

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2023

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

For the transition period from _____ to _____

Commission file number 333-256188

1STDIBS.COM, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

51 Astor Place, 3rd Floor

New York, New York

(Address of Principal Executive Offices)

94-3389618

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

10003

(Zip Code)

(212) 627-3927

Registrant's telephone number, including area code

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value per share	DIBS	Nasdaq Global Market

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

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

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

Large accelerated filer

Non-accelerated filer

☐

☒

Accelerated filer

Smaller reporting company

Emerging growth company

☐

☒

☒

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

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

As of October 27, 2023, the registrant had 39,981,248 shares of common stock, \$0.01 par value per share outstanding.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements that involve substantial risks and uncertainties. Any statements contained in this Quarterly Report on Form 10-Q that are not statements of historical facts may be deemed to be forward-looking statements. In some cases, you can identify forward-looking statements by the words “may,” “might,” “will,” “can,” “could,” “would,” “should,” “expect,” “intend,” “plan,” “objective,” “target,” “anticipate,” “believe,” “estimate,” “predict,” “project,” “potential,” “continue,” and “ongoing,” or the negative of these terms, or other comparable terminology intended to identify statements about the future. These statements involve known and unknown risks, uncertainties, and other factors that may cause our actual results, performance, or achievements to be materially different from the information expressed or implied by these forward-looking statements. Forward-looking statements include, but are not limited to, statements about:

- our future financial performance, including our expectations regarding our net revenue, cost of revenue, operating expenses, and our ability to achieve and maintain future profitability;
 - our ability to effectively manage or sustain our growth and to effectively expand our operations, including internationally;
 - our strategies, plans, objectives and goals;
 - the market demand for the products offered on our online marketplace, including vintage, antique, and contemporary furniture, home décor, jewelry, watches, art, and fashion, new and authenticated luxury design products in general, and the online market for these products;
 - our ability to compete with existing and new competitors in existing and new markets;
 - our ability to attract and retain sellers and buyers;
 - our ability to increase the supply of luxury design products offered through our online marketplace;
 - our ability to timely and effectively scale our operations;
 - our ability to enter international markets;
 - our ability to successfully implement, launch, and achieve market acceptance of our 1stDibs Auctions offering and to anticipate and manage the risks associated therewith
 - our ability to develop and protect our brand;
 - our ability to comply with laws and regulations;
 - our expectations regarding outstanding litigation;
 - our expectations and management of future growth;
 - our expectations concerning relationships with third parties;
 - economic and industry trends, projected growth, or trend analysis;
 - our estimated market opportunity;
 - our ability to add capacity, capabilities, and automation to our operations;
 - the increased expenses associated with being a public company;
 - the timing and amount of share repurchases;
 - the effect of catastrophic events or geopolitical conditions, such as the COVID-19 pandemic, including the uncertainty with respect to potential resurgences, on our business and operations;
 - our ability to maintain, protect, and enhance our intellectual property rights and successfully defend against claims of infringement, misappropriation, or other violations of third-party intellectual property;
 - the availability of capital to grow our business;
 - our ability to successfully defend any future litigation brought against us;
 - our ability to implement, maintain, and improve effective internal controls;
 - adverse economic or market conditions that may harm our business;
-

- exposure to increased economic and operational uncertainties from operating a global business, including the effects of foreign currency exchange;
- the dependence of our business on our ability to attract and retain talented employees;
- potential changes in laws and regulations applicable to us or our sellers, or our sellers' ability to comply therewith; and
- the amount of time for which we expect our cash balances and other available financial resources to be sufficient to fund our operations.

These forward-looking statements reflect our management's beliefs and views with respect to future events and are based on estimates and assumptions as of the date of this Quarterly Report on Form 10-Q and are subject to risks and uncertainties. You should refer to the section titled "Risk Factors" included under Part II, Item 1A below and elsewhere in this Quarterly Report on Form 10-Q, as well as in our other filings with the Securities and Exchange Commission (the "SEC"), for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. As a result of these factors, we cannot assure you that the forward-looking statements in this Quarterly Report on Form 10-Q will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified timeframe, or at all. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. Given these uncertainties, you should not place undue reliance on these forward-looking statements.

In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q. While we believe that such information provides a reasonable basis for these statements, such information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on them.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of activity, performance, or events and circumstances reflected in the forward-looking statements will be achieved or occur. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements. Such forward-looking statements relate only to events as of the date of this Quarterly Report on Form 10-Q. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this Quarterly Report on Form 10-Q to conform these statements to actual results or to changes in our expectations, except as required by law.

You should read this Quarterly Report on Form 10-Q and the documents that we reference and have filed as exhibits with the understanding that our actual future results may be materially different from what we expect. We qualify all of the forward-looking statements in this Quarterly Report on Form 10-Q by these cautionary statements.

RISK FACTOR SUMMARY

The following risk factor summary should be read together with the more detailed discussion of risks and uncertainties set forth in the “Risk Factors” section of this report.

- Our history of operating losses and ability to achieve or maintain profitability in the future, which could negatively impact our financial condition and our stock price;
 - Fluctuations in our quarterly and annual net revenue and results of operations, which could cause our stock price to fluctuate and the value of your investment to decline;
 - Our historical growth, which may not be indicative of our future growth;
 - Our ability to generate a sufficient volume of listings of luxury design products on our online marketplace or to accurately vet the authenticity of these products, which could impact our business, brand, and reputation;
 - Our ability to maintain the authenticity of the items listed and sold through our online marketplace, which could cause our business, brand, and reputation to suffer;
 - Risks associated with claims that items listed on our online marketplace are counterfeit, infringing, hazardous, or illegal, or otherwise subject to regulation or cultural patrimony considerations;
 - Risks associated with liability for fraudulent or unlawful activities of sellers who list items on our online marketplace, which could cause our business, brand, and reputation to suffer;
 - Our ability to attract and maintain an active community of sellers and buyers, which could impact our growth;
 - Our reliance, in part, on sellers to provide a positive experience to buyers;
 - Our ability to compete effectively;
 - Real or perceived inaccuracies in our metrics and market estimates used to evaluate our performance, which may harm our reputation and negatively affect our business;
 - Our ability to successfully expand our business model to encompass additional categories of luxury design products in a timely and cost-effective manner;
 - The COVID-19 pandemic, which has impacted, and may continue to impact, our business, key metrics, and results of operations in volatile and unpredictable ways;
 - Our ability to maintain and promote our brand and reputation, which could impact our business, market position, and future growth;
 - Risks related to acquisitions, which may divert management’s attention and/or prove to be unsuccessful;
 - Risks related to further expansion into markets outside of the United States;
 - Our ability to successfully protect our intellectual property;
 - Risks associated with the disclosure of sensitive information about our sellers and buyers or other third parties with whom we transact business, or cyber-attacks against us or our third-party providers, which could result in curtailed use of our online marketplace, exposure to liability, and reputational damage;
 - Risks related to regulatory matters and litigation;
 - Risks related to the impact of and focus on Environmental, Social, and Governance (“ESG”) matters;
 - Risks related to our operations as a public company;
 - Risks related to our internal control over financial reporting and our disclosure controls and procedures; and
 - Risks related to our common stock, including that an active trading market for our common stock may not develop or be sustained and that the price of our common stock may be volatile.
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Part I - Financial Information

Item 1. Condensed Consolidated Financial Statements (Unaudited)

1STDIBS.COM, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except share and per share amounts)
(Unaudited)

	September 30, 2023	December 31, 2022
Assets		
Current assets:		
Cash and cash equivalents	\$ 32,442	\$ 153,209
Short-term investments	110,552	—
Restricted cash, current	—	1,500
Accounts receivable, net of allowance for doubtful accounts of \$195 and \$113 at September 30, 2023 and December 31, 2022, respectively	693	972
Prepaid expenses	2,612	3,506
Receivables from payment processors	3,475	2,476
Other current assets	942	800
Total current assets	150,716	162,463
Restricted cash, non-current	3,336	3,334
Property and equipment, net	3,283	3,685
Operating lease right-of-use assets	20,073	21,990
Goodwill	4,082	4,075
Other assets	1,286	249
Total assets	\$ 182,776	\$ 195,796
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 2,325	\$ 2,905
Payables due to sellers	7,789	7,185
Accrued expenses	11,323	10,761
Operating lease liabilities, current	2,891	2,770
Other current liabilities	2,633	2,429
Total current liabilities	26,961	26,050
Operating lease liabilities, non-current	19,494	21,678
Other liabilities	8	46
Total liabilities	46,463	47,774
Commitments and contingencies (Note 13)		
Stockholders' equity:		
Preferred stock, \$0.01 par value; 10,000,000 shares authorized as of September 30, 2023 and December 31, 2022; zero shares issued and outstanding as of September 30, 2023 and December 31, 2022	—	—
Common stock, \$0.01 par value; 400,000,000 shares authorized as of September 30, 2023 and December 31, 2022; 40,386,375 and 39,260,193 shares issued as of September 30, 2023 and December 31, 2022, respectively	403	393
Treasury stock, at cost; 334,959 and zero shares as of September 30, 2023 and December 31, 2022, respectively	(1,377)	—
Additional paid-in capital	448,544	439,005
Accumulated deficit	(310,778)	(291,020)
Accumulated other comprehensive loss	(479)	(356)
Total stockholders' equity	136,313	148,022
Total liabilities and stockholders' equity	\$ 182,776	\$ 195,796

See accompanying notes to the condensed consolidated financial statements.

1STDIBS.COM, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands, except share and per share amounts)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net revenue	\$ 20,663	\$ 22,729	\$ 63,762	\$ 73,892
Cost of revenue	5,510	7,278	19,144	22,908
Gross profit	15,153	15,451	44,618	50,984
Operating expenses:				
Sales and marketing	8,411	11,072	28,007	34,139
Technology development	4,515	6,363	17,199	18,711
General and administrative	6,772	6,731	22,323	20,635
Provision for transaction losses	688	1,183	2,940	4,432
Gain on sale of Design Manager	—	—	—	(9,684)
Total operating expenses	20,386	25,349	70,469	68,233
Loss from operations	(5,233)	(9,898)	(25,851)	(17,249)
Other income, net:				
Interest income	1,757	520	4,933	746
Interest expense	—	(3)	—	(11)
Other, net	171	353	1,160	837
Total other income, net	1,928	870	6,093	1,572
Net loss before income taxes	(3,305)	(9,028)	(19,758)	(15,677)
Provision for income taxes	—	—	—	—
Net loss	\$ (3,305)	\$ (9,028)	\$ (19,758)	\$ (15,677)
Net loss per share—basic and diluted	\$ (0.08)	\$ (0.23)	\$ (0.50)	\$ (0.41)
Weighted average common shares outstanding—basic and diluted	39,962,932	38,668,231	39,647,716	38,291,977

See accompanying notes to the condensed consolidated financial statements.

1STDIBS.COM, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(Amounts in thousands)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net loss	\$ (3,305)	\$ (9,028)	\$ (19,758)	\$ (15,677)
Other comprehensive loss:				
Foreign currency translation adjustment, net of tax of \$0 for each of the three and nine months ended September 30, 2023 and 2022	(34)	(103)	9	(272)
Unrealized losses on short-term investments, net of tax of \$0 for each of the three and nine months ended September 30, 2023 and 2022	(12)	—	(132)	—
Comprehensive loss	<u>\$ (3,351)</u>	<u>\$ (9,131)</u>	<u>\$ (19,881)</u>	<u>\$ (15,949)</u>

See accompanying notes to the condensed consolidated financial statements.

1STDIBS.COM, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Amounts in thousands, except share amounts)
(Unaudited)

Three Months Ended September 30, 2023								
	Common Stock		Additional Paid - In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Treasury Stock	Total Stockholders' Equity	
	Shares	Amount						
Balances as of June 30, 2023	40,037,018	\$ 400	\$ 445,480	\$ (307,473)	\$ (433)	\$ —	\$	137,974
Issuance of common stock for exercise of stock options	11,000	—	43	—	—	—		43
Vested restricted stock units converted to common stock	338,357	3	(3)	—	—	—		—
Stock-based compensation	—	—	3,024	—	—	—		3,024
Repurchase of common stock	(334,959)	—	—	—	—	(1,377)		(1,377)
Other comprehensive loss	—	—	—	—	(46)	—		(46)
Net loss	—	—	—	(3,305)	—	—		(3,305)
Balances as of September 30, 2023	40,051,416	\$ 403	\$ 448,544	\$ (310,778)	\$ (479)	\$ (1,377)	\$	136,313

Nine Months Ended September 30, 2023								
	Common Stock		Additional Paid - In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Treasury Stock	Total Stockholders' Equity	
	Shares	Amount						
Balances as of December 31, 2022	39,260,193	\$ 393	\$ 439,005	\$ (291,020)	\$ (356)	\$ —	\$	148,022
Issuance of common stock for exercise of stock options	19,978	—	78	—	—	—		78
Vested restricted stock units converted to common shares	1,106,204	10	(10)	—	—	—		—
Stock-based compensation	—	—	9,471	—	—	—		9,471
Repurchase of common stock	(334,959)	—	—	—	—	(1,377)		(1,377)
Other comprehensive loss	—	—	—	—	(123)	—		(123)
Net loss	—	—	—	(19,758)	—	—		(19,758)
Balances as of September 30, 2023	40,051,416	\$ 403	\$ 448,544	\$ (310,778)	\$ (479)	\$ (1,377)	\$	136,313

Three Months Ended September 30, 2022								
	Common Stock		Additional Paid - In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Treasury Stock	Total Stockholders' Equity	
	Shares	Amount						
Balances as of June 30, 2022	38,573,212	\$ 383	\$ 431,513	\$ (275,131)	\$ (398)	\$ —	\$	156,367
Issuance of common stock for exercise of stock options	78,011	1	308	—	—	—		309
Vested restricted stock units converted to common shares	245,228	—	—	—	—	—		—
Stock-based compensation	—	—	3,154	—	—	—		3,154
Other comprehensive loss	—	—	—	—	(103)	—		(103)
Net loss	—	—	—	(9,028)	—	—		(9,028)
Balances as of September 30, 2022	38,896,451	\$ 384	\$ 434,975	\$ (284,159)	\$ (501)	\$ —	\$	150,699

Nine Months Ended September 30, 2022								
	Common Stock		Additional Paid - In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Treasury Stock	Total Stockholders' Equity	
	Shares	Amount						
Balances as of December 31, 2021	37,991,529	\$ 380	\$ 425,769	\$ (268,482)	\$ (229)	\$ —	\$	157,438
Issuance of common stock for exercise of stock options	396,089	4	1,544	—	—	—		1,548
Vested restricted stock units converted to common shares	508,833	—	—	—	—	—		—
Stock-based compensation	—	—	7,662	—	—	—		7,662
Other comprehensive loss	—	—	—	—	(272)	—		(272)
Net loss	—	—	—	(15,677)	—	—		(15,677)
Balances as of September 30, 2022	38,896,451	\$ 384	\$ 434,975	\$ (284,159)	\$ (501)	\$ —	\$	150,699

See accompanying notes to the condensed consolidated financial statements.

1STDIBS.COM, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2023	2022
Cash flows from operating activities:		
Net loss	\$ (19,758)	\$ (15,677)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,815	2,189
Stock-based compensation expense	9,340	7,662
Provision for transaction losses, returns and refunds	703	277
Amortization of costs to obtain revenue contracts	242	233
Amortization of operating lease right-of-use assets	1,917	1,891
Gain on sale of Design Manager	—	(9,684)
Amortization of (discounts) premiums, net on short-term investments	(2,366)	—
Other, net	(45)	517
Changes in operating assets and liabilities:		
Accounts receivable	40	(151)
Prepaid expenses and other current assets	415	(1,448)
Receivables from payment processors	(999)	(619)
Other assets	(1,215)	(602)
Accounts payable and accrued expenses	(210)	(3,692)
Payables due to sellers	606	(977)
Operating lease liabilities	(2,063)	(2,036)
Other current liabilities and other liabilities	103	(293)
Net cash used in operating activities	(11,475)	(22,410)
Cash flows from investing activities:		
Purchases of short-term investments	(166,471)	—
Maturities of short-term investments	58,153	—
Development of internal-use software	(1,215)	(1,688)
Purchases of property and equipment	(67)	(84)
Proceeds from sale of Design Manager	—	14,611
Other, net	—	(18)
Net cash (used in) provided by investing activities	(109,600)	12,821
Cash flows from financing activities:		
Proceeds from exercise of stock options	78	1,548
Payments for repurchase of common stock	(1,312)	—
Net cash (used in) provided by financing activities	(1,234)	1,548
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	44	(689)
Net decrease in cash, cash equivalents, and restricted cash	(122,265)	(8,730)
Cash, cash equivalents, and restricted cash at beginning of the period	158,043	171,559
Cash, cash equivalents, and restricted cash at end of the period	<u>\$ 35,778</u>	<u>\$ 162,829</u>
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ —	\$ 10

See accompanying notes to the condensed consolidated financial statements.

1STDIBS.COM, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Basis of Presentation and Summary of Significant Accounting Policies

Description of Business

1stdibs.com, Inc. ("1stDibs" or the "Company") is one of the world's leading online marketplaces for connecting design lovers with many of the best sellers and makers of vintage & antique furniture, contemporary furniture, home décor, jewelry, watches, art, and fashion. The Company's thoroughly vetted seller base, in-depth editorial content, and custom-built technology platform create trust in the Company's brand and facilitate high-consideration purchases of luxury design products online. By disrupting the way these items are bought and sold, 1stDibs is both expanding access to, and growing the market for, luxury design products.

The Company was incorporated in the state of Delaware on March 10, 2000 and is headquartered in New York, NY.

Basis of Presentation

The accompanying condensed consolidated financial statements are prepared in accordance with the accounting principles generally accepted in the United States of America ("GAAP") and include the accounts of the Company and its wholly-owned subsidiaries, 1stdibs.com, Ltd. and 1stdibs Design Manager, Inc. ("Design Manager"). The Company sold its equity interest in Design Manager on June 29, 2022, therefore, the condensed consolidated statements of operations for the nine months ended September 30, 2022 includes activity relating to Design Manager. The condensed consolidated balance sheet as of September 30, 2023 no longer includes the assets, liabilities, and equity amounts associated with Design Manager. All intercompany accounts and transactions have been eliminated in consolidation. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. Therefore, these condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes included in the Company's Annual Report on Form 10-K (the "Form 10-K") for the fiscal year ended December 31, 2022, filed with the Securities and Exchange Commission ("SEC") on March 3, 2023.

The condensed consolidated balance sheet as of December 31, 2022, included herein, was derived from the audited financial statements as of that date, but does not include all disclosures including certain notes required by GAAP on an annual reporting basis.

In the opinion of the Company, the accompanying unaudited condensed consolidated financial statements contain all adjustments, consisting of only normal recurring adjustments, necessary for a fair presentation of its financial position and its results of operations, changes in stockholders' equity, and cash flows for the interim periods. The results for the three and nine months ended September 30, 2023 are not necessarily indicative of the results to be expected for any subsequent quarter or for the fiscal year ending December 31, 2023.

There have been no material changes to the Company's significant accounting policies as described in the Form 10-K except for the short-term investments and treasury stock discussed below. Certain immaterial amounts in the financial statements of the prior years have been reclassified to conform to the current year presentation for comparative purposes.

Restructuring Charges

In June 2023, the Company announced a workforce reduction designed to reduce operating costs and realign investment priorities involving the reduction of approximately 20% of the Company's global workforce. As a result of the reduction, the Company incurred approximately \$2.0 million in non-recurring restructuring charges during the nine months ended September 30, 2023, consisting primarily of employee severance and benefits costs. During the three months ended September 30, 2023, \$1.4 million has been paid and \$0.6 million is included in accrued expenses on the Company's condensed consolidated balance sheet as of September 30, 2023.

1STDIBS.COM, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

The following table displays a rollforward of the charges to the accrued balance as of September 30, 2023:

(in thousands)	Restructuring Charges
Balance, December 31, 2022	\$ —
Restructuring charges	2,004
Cash payments	1,374
Balance, September 30, 2023	\$ 630

The expense is included within the respective financial statement line items on the condensed consolidated statements of operations as shown in the table below for the nine months ended September 30, 2023. There was no expense incurred during the three months ended September 30, 2023.

(in thousands)	Nine Months Ended September 30, 2023
Cost of revenue	\$ 135
Sales and marketing	789
Technology development	1,044
General and administrative	36
Total	\$ 2,004

Use of Estimates

The preparation of the condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting periods. Significant estimates and assumptions reflected in these condensed consolidated financial statements include, but are not limited to, revenue recognition, provision for transaction losses, determination of useful lives of property and equipment, impairment assessment of goodwill, capitalization of internal-use software and determination of useful lives, income taxes, and the valuation of stock-based compensation and leases. The Company evaluates its estimates and assumptions on an ongoing basis. Actual results could differ from those estimates and such differences may be material to the condensed consolidated financial statements.

Cash, Cash Equivalents, and Restricted Cash

The following represents the Company's cash, cash equivalents, and restricted cash as of the periods presented:

(in thousands)	September 30, 2023	September 30, 2022
Cash and cash equivalents	\$ 32,442	\$ 157,995
Restricted cash, current	—	1,500
Restricted cash, non-current	3,336	3,334
Total cash, cash equivalents, and restricted cash	\$ 35,778	\$ 162,829

The Company considers all short-term, highly liquid investments purchased with an original maturity of three months or less at the date of purchase to be cash equivalents. Certain cash equivalents consist of investments in debt securities that are classified as available-for-sale. During the three and nine months ended September 30, 2023, the Company purchased \$3.2 million and \$34.9 million of available-for-sale securities classified as cash equivalents, respectively. The Company's restricted cash relates to a \$3.3 million Letter of Credit for its office lease in New York, New York. Prior to September 30, 2023, \$1.5 million was held in a joint escrow account in connection with the sale of Design Manager. As of September 30, 2023 the restriction was lifted and the funds were released. The carrying value of the restricted cash approximates fair value.

Short-term Investments

Short-term investments designated as available-for-sale securities are carried at fair value, which is based on quoted market prices for such securities, if available, or is estimated on the basis of quoted market prices of financial instruments with similar characteristics. Investments with original maturities greater than 90 days and less than one year are classified within short-term investments on the Company's condensed consolidated balance sheets. In addition, investments with maturities beyond one

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year at the time of purchase that are highly liquid in nature and represent the investment of cash that is available for current operations are classified as short-term investments. Any other investments with original maturities greater than one year would be classified within long-term investments.

Unrealized gains and losses of available-for-sale securities are excluded from earnings and are reported as a component of other comprehensive income (loss) until the security is sold, has matured, or the Company determines that the fair value of the security has declined below its adjusted cost basis and the decline is not due to a credit loss. Realized gains and losses on short-term investments are calculated based on the specific identification method and would be reclassified from accumulated other comprehensive loss to other, net in the Company's condensed consolidated statements of operations.

Short-term investments are evaluated for impairment quarterly. The Company's portfolio of available-for-sale debt securities is required to incorporate forward-looking information to determine any credit losses. This risk is mitigated by the high quality nature of the investments. The Company evaluates the current expected credit loss by considering various factors in determining whether it should recognize an impairment charge, including the credit quality of the issuer, the duration that the fair value has been less than the adjusted cost basis, the severity and reason for the decline in value, and the Company's intent to sell and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value. If the Company concluded that an investment is impaired or a portion of the unrealized loss is a result of a credit loss, it recognizes the charge at that time in the condensed consolidated statements of operations. Determining whether the decline in fair value is due to a credit loss requires management judgment based on the specific facts and circumstances of each security. The ultimate value realized on these securities is subject to market price volatility until they are sold. The Company did not recognize any credit losses related to available-for-sale debt securities during the three and nine months ended September 30, 2023.

Treasury Stock

In August 2023, the Company's Board of Directors authorized the Company to repurchase up to an aggregate of \$20.0 million of its common stock ("Stock Repurchase Program"). Repurchased common stock is stated at cost, determined on an average cost basis and is presented as a reduction of stockholders' equity on the condensed consolidated balance sheets. The direct costs incurred to acquire treasury stock are treated like stock issuance costs and added to the cost of the treasury stock, which includes applicable fees and taxes. There have been no reissuances of treasury stock as of September 30, 2023.

Accounts Receivable, net

The Company's accounts receivable are recorded at amounts billed to sellers, generally for subscription revenue, and are presented net of an estimated allowance for doubtful accounts on the Company's consolidated balance sheets. The Company's accounts receivable do not bear interest and do not require collateral or other security to support related receivables. The allowance for doubtful accounts considers forward-looking information to estimate expected credit losses using a number of factors, including age of the receivable, current economic conditions, historical losses, and management's assessment and judgment of the seller. The evaluation is inherently subjective, as it requires estimates that are susceptible to significant revision as more information becomes available. Losses are charged against the allowance when management believes the uncollectability of a receivable is confirmed and subsequent recoveries, if any, are credited to the allowance. Account balances are written off after all means of collection are exhausted and the potential for non-recovery is determined to be probable. Adjustments to the allowance for doubtful accounts are recorded as a component of provision for transaction losses in the condensed consolidated statements of operations.

Recently Adopted Accounting Pronouncements

In June 2016, the FASB issued ASU 2016-13, Financial Instruments - Credit Losses, which replaces the incurred loss impairment methodology with a methodology that requires the reflection of expected credit losses and also requires consideration of a broader range of reasonable and supportable information to determine credit loss estimates. It also eliminates the concept of other-than-temporary impairment and requires credit losses related to available-for-sale debt securities to be recorded through an allowance for credit losses rather than as a reduction in the amortized cost basis of the securities. For most financial instruments, the standard requires the use of a forward-looking expected loss model rather than the incurred loss model for recognizing credit losses, which generally results in the earlier recognition of credit losses on financial instruments.

The Company adopted this standard effective January 1, 2023 under a modified retrospective basis and considers forward-looking information to estimate expected credit losses. No adjustment to accumulated deficit was recorded as the adoption of this standard did not have a material impact on the Company's condensed consolidated financial statements.

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2. Fair Value of Financial Instruments

Certain assets and liabilities are carried at fair value in accordance with GAAP. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date.

Valuation techniques used to measure fair value require the Company to maximize the use of observable inputs and minimize the use of unobservable inputs. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). Financial assets and liabilities carried at fair value are to be classified and disclosed in one of the following three levels of the fair value hierarchy, of which the first two are considered observable and the last is considered unobservable:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Inputs other than quoted prices included in Level 1 that are observable for the asset or liability, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3—Unobservable inputs that are supported by little or no market activity that are significant to determining the fair value of the assets or liabilities, including pricing models, discounted cash flow methodologies, and similar techniques.

Short-term investments and certain cash equivalents consist of investments in debt securities that are available-for-sale. The table below segregates all assets that are measured at fair value on a recurring basis into the most appropriate level within the fair value hierarchy based on the inputs used to determine the fair value at the measurement date:

(in thousands)	September 30, 2023			
	Level 1	Level 2	Level 3	Total
Cash equivalents:				
Money market fund	\$ 6,875	\$ —	\$ —	\$ 6,875
U.S. Treasury securities	—	995	—	995
Total cash equivalents	\$ 6,875	\$ 995	\$ —	\$ 7,870
Short-term investments:				
Commercial paper	\$ —	\$ 15,572	\$ —	\$ 15,572
Corporate notes	—	7,122	—	7,122
U.S. Treasury securities	—	22,757	—	22,757
U.S. Government agency securities	—	65,101	—	65,101
Total short-term investments	\$ —	\$ 110,552	\$ —	\$ 110,552

There were no transfers between Level 1, Level 2, or Level 3 during the three and nine months ended September 30, 2023 and 2022. As of September 30, 2023 and December 31, 2022, the carrying amounts of the Company's financial instruments, including cash and cash equivalents, restricted cash, accounts receivable, prepaid expenses, other current assets, accounts payable, accrued expenses and other current liabilities, approximate fair value because of their short maturities, and therefore were all classified as Level 1.

3. Revenue Recognition

The following table summarizes the Company's net revenue by type of service for the periods presented:

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Seller marketplace services	\$ 20,467	\$ 22,504	\$ 63,239	\$ 71,597
Other services	196	225	523	2,295
Total net revenue	\$ 20,663	\$ 22,729	\$ 63,762	\$ 73,892

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The Company generates revenue from seller marketplace services and other services. Seller marketplace services primarily consist of marketplace transactions, subscriptions, and listing fees. Other services primarily consist of advertising revenues generated from displaying ads on the Company's online marketplace and software services revenue related to Design Manager, typically used by interior designers. Design Manager was sold on June 29, 2022; therefore, no related net revenue for software services was recognized during the three and nine months ended September 30, 2023 as well as the three months ended September 30, 2022.

As of both September 30, 2023 and December 31, 2022, the Company recorded \$0.5 million of costs to obtain revenue contracts, of which \$0.3 million was included in other current assets, and \$0.2 million was included in other assets. Amortization of costs to obtain revenue contracts totaled \$0.1 million and \$0.2 million for both the three and nine months ended September 30, 2023, and 2022, respectively. The Company periodically reviews the costs to obtain revenue contracts to determine whether events or changes in circumstances have occurred that could impact the period of benefit of these costs to obtain revenue contracts.

4. Short-Term Investments

The following table summarizes the estimated value of the Company's short-term investments as of September 30, 2023:

(in thousands)	September 30, 2023			
	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value
Commercial paper	\$ 15,589	\$ —	\$ (17)	\$ 15,572
Corporate notes	7,134	—	(12)	7,122
U.S. Treasury securities	22,786	—	(29)	22,757
U.S. Government agency securities	65,175	10	(84)	65,101
Total short-term investments	<u>\$ 110,684</u>	<u>\$ 10</u>	<u>\$ (142)</u>	<u>\$ 110,552</u>

As of December 31, 2022, the Company had no short-term investments. As of September 30, 2023, the fair value of short-term investments by remaining contractual maturity consisted of the following:

(in thousands)	Fair Value
Remaining maturity date one year or less	\$ 99,000
Remaining maturity date greater than one year	11,552
Total short-term investments	<u>\$ 110,552</u>

5. Property and Equipment, net

As of September 30, 2023 and December 31, 2022, property and equipment, net consisted of the following:

(in thousands)	September 30, 2023	December 31, 2022
Internal-use software	\$ 19,047	\$ 18,418
Leasehold improvements	3,605	3,594
Furniture and fixtures	1,131	1,114
Computer equipment and software	898	851
Software in progress	520	562
Total property and equipment, gross	25,201	24,539
Less: Accumulated depreciation and amortization	(21,918)	(20,854)
Total property and equipment, net	<u>\$ 3,283</u>	<u>\$ 3,685</u>

As of September 30, 2023 and December 31, 2022, the net book value of internal-use software was \$2.6 million and \$3.0 million, respectively. Depreciation and amortization expense related to the Company's property and equipment totaled \$0.4 million and \$1.8 million for the three and nine months ended September 30, 2023, respectively, which included amortization expense for internal-use software of \$0.4 million and \$1.7 million, respectively. Included in amortization expense for the nine months ended September 30, 2023, was \$0.5 million of accelerated internal-use software amortization related to the shift in strategy to discontinue supporting the Company's NFT platform. Depreciation and amortization expense related to the Company's property and equipment totaled \$0.7 million and \$2.1 million for the three and nine months ended September 30,

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2022, respectively, which included amortization expense for internal-use software of \$0.7 million and \$2.0 million, respectively.

6. Accrued Expenses

As of September 30, 2023 and December 31, 2022, accrued expenses consisted of the following:

(in thousands)	September 30, 2023	December 31, 2022
Shipping	\$ 3,213	\$ 3,597
Salaries & benefits	3,267	1,862
Sales & use taxes payable	1,159	1,378
Allowance for transaction losses	1,200	1,327
Restructuring charges	630	—
Payment processor fees	525	970
Allowance for e-commerce returns	392	438
Other	937	1,189
Total accrued expenses	<u>\$ 11,323</u>	<u>\$ 10,761</u>

7. Leases

The Company enters into contracts in the normal course of business and assesses whether any such contracts contain a lease. The Company determines if an arrangement is a lease at inception if it conveys the right to control the identified asset for a period of time in exchange for consideration. The Company classifies leases as operating or financing in nature, and records the associated right-of-use asset and lease liability on its condensed consolidated balance sheet. The lease liability represents the present value of future lease payments, net of lease incentives, discounted using an incremental borrowing rate, which is a management estimate based on the information available at the commencement date of a lease arrangement.

The Company accounts for lease and non-lease components related to operating leases as a single lease component. The Company has elected that costs associated with leases having an initial term of 12 months or less ("short-term leases") are recognized in the condensed consolidated statements of operations on a straight-line basis over the lease term and are not recorded on the balance sheet. Lease expense is recognized as a single lease cost on a straight-line basis over the lease term. The lease term consists of non-cancelable periods and may include options, including those to extend or terminate, if it is reasonably certain they will be exercised. Variable lease expense is recognized as incurred and consists primarily of real estate taxes, utilities, and other office space related expenses.

The Company's operating lease arrangements are principally for office space in its New York City headquarters. As of September 30, 2023, the Company had \$20.1 million of operating lease right-of-use assets, \$2.9 million and \$19.5 million of current and non-current operating lease liabilities, respectively, and no finance leases on its condensed consolidated balance sheet. These operating lease arrangements, included in the measurement of lease liabilities, had a weighted-average remaining lease term of 6.25 years, a weighted-average discount rate of 5.9%, and do not reflect options to extend or terminate, as management does not consider the exercise of these options to be reasonably certain. As of December 31, 2022, the Company had \$22.0 million of operating lease right-of-use assets, \$2.8 million and \$21.7 million of current and non-current operating lease liabilities, respectively, and no finance leases on its condensed consolidated balance sheet.

During the three and nine months ended September 30, 2023, the Company paid \$1.0 million and \$3.1 million, respectively, for amounts included in the measurement of lease liabilities, and \$1.1 million and \$3.2 million during the three and nine months ended September 30, 2022, respectively. The Company did not enter into any new lease arrangements as a lessee during the three and nine months ended September 30, 2022.

In August 2023, the Company entered into a sublease agreement as the sublessor for its office space in its New York City headquarters (the "Sublease"). The Sublease will commence on October 1, 2023 for approximately 78% of the rentable square feet and expand to 100% of the rentable square feet on January 15, 2024. The sublease ends on December 31, 2029, the expiration date of the Company's New York City headquarter's lease, and contains an option for the lessee to terminate on the third anniversary of the commencement date. The Sublease contains a five-month rent abatement provision, with an additional abatement against fixed rent for the sixth calendar month. Beginning in April 2024 the Company will collect monthly lease payments of \$0.3 million with annual increases over the term. In addition, the subtenant will be responsible for its proportionate share of the operating expenses of the building, including taxes, electric, heating, ventilation, and air conditioning. The proportionate share will be 78% from the commencement of the Sublease until the January 15, 2024, at that time the

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proportionate share will be increased to 100%. Sublease income is recognized as an offset to lease expense on a straight-line basis over the lease term and is included in general and administrative expenses on the Company's condensed consolidated statement of operations. During the three months ended September 30, 2023, the Company capitalized its \$1.1 million broker fee paid which will be amortized over the life of the Sublease. There was no sublease income recognized in the three and nine months ended September 30, 2023 and 2022.

Subsequent to the balance sheet date, in November 2023, the Company entered into a lease agreement, as the lessee, for 13,671 square feet for a new office which is anticipated to be the Company's new corporate headquarters in New York City (the Lease Agreement"). The Lease Agreement is expected to have a commencement date of January 15, 2024 with a five year term and an initial seven month rent abatement period. The lease agreement includes an option for the Company to extend the lease for an additional five years.

The Company recognized lease expense for the periods presented:

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Operating lease expense	\$ 991	\$ 1,000	\$ 2,979	\$ 2,987
Short-term lease expense	33	22	87	100
Variable lease expense	196	287	772	776
Total lease expense	<u>\$ 1,220</u>	<u>\$ 1,309</u>	<u>\$ 3,838</u>	<u>\$ 3,863</u>

As of September 30, 2023, the total remaining operating lease payments included in the measurement of lease liabilities was as follows (in thousands):

Fiscal Year Ending December 31,	Operating Lease Payments
2023 (remaining)	\$ 1,020
2024	4,114
2025	4,292
2026	4,292
2027	4,292
Thereafter	8,583
Total operating lease payments	<u>26,593</u>
Less: imputed interest	(4,208)
Total lease liabilities	<u>\$ 22,385</u>

8. Other Current Liabilities

As of September 30, 2023 and December 31, 2022, other current liabilities consisted of the following:

(in thousands)	September 30, 2023	December 31, 2022
Sales and use tax contingencies	\$ 1,946	\$ 1,863
Buyer deposits	392	318
Deferred revenue	99	140
Other	196	108
Total other current liabilities	<u>\$ 2,633</u>	<u>\$ 2,429</u>

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9. Equity

As of September 30, 2023 and December 31, 2022, the Company had reserved shares of common stock for issuance in connection with the following:

	September 30, 2023	December 31, 2022
Options to purchase common stock	3,930,336	4,034,287
Restricted stock units outstanding	4,116,974	2,807,981
Shares available for future grant under the 2021 Plan	2,781,826	3,151,824
Shares available for future grant under the ESPP	1,572,504	1,179,902
Total	12,401,640	11,173,994

Preferred Stock

Effective June 14, 2021, in connection with the closing of the Company's IPO, the Company's board of directors ("Board") is authorized to issue up to 10,000,000 shares of preferred stock, \$0.01 par value per share, in one or more series. The Company's Board has the discretion to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock. As of September 30, 2023 and December 31, 2022, no shares of preferred stock were issued or outstanding.

Common Stock

As of September 30, 2023 and December 31, 2022, the Company had authorized 400,000,000 shares of voting common stock, \$0.01 par value per share. Each holder of the Company's common stock is entitled to one vote for each share on all matters to be voted upon by the stockholders and there are no cumulative rights. Subject to any preferential rights of any outstanding preferred stock, holders of the Company's common stock are entitled to receive ratably the dividends, if any, as may be declared from time to time by the Board out of legally available funds. If there is a liquidation, dissolution, or winding up of the Company, holders of the Company's common stock would be entitled to share in the Company's assets remaining after the payment of liabilities and any preferential rights of any outstanding preferred stock. The rights, preferences, and privileges of the holders of the Company's common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock which the Company may designate and issue in the future.

Treasury Stock

As of September 30, 2023, the Company had 334,959 shares of treasury stock carried at its cost basis of \$1.4 million, which the Company purchased during the three months ended September 30, 2023, and approximately \$18.6 million remains available for future purchases.

The repurchase may be effected, from time-to-time, through open market purchases, privately negotiated transactions, Rule 10b5-1 plans, accelerated stock repurchases, block trades, derivative contracts or otherwise in compliance with Rule 10b-18 of the Exchange Act. The repurchase program is not subject to a termination or expiration date, and it does not obligate the Company to acquire any specific number of shares. The timing, price and volume of repurchases will be based on a number of factors, including market conditions, relevant securities laws, and other considerations.

10. Stock-based compensation

2011 Option Plan

The Company adopted the 2011 Stock Option and Grant Plan (the "2011 Plan") on September 2, 2011 and amended and restated the plan on December 14, 2011. The 2011 Plan provided for the Company to grant incentive stock options or nonqualified stock options, restricted stock awards, and other stock-based awards to its employees, directors, officers, outside advisors, and non-employee consultants. At the time of grant, the options issued to new employees pursuant to the 2011 Plan expire ten years from the date of grant and generally vest over four years, with 25% vesting on the first anniversary and the balance vesting ratably over the remaining 36 months. Options issued pursuant to the 2011 Plan expire ten years from the date of grant and generally vest ratably over 48 months.

Following the completion of the Company's IPO in June 2021, no additional awards and no shares of the Company's common stock remain available for future issuance under the 2011 Plan. However, the 2011 Plan will continue to govern the terms and conditions of the outstanding awards previously granted thereunder.

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2021 Stock Incentive Plan

In May 2021, the Company's Board adopted, and its stockholders approved, the 2021 Stock Incentive Plan (the "2021 Plan"), which became effective upon the SEC declaring the Company's IPO registration statement effective. The 2021 Plan provides for the grant of incentive stock options ("ISOs"), nonstatutory stock options, restricted share awards, stock unit awards, stock appreciation rights, cash-based awards, and performance-based stock awards, or collectively, stock awards. ISOs may be granted only to the Company's employees, including officers, and the employees of its parent or subsidiaries. All other stock awards may be granted to the Company's employees, officers, non-employee directors, consultants, and the employees and consultants of its parent, subsidiaries, and affiliates.

The aggregate number of shares of the Company's common stock that may be issued pursuant to stock awards under the 2021 Plan will not exceed the sum of (x) 4,333,333 shares (as adjusted for stock splits, stock dividends, combinations, and the like), plus (y) the sum of (1) the number of reserved shares not issued or subject to outstanding awards under the 2011 Plan on the effective date of the 2021 Plan and (2) the number of shares subject to outstanding stock awards granted under the 2011 Plan and that, following the effective date of the 2021 Plan, (A) are subsequently forfeited or terminated for any reason before being exercised or settled, (B) are not issued because such stock award is settled in cash, (C) are subject to vesting restrictions and are subsequently forfeited, (D) are withheld or reacquired to satisfy the applicable exercise, strike, or purchase price, or (E) are withheld or reacquired to satisfy a tax withholding obligation, plus (z) an annual increase on the first day of each fiscal year, for a period of not more than 10 years, beginning on January 1, 2022 and ending on, and including, January 1, 2031, in an amount equal to the lesser of (i) 5% of the outstanding shares on the last day of the immediately preceding fiscal year or (ii) such lesser amount that the Compensation Committee of the Board determines for purposes of the annual increase for that fiscal year. On January 1, 2023, the number of shares of common stock available for issuance under the 2021 Plan was automatically increased according to its terms by 1,963,010 shares.

As of September 30, 2023, 2,781,826 shares were available for future grants of the Company's common stock.

Stock Option Valuation

No stock options were granted during the three and nine months ended September 30, 2023, or the three months ended September 30, 2022. On a weighted-average basis, the assumptions used in the Black Scholes option-pricing model to determine the grant date fair value of the options granted to the Company's employees were an expected term of 6 years, an expected stock price volatility of 64.6%, and a risk-free interest rate of 2.3% for the nine months ended September 30, 2022.

Stock Options

The following table summarizes the Company's stock option activity since December 31, 2022:

	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding as of December 31, 2022	4,034,287	\$ 6.90	6.9	\$ 1,625
Granted	—	\$ —		
Exercised	(19,978)	\$ 3.90		
Cancelled/Forfeited	(83,973)	\$ 6.38		
Outstanding as of September 30, 2023	3,930,336	\$ 6.92	6.1	\$ —
Options exercisable as of September 30, 2023	2,799,980	\$ 6.27	5.4	\$ —
Options vested and expected to vest as of September 30, 2023	3,930,336	\$ 6.92	6.1	\$ —

The aggregate intrinsic value of stock options is calculated as the difference between the exercise price of the stock options and the fair value of the Company's common stock for all stock options that had exercise prices lower than the fair value of the Company's common stock.

The aggregate intrinsic value of stock options exercised was less than \$0.1 million during each of the three and nine months ended September 30, 2023, and \$0.2 million and \$1.1 million during the three and nine months ended September 30, 2022, respectively. The weighted-average grant date fair value per share of stock options granted was \$4.43 for the nine months ended September 30, 2022.

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The total fair value of stock options vested was \$0.7 million and \$2.7 million during the three and nine months ended September 30, 2023, respectively, and \$0.8 million and \$3.4 million during the three and nine months ended September 30, 2022, respectively.

The stock options granted during the fiscal year ended December 31, 2021 included 615,997 stock options granted to executive officers that include a performance condition related to a sale event or initial public offering occurring before December 31, 2021 in addition to the standard service condition. These options will vest over four years, with approximately 21% vested on January 1, 2022, and the balance vesting ratably over the remaining 38 months. Stock-based compensation expense of \$0.2 million and \$0.5 million was recognized for options having a performance condition during the three and nine months ended September 30, 2023, respectively, and \$0.2 million and \$0.6 million during the three and nine months ended September 30, 2022, respectively.

Restricted Stock Units

The following table summarizes the activity related to the Company's restricted stock units:

	Outstanding Restricted Stock Units		Weighted-Average Grant Date Fair Value
Outstanding as of December 31, 2022	2,807,981	\$	7.85
Granted	2,992,595		3.95
Vested	(1,106,204)		6.54
Cancelled	(577,398)		7.00
Outstanding as of September 30, 2023	4,116,974	\$	5.49

The estimated weighted-average grant date fair value of restricted stock units granted was \$4.11 and \$3.95 per share for the three and nine months ended September 30, 2023, and \$7.23 and \$7.61 per share for the three and nine months ended September 30, 2022, respectively. The total grant date fair value of restricted stock units vested was \$2.0 million and \$7.2 million for the three and nine months ended September 30, 2023, respectively, and \$2.1 million and \$4.3 million for the three and nine months ended September 30, 2022.

Employee Stock Purchase Plan

In May 2021, the Company's Board adopted, and its stockholders approved, the Company's 2021 Employee Stock Purchase Plan (the "ESPP"). A total of 1,572,504 shares of the Company's authorized but unissued or reacquired shares of its common stock (as adjusted for stock splits, stock dividends, combinations, and the like) are available for issuance under the ESPP. The number of shares of the Company's common stock that will be available for issuance under the ESPP also includes an annual increase on the first day of each fiscal year, for a period of not more than 10 years, beginning on January 1, 2022, equal to the least of: (i) 1% of the outstanding shares of the Company's common stock on such date, (ii) 400,000 shares (as adjusted for stock splits, stock dividends, combinations, and the like) or (iii) a lesser amount determined by the Compensation Committee or the Company's Board of Directors. On January 1, 2023, the number of shares of common stock available for issuance under the ESPP was automatically increased according to its terms by 392,602 shares.

During regularly scheduled "offerings" under the ESPP, participants may purchase the Company's common stock through payroll deductions, up to a maximum of 15% of their eligible compensation, or such lower limit as may be determined by the Compensation Committee from time to time. Participants will be able to withdraw their accumulated payroll deductions prior to the end of the offering period in accordance with the terms of the offering. Participation in the ESPP will end automatically on termination of employment. The purchase price will be specified pursuant to the offering, but cannot, under the terms of the ESPP, be less than 85% of the fair market value per share of the Company's common stock on either the offering date or on the purchase date, whichever is less. The fair market value of the Company's common stock for this purpose will generally be the closing price on Nasdaq (or such other exchange as the Company's common stock may be traded at the relevant time) for the date in question, or if such date is not a trading day, for the last trading day before the date in question. As of September 30, 2023, an initial offering period has not commenced, and for the three and nine months ended September 30, 2023, no shares of common stock were purchased under the ESPP.

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Stock-Based Compensation Expense

The following table summarizes the classification of the Company's stock-based compensation expense in the condensed consolidated statements of operations:

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Cost of revenue	\$ 75	\$ 149	\$ 312	\$ 402
Sales and marketing	727	704	2,176	1,765
Technology development	792	1,134	2,802	2,865
General and administrative	1,388	1,167	4,050	2,630
Total stock-based compensation expense	<u>\$ 2,982</u>	<u>\$ 3,154</u>	<u>\$ 9,340</u>	<u>\$ 7,662</u>

Stock-based compensation capitalized in connection with the Company's internal-use software was less than \$0.1 million for the three months ended September 30, 2023, \$0.1 million for the nine months ended September 30, 2023, and less than \$0.1 million for each of the three and nine months ended September 30, 2022. As of September 30, 2023, total unrecognized compensation expense related to unvested stock-based awards was \$27.0 million, which is expected to be recognized over a weighted-average period of 2.4 years.

11. Income Taxes

The income tax provision was immaterial for the three and nine months ended September 30, 2023 and 2022 due to the net loss before income taxes incurred for the fiscal year ended December 31, 2022 and expected to be incurred for the fiscal year ending December 31, 2023. The Company's continues to maintain a full valuation allowance against its net deferred tax assets. There were no material liabilities for interest and penalties accrued as of September 30, 2023.

12. Net Loss Per Share

The following table summarizes the computation of basic and diluted net loss per share attributable to common stockholders for the three and nine months ended September 30, 2023 and 2022:

(in thousands, except share and per share amounts)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Numerator:				
Net loss	\$ (3,305)	\$ (9,028)	\$ (19,758)	\$ (15,677)
Denominator:				
Weighted average common shares outstanding—basic and diluted	39,962,932	38,668,231	39,647,716	38,291,977
Net loss per share—basic and diluted	<u>\$ (0.08)</u>	<u>\$ (0.23)</u>	<u>\$ (0.50)</u>	<u>\$ (0.41)</u>

The Company's potentially dilutive securities, which include outstanding stock options and restricted stock units have been excluded from the computation of diluted net loss per share from each period as including them would have had an anti-dilutive effect. Therefore, the weighted average number of common shares outstanding used to calculate both basic and diluted net loss per share is the same. The Company excluded the following potentially dilutive securities for each period presented:

	September 30,	
	2023	2022
Options to purchase common stock	3,930,336	4,202,430
Restricted stock units	4,116,974	2,954,549
Total	<u>8,047,310</u>	<u>7,156,979</u>

13. Commitments and Contingencies

Contractual Obligations

The Company has \$28.8 million of non-cancelable contractual commitments as of September 30, 2023, primarily related to its operating lease agreement for its corporate headquarters in New York, NY, as well as other software and support services. For those agreements with variable terms, the Company does not estimate what the total obligation may be beyond any

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minimum obligations. The following table represents the Company's commitments under its purchase obligations as of September 30, 2023 (in thousands):

Fiscal Year Ending December 31,	Lease Obligations	Other Obligations	Total Obligations
2023 (remaining)	\$ 1,020	\$ 372	\$ 1,392
2024	4,114	1,291	5,405
2025	4,292	506	4,798
2026	4,292	33	4,325
2027	4,292	—	4,292
Thereafter	8,583	—	8,583
Total	\$ 26,593	\$ 2,202	\$ 28,795

Legal Proceedings

The Company is subject to various claims and contingencies which are in the scope of ordinary and routine litigation incidental to its business, including those related to regulation, litigation, business transactions, employee-related matters, and taxes, among others. When the Company becomes aware of a claim or potential claim, the likelihood of any loss or exposure is assessed. If it is probable that a loss will result and the amount of the loss can be reasonably estimated, the Company records a liability for the loss. The liability recorded includes probable and estimable legal costs incurred to date and future legal costs to the point in the legal matter where the Company believes a conclusion to the matter will be reached. If the loss is not probable or the amount of the loss cannot be reasonably estimated, the Company discloses the claim if the likelihood of a potential loss is reasonably possible. The Company does not believe that it is party to any pending legal proceedings that are likely to have a material effect on its business, financial condition, or results of operations for the three and nine months ended September 30, 2023 and 2022.

Indemnification

In the ordinary course of business, the Company may provide indemnification of varying scope and terms to vendors, lessors, business partners, and other parties with respect to certain matters including, but not limited to, losses arising out of breach of such agreements or from intellectual property infringement claims made by third parties. In addition, the Company has entered into indemnification agreements with members of its Board and officers that will require the Company, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is, in many cases, unlimited. To date, the Company has not incurred any material costs as a result of such indemnifications.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion and analysis of our financial condition and results of operations together with the consolidated financial statements and related notes that are included elsewhere in this Quarterly Report on Form 10-Q. This discussion contains forward-looking statements based upon current plans, expectations, and beliefs that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under “Risk Factors” under Part II, Item 1A in this Quarterly Report on Form 10-Q. Our historical results are not necessarily indicative of the results that may be expected for any period in the future.

Company Overview

We are one of the world’s leading online marketplaces for connecting design lovers with many of the best sellers and makers of vintage, antique, and contemporary furniture, home décor, jewelry, watches, art, and fashion. We believe we are a leading online marketplace for these luxury design products based on the aggregate number of such listings on our online marketplace and our Gross Merchandise Value (“GMV”). Our thoroughly vetted seller base, in-depth editorial content, and custom-built technology platform create trust in our brand and facilitate high-consideration purchases. By disrupting the way these items are bought and sold, we are both expanding access to, and growing the market for, luxury design products.

1stDibs began in 2000 with the vision of bringing the magic of the Paris flea market online by creating a listings site for top vintage and antique furniture sellers. Soon thereafter, we moved our headquarters to New York City and focused primarily on adding U.S.-based sellers to our site. The quality of our initial seller base enabled us to build a reputation in the design industry as a trusted source for unique luxury design products. In over two decades of operating history, we have strengthened our brand and deepened our seller relationships. We launched our e-commerce platform in 2013 and transitioned to a full e-commerce marketplace model in 2016. We provide our sellers, the vast majority of which are small businesses, access to a global community of buyers and a platform to facilitate e-commerce at scale. Our sellers use our platform to manage their inventory, build their digital marketing presence, and communicate and negotiate orders directly with buyers. We provide our buyers a trusted purchase experience with our user-friendly interface, dedicated specialist support, and 1stDibs Promise, our comprehensive buyer protection program. We operate an asset-light business model which allows us to scale in a capital efficient manner. While we facilitate shipping and fulfillment logistics, we do not take physical possession of the items sold on our online marketplace.

Key Operating and Financial Metrics

We use the following key metrics and non-GAAP measures to evaluate our performance, identify trends affecting our business, and make strategic decisions:

- GMV;
- Number of Orders;
- Active Buyers; and
- Adjusted EBITDA (see “Non-GAAP Financial Measures” for a discussion of Adjusted EBITDA and a reconciliation of net loss, the most directly comparable financial measure calculated and presented in accordance with GAAP, to Adjusted EBITDA).

For GMV, Number of Orders, and Active Buyers, these metrics are based on internal company data, assumptions, and estimates and are used in managing our business. We believe that these figures are reasonable estimates, and we actively take measures to improve their accuracy, such as eliminating known fictitious or duplicate accounts. There are, however, inherent challenges in gathering accurate data across large online and mobile populations. For example, individuals may have multiple email accounts in violation of our terms of service, which would result in an Active Buyer being counted more than once, thus impacting the accuracy of our number of Active Buyers. In addition, certain metrics, such as the number of Active Buyers and Number of Orders, are measured based on such numbers as reported in a given month, minus cancellations within that month. As we do not retroactively adjust such numbers for cancellations occurring after the month, the metrics presented do not reflect subsequent order cancellations. We regularly review and may adjust our processes for calculating these metrics to improve their

accuracy. These key operating and financial metrics may vary from period to period and should not be viewed as indicative of other metrics.

(dollars in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
GMV	\$ 88,983	\$ 99,213	\$ 275,905	\$ 321,514
Number of Orders	31,202	35,235	98,988	110,111
Active Buyers	63,227	68,011	63,227	68,011
Adjusted EBITDA (unaudited)	\$ (1,802)	\$ (5,456)	\$ (11,635)	\$ (16,195)

Gross Merchandise Value

We define GMV as the total dollar value from items sold by our sellers through 1stDibs in a given month, minus cancellations within that month, and excluding shipping and sales taxes. GMV includes all sales reported to us by our sellers, whether transacted through the 1stDibs online marketplace or reported as an offline sale. We view GMV as a measure of the total economic activity generated by our online marketplace and as an indicator of the scale, growth, and health of our online marketplace. Our historical growth rates for GMV may not be indicative of future growth rates in GMV.

Number of Orders

We define Number of Orders as the total number of orders placed or reported through the 1stDibs online marketplace in a given month, minus cancellations within that month. Our historical growth rates for Number of Orders may not be indicative of future growth rates in Number of Orders.

Active Buyers

We define Active Buyers as buyers who have made at least one purchase through our online marketplace during the 12 months ended on the last day of the period presented, net of cancellations. A buyer is identified by a unique email address; thus an Active Buyer could have more than one account if they were to use a separate unique email address to set up each account. We believe this metric reflects scale, engagement and brand awareness, and our ability to convert user activity on our online marketplace into transactions. Our historical growth rates for Active Buyers may not be indicative of future growth rates in new Active Buyers.

Adjusted EBITDA

We define Adjusted EBITDA as net loss excluding depreciation and amortization, stock-based compensation expense, other income, net, provision for income taxes, gain on sale of business, and strategic alternative expenses. Adjusted EBITDA is a key performance measure used by our management and board of directors to assess our operating performance and the operating leverage of our business. We believe that Adjusted EBITDA helps identify underlying trends in our business that could otherwise be masked by the effect of the income and expenses that we exclude from Adjusted EBITDA. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results, enhances the overall understanding of our past performance and future prospects, and allows for greater transparency with respect to key financial metrics used by our management in their financial and operational decision-making. See “Non-GAAP Financial Measures” for more information and for a reconciliation of net loss, the most directly comparable financial measure calculated and presented in accordance with GAAP, to Adjusted EBITDA.

Components of Results of Operations

Net Revenue

Our net revenue consists principally of seller marketplace services, advertisements, and, prior to the sale of Design Manager, software services. Seller marketplace services primarily consist of marketplace transactions, subscriptions, and listing fees. Marketplace transaction fees are collected when sellers pay us commissions ranging from 5% to 50%, and processing fees of 3%, for successful purchase transactions, net of expected refunds. If a seller accepts a return or refund of an on-platform purchase, the related commission and processing fees are refunded. Revenue from subscriptions consist of access to our online marketplace, allowing sellers, who are our customers, to execute successful purchase transactions with buyers. In January 2022, we launched new seller pricing tiers which allow new sellers to choose the plan that best fits their business and includes choices of a higher monthly subscription fee and lower commission rates, as well as a subscription-free tier with higher commission rates. Listing fee revenue is collected when sellers pay us for promoting certain products on their behalf and at their discretion through our online marketplace. Prior to the sale of Design Manager, software services revenue consisted of monthly and annual subscriptions allowing customers to access our Design Manager software, typically used by interior designers. Due to the sale of Design Manager on June 29, 2022, there was no net revenue related to software services after the sale and we

anticipate that net revenue will no longer include software services in future periods. Advertisements consist of impression-based ads displayed on our online marketplace on the seller's behalf.

Cost of Revenue

Cost of revenue includes payment processor fees and hosting expenses. Cost of revenue also includes expenses associated with payroll, employee benefits, stock-based compensation, other headcount-related expenses associated with operations personnel supporting revenue-related operations and logistics, consulting costs, and amortization expense related to our capitalized internal-use software.

In certain transactions where our shipping services are elected by sellers, we enable shipping of items purchased from the seller to the buyer. The difference between the amount collected for shipping and the amount charged by the shipping carrier is included in cost of revenue in our consolidated statements of operations. We enable fulfillment and shipping, but do not take ownership of or manage inventory.

Sales and Marketing

Sales and marketing expenses include payroll, employee benefits, stock-based compensation, other headcount-related expenses associated with sales and marketing personnel, advertising expense, consulting costs, and promotional discounts offered to new and existing buyers. Advertising expenses consist primarily of costs incurred promoting and marketing our services, such as costs associated with acquiring new users through performance-based marketing, social media programs, email, and events. Promotional discounts and incentives represent incentives solely to end buyers and, therefore, are not considered payments made to our customers. Buyers are not our customers because access to the 1stDibs online marketplace is free for buyers, and we have no performance obligations with respect to buyers.

Technology Development

Technology development expenses include payroll, employee benefits, stock-based compensation, and other headcount-related expenses associated with engineering and product development personnel and consulting costs related to technology development. We expense all technology development expenses as incurred, except for those expenses that meet the criteria for capitalization as internal-use software.

General and Administrative

General and administrative expenses include payroll, employee benefits, stock-based compensation, other headcount-related expenses associated with finance, legal, facility and human resources related personnel, lease expense, business liability insurance, accounting, professional fees, and depreciation and amortization of property and equipment. We expense all general and administrative expenses as incurred.

Provision for Transaction Losses

Provision for transaction losses primarily consists of transaction loss expense associated with our buyer protection program, including damages to products caused by shipping and transit, items that were not received or not as represented by the seller, and reimbursements to buyers at our discretion if they are dissatisfied with their experience. The provision for transaction losses also includes bad debt expense associated with our accounts receivable balance.

Results of Operations

The following table summarizes our results of operations for the periods indicated:

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net revenue	\$ 20,663	\$ 22,729	\$ 63,762	\$ 73,892
Cost of revenue	5,510	7,278	19,144	22,908
Gross profit	15,153	15,451	44,618	50,984
Operating expenses:				
Sales and marketing	8,411	11,072	28,007	34,139
Technology development	4,515	6,363	17,199	18,711
General and administrative	6,772	6,731	22,323	20,635
Provision for transaction losses	688	1,183	2,940	4,432
Gain on sale of Design Manager	—	—	—	(9,684)
Total operating expenses	20,386	25,349	70,469	68,233
Loss from operations	(5,233)	(9,898)	(25,851)	(17,249)
Other income, net:				
Interest income	1,757	520	4,933	746
Interest expense	—	(3)	—	(11)
Other, net	171	353	1,160	837
Total other income, net	1,928	870	6,093	1,572
Net loss before income taxes	(3,305)	(9,028)	(19,758)	(15,677)
Provision for income taxes	—	—	—	—
Net loss	\$ (3,305)	\$ (9,028)	\$ (19,758)	\$ (15,677)

The following table summarizes our results of operations as a percentage of net revenue for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net revenue	100 %	100 %	100 %	100 %
Cost of revenue	27	32	30	31
Gross profit	73	68	70	69
Operating expenses:				
Sales and marketing	41	49	44	46
Technology development	22	28	27	25
General and administrative	33	30	35	28
Provision for transaction losses	3	5	5	6
Gain on sale of Design Manager	—	—	—	(13)
Total operating expenses	99	112	111	92
Loss from operations	(26)	(44)	(41)	(23)
Other income, net:				
Interest income	9	2	8	1
Interest expense	—	—	—	—
Other, net	1	2	2	1
Total other income, net	10	4	10	2
Net loss before income taxes	(16)	(40)	(31)	(21)
Provision for income taxes	—	—	—	—
Net loss	(16)%	(40)%	(31)%	(21)%

Comparison of the Three Months Ended September 30, 2023 and 2022

Net Revenue

(in thousands)	Three Months Ended September 30,			
	2023	2022	\$ Change	% Change
Net revenue	\$ 20,663	\$ 22,729	\$ (2,066)	(9)%

Net revenue was \$20.7 million for the three months ended September 30, 2023, as compared to \$22.7 million for the three months ended September 30, 2022. The decrease of \$2.1 million, or 9%, was primarily due to a \$2.0 million decrease in seller marketplace services revenue, which was due to a decrease in marketplace transaction fees resulting from the decrease in our GMV. We believe our GMV and net revenue have been impacted negatively, both directly and indirectly, by macroeconomic factors, including significant capital market volatility, significant housing market volatility, rising interest rates, inflation, global economic, and geopolitical developments and the changing consumer behaviors as a result of the COVID-19 pandemic; however, these impacts are difficult to isolate and quantify.

Our marketplace transaction fees represent the majority of our net revenue and accounted for 71% of our net revenue for each of the three months ended September 30, 2023 and 2022. Subscription fees accounted for 24% and 25% of our net revenue for the three months ended September 30, 2023 and 2022, respectively.

Cost of Revenue

(in thousands)	Three Months Ended September 30,			
	2023	2022	\$ Change	% Change
Cost of revenue	\$ 5,510	\$ 7,278	\$ (1,768)	(24)%

Cost of revenue was \$5.5 million for the three months ended September 30, 2023, as compared to \$7.3 million for the three months ended September 30, 2022. The decrease of \$1.8 million, or 24%, was primarily driven by a \$0.6 million decrease in salaries and benefits resulting from decreases in headcount from the prior period, primarily related to our reduction in workforce in June 2023. There was also a \$0.5 million decrease in shipping expenses due to more efficient pricing and better negotiated rates from our carriers, a \$0.3 million decrease in credit card processing fees due to the decrease in net revenue, and a \$0.3 million decrease in depreciation expense.

Gross Profit and Gross Margin

Gross profit was \$15.2 million and gross margin was 73.3% for the three months ended September 30, 2023, as compared to gross profit of \$15.5 million and gross margin of 68.0% for the three months ended September 30, 2022. The decrease in gross profit for the three months ended September 30, 2023 was primarily driven by net revenue decreasing \$0.3 million more than cost of revenue, as outlined above. The increase in gross margin percentage was primarily driven by our cost of revenue decreasing at a faster pace than net revenue, as outlined above.

Operating Expenses

Sales and Marketing

(in thousands)	Three Months Ended September 30,			
	2023	2022	\$ Change	% Change
Sales and marketing	\$ 8,411	\$ 11,072	\$ (2,661)	(24)%

Sales and marketing expense was \$8.4 million for the three months ended September 30, 2023, as compared to \$11.1 million for the three months ended September 30, 2022. The decrease of \$2.7 million, or 24% was primarily driven by a \$1.2 million decrease in salaries and benefits resulting from decreases in headcount from the prior period, primarily related to our reduction in workforce in June 2023, and a \$1.3 million decrease in discretionary expenses, including performance-based marketing and promotional campaigns.

Technology Development

(in thousands)	Three Months Ended September 30,			
	2023	2022	\$ Change	% Change
Technology development	\$ 4,515	\$ 6,363	\$ (1,848)	(29)%

Technology development expense was \$4.5 million for the three months ended September 30, 2023 as compared to \$6.4 million for the three months ended September 30, 2022. The decrease of \$1.8 million, or 29% was primarily driven by a

\$1.5 million decrease in salaries and benefits and a \$0.3 million decrease in stock-based compensation resulting from decreases in headcount from the prior period, primarily related to our reduction in workforce in June 2023.

General and Administrative

(in thousands)	Three Months Ended September 30,			
	2023	2022	\$ Change	% Change
General and administrative	\$ 6,772	\$ 6,731	\$ 41	1 %

General and administrative expense was \$6.8 million for the three months ended September 30, 2023, as compared to \$6.7 million for the three months ended September 30, 2022. There were nominal increases in salaries and benefits as well as stock-based compensation due to our annual compensation increases which occur each March. These increases were partially offset by lower rates negotiated with vendors, including lower liability insurance expense.

Provision for Transaction Losses

(in thousands)	Three Months Ended September 30,			
	2023	2022	\$ Change	% Change
Provision for transaction losses	\$ 688	\$ 1,183	\$ (495)	(42)%

Provision for transaction losses was \$0.7 million for the three months ended September 30, 2023, as compared to \$1.2 million for the three months ended September 30, 2022. The decrease of \$0.5 million, or 42%, was primarily driven by a decrease in damage claims as a result of the decrease in GMV as well as new policies implemented in partnership with our carriers.

Other Income, Net

(in thousands)	Three Months Ended September 30,			
	2023	2022	\$ Change	% Change
Total other income, net	\$ 1,928	\$ 870	\$ 1,058	122 %

Other income, net was \$1.9 million for the three months ended September 30, 2023, as compared to \$0.9 million for the three months ended September 30, 2022. The increase of \$1.1 million, or 122%, was primarily driven by an increase in interest income due to our shift in investment strategies in cash, cash equivalents and short-term investments providing higher rates of return.

Comparison of the Nine Months Ended September 30, 2023 and 2022

Net Revenue

(in thousands)	Nine Months Ended September 30,			
	2023	2022	\$ Change	% Change
Net revenue	\$ 63,762	\$ 73,892	\$ (10,130)	(14)%

Net revenue was \$63.8 million for the nine months ended September 30, 2023, as compared to \$73.9 million for the nine months ended September 30, 2022. The decrease of \$10.1 million, or 14%, was primarily driven by a decrease in seller marketplace services revenue of \$8.4 million, which was due to a decrease in marketplace transaction fees resulting from the decrease in our GMV. We believe our GMV and net revenue have been impacted negatively, both directly and indirectly, by macroeconomic factors, including significant capital market volatility, significant housing market volatility, rising interest rates, inflation, global economic and geopolitical developments, and the changing consumer behaviors as a result of the COVID-19 pandemic; however, these impacts are difficult to isolate and quantify. Additionally, there was a \$1.4 million decrease in software services as a result of the sale of Design Manager in June 2022.

Our marketplace transaction fees represent the majority of our net revenue and accounted for 71% and 70% of our net revenue for the nine months ended September 30, 2023 and 2022, respectively. Subscription fees accounted for 24% of our net revenue for each of the nine months ended September 30, 2023 and 2022, respectively.

Cost of Revenue

(in thousands)	Nine Months Ended September 30,			
	2023	2022	\$ Change	% Change
Cost of revenue	\$ 19,144	\$ 22,908	\$ (3,764)	(16)%

Cost of revenue was \$19.1 million for the nine months ended September 30, 2023, as compared to \$22.9 million for the nine months ended September 30, 2022. The decrease of \$3.8 million, or 16%, was primarily driven by a \$1.3 million decrease in credit card processing fees due to the decrease in net revenue, and a \$1.1 million decrease in salaries and benefits resulting from decreases in headcount from the prior period, primarily related to our reduction in workforce in June 2023. There was also a \$1.0 million decrease in shipping expenses due to more efficient pricing and better negotiated rates from our carriers, and a \$0.3 million decrease in depreciation expense.

Gross Profit and Gross Margin

Gross profit was \$44.6 million and gross margin was 70.0% for the nine months ended September 30, 2023, as compared to gross profit of \$51.0 million and gross margin of 69.0% for the nine months ended September 30, 2022. The decrease in gross profit for the nine months ended September 30, 2023 was primarily driven by net revenue decreasing \$6.4 million more than cost of revenue, as outlined above. The increase in gross margin percentage was primarily driven by cost of revenue decreasing at a faster pace than net revenue, as outlined above.

Operating Expenses

Sales and Marketing

(in thousands)	Nine Months Ended September 30,			
	2023	2022	\$ Change	% Change
Sales and marketing	\$ 28,007	\$ 34,139	\$ (6,132)	(18)%

Sales and marketing expense was \$28.0 million for the nine months ended September 30, 2023, as compared to \$34.1 million for the nine months ended September 30, 2022. The decrease of \$6.1 million, or 18% was primarily driven by a \$5.2 million decrease in discretionary expenses, including performance-based marketing and promotional campaigns. There was also a \$0.6 million decrease in salaries and benefits resulting from decreases in headcount from the prior period, primarily related to our reduction in workforce in June 2023.

Technology Development

(in thousands)	Nine Months Ended September 30,			
	2023	2022	\$ Change	% Change
Technology development	\$ 17,199	\$ 18,711	\$ (1,512)	(8)%

Technology development expense was \$17.2 million for the nine months ended September 30, 2023, as compared to \$18.7 million for the nine months ended September 30, 2022. The decrease of \$1.5 million, or 8% was primarily driven by a \$0.7 million decrease in salaries and benefits resulting from decreases in headcount from the prior period, primarily related to our reduction in workforce in June 2023, and a \$0.6 million decrease in consulting costs.

General and Administrative

(in thousands)	Nine Months Ended September 30,			
	2023	2022	\$ Change	% Change
General and administrative	\$ 22,323	\$ 20,635	\$ 1,688	8 %

General and administrative expense was \$22.3 million for the nine months ended September 30, 2023, as compared to \$20.6 million for the nine months ended September 30, 2022. The increase of \$1.7 million, or 8%, was primarily driven by a \$1.4 million increase in stock-based compensation expense and a \$0.8 million increase in salaries and benefits due to our annual compensation increases which occur each March. These increases were partially offset by lower rates negotiated with vendors, including lower liability insurance expense.

Provision for Transaction Losses

(in thousands)	Nine Months Ended September 30,			
	2023	2022	\$ Change	% Change
Provision for transaction losses	\$ 2,940	\$ 4,432	\$ (1,492)	(34)%

Provision for transaction losses was \$2.9 million for the nine months ended September 30, 2023, as compared to \$4.4 million for the nine months ended September 30, 2022. The decrease of \$1.5 million, or 34%, was primarily driven by a decrease in damage claims as a result of the decrease in GMV as well as new policies implemented in partnership with our carriers.

Other Income, Net

(in thousands)	Nine Months Ended September 30,			
	2023	2022	\$ Change	% Change
Total other income, net	\$ 6,093	\$ 1,572	\$ 4,521	288 %

Other income, net was \$6.1 million for the nine months ended September 30, 2023, as compared to \$1.6 million for the nine months ended September 30, 2022. The increase of \$4.5 million, or 288%, was primarily driven by an increase in interest income due to our shift in investment strategies in cash, cash equivalents and short-term investments providing higher rates of return.

Non-GAAP Financial Measures

We have included Adjusted EBITDA, which is a non-GAAP financial measure, because it is a key measure used by our management team to help us to assess our operating performance and the operating leverage in our business. We also use this measure to analyze our financial results, establish budgets and operational goals for managing our business, and make strategic decisions. We believe that Adjusted EBITDA helps identify underlying trends in our business that could otherwise be masked by the effect of the income and expenses that we exclude from Adjusted EBITDA. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our results of operations, enhances the overall understanding of our past performance and future prospects, and allows for greater transparency with respect to key financial metrics used by our management in their financial and operational decision-making. We also believe that the presentation of this non-GAAP financial measure provides an additional tool for investors to use in comparing our core business and results of operations over multiple periods with other companies in our industry, many of which present similar non-GAAP financial measures to investors, and to analyze our cash performance.

The non-GAAP financial measures presented may not be comparable to similarly titled measures reported by other companies due to differences in the way that these measures are calculated. The non-GAAP financial measures presented should not be considered as the sole measure of our performance and should not be considered in isolation from, or as a substitute for, comparable financial measures calculated in accordance with GAAP. Further, these non-GAAP financial measures have certain limitations in that they do not include the impact of certain expenses that are reflected in our condensed consolidated statements of operations. Accordingly, these non-GAAP financial measures should be considered as supplemental in nature, and are not intended, and should not be construed, as a substitute for the related financial information calculated in accordance with GAAP. These limitations of Adjusted EBITDA include the following:

- The exclusion of certain recurring, non-cash charges, such as depreciation of property and equipment and amortization of intangible assets. While these are non-cash charges, we may need to replace the assets being depreciated and amortized in the future and Adjusted EBITDA does not reflect cash requirements for these replacements or new capital expenditure requirements;
- The exclusion of stock-based compensation expense, which has been a significant recurring expense and will continue to constitute a significant recurring expense for the foreseeable future, as equity awards are expected to continue to be an important component of our compensation strategy;
- The exclusion of other income, net, which includes interest income related to our cash, cash equivalents and short-term investments, interest expense, and realized and unrealized gains and losses on foreign currency exchange;
- The exclusion of gain on sale of Design Manager, which is a one-time sale of our wholly owned subsidiary; and
- The exclusion of strategic alternative expenses in connection with capital return strategies, buy- and sell-side mergers, acquisitions and partnerships, sale of a business or subsidiary, business optimization costs related to revisions of operational objectives and priorities, cost saving initiatives related to one-time restructuring charges and integration costs, in all cases outside the ordinary course.

Because of these limitations, you should consider Adjusted EBITDA alongside other financial performance measures, including net loss and our other GAAP results.

We define Adjusted EBITDA as our net loss, excluding: (1) depreciation and amortization; (2) stock-based compensation expense; (3) other income, net; (4) provision for income taxes; (5) gain on sale of business; and (6) strategic alternative expenses. The following table provides a reconciliation of net loss, the most directly comparable GAAP financial measure, to Adjusted EBITDA:

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net loss	\$ (3,305)	\$ (9,028)	\$ (19,758)	\$ (15,677)
Depreciation and amortization	449	708	1,815	2,189
Stock-based compensation expense	2,982	3,154	9,340	7,662
Other income, net	(1,928)	(870)	(6,093)	(1,572)
Provision for income taxes	—	—	—	—
Gain on sale of Design Manager	—	—	—	(9,684)
Strategic alternative expenses	—	580	3,061	887
Adjusted EBITDA	<u>\$ (1,802)</u>	<u>\$ (5,456)</u>	<u>\$ (11,635)</u>	<u>\$ (16,195)</u>

Liquidity and Capital Resources

As of September 30, 2023, we had cash, cash equivalents and short-term investments of \$143.0 million and an accumulated deficit of \$310.8 million. Net cash used in operating activities was \$11.5 million in the nine months ended September 30, 2023. We expect operating losses and negative cash flows from operations to continue in the foreseeable future as we continue to strategically invest in growth activities. Our principal use of cash is to fund our operations and platform development to support our strategic initiatives and potential share repurchases under the Stock Repurchase Program.

Based on our current plans, we believe our existing cash, cash equivalents and short-term investments will be sufficient to fund our operations and capital expenditure requirements through at least the next 12 months. We expect to continue to incur substantial expenditures in the near term to support our ongoing activities. While management believes that our current cash, cash equivalents and short-term investments are sufficient to fund our operating expenses, capital expenditure requirements and any potential share repurchases under the Stock Repurchase Program for at least the next 12 months, we may need to borrow funds or raise additional equity to achieve our longer-term business objectives.

Our future capital requirements will depend on many factors, including:

- the emergence of competing online marketplaces and other adverse marketing developments;
- the timing and extent of our sales and marketing and technology development expenditures; and
- any investments, acquisitions or other similar strategic endeavors we may choose to pursue in the future.

A change in the outcome of any of these or other variables could significantly impact our operating plans, and we may need additional funds to meet operational needs and capital requirements associated with such plans. In addition, any future borrowings may result in additional restrictions on our business and any issuance of additional equity would result in dilution to investors. If we are unable to raise additional capital when we need it, it could harm our business, results of operations, and financial condition.

Stock Repurchase Program

In August 2023, the Board of Directors authorized a Stock Repurchase Program to repurchase up to an aggregate of \$20.0 million of our common stock. As of September 30, 2023, 334,959 shares have been purchased for a total cost of

\$1.4 million since the commencement of the program and approximately \$18.6 million remains available for future purchases under the program.

Cash Flows

The following table summarizes our cash flows for the periods indicated:

(in thousands)	Nine Months Ended September 30,	
	2023	2022
Net cash used in operating activities	\$ (11,475)	\$ (22,410)
Net cash (used in) provided by investing activities	(109,600)	12,821
Net cash (used in) provided by financing activities	(1,234)	1,548
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	44	(689)
Net decrease in cash, cash equivalents, and restricted cash	<u>\$ (122,265)</u>	<u>\$ (8,730)</u>

Cash Flows from Operating Activities

Net cash used in operating activities was \$11.5 million for the nine months ended September 30, 2023, and was driven primarily by net revenue decreasing at a faster pace than operating expenses as described in the “Results of Operations” section. Our changes in operating assets and liabilities were impacted by a negative change in operating lease liabilities of \$2.1 million due to the continued lease payments on our NYC headquarters and a \$1.2 million change in other assets, primarily related to the \$1.1 million broker fee paid in connection with our subleasing of our NYC headquarters, as discussed in Note 7, “Leases.”

Net cash used in operating activities was \$22.4 million for the nine months ended September 30, 2022, and was driven primarily by the cash impact of net loss and negative changes in our operating assets and liabilities, including a \$3.7 million change in accounts payable and accrued expenses due to timing of invoices and payments including \$0.6 million related to our September 2022 reduction in workforce, a \$2.0 million change in operating lease liabilities due to the continued lease payments on our NYC headquarters, and a \$1.4 million change in prepaid expenses and other current assets due to the timing of payments of our annual contracts.

Cash Flows from Investing Activities

Net cash used in investing activities was \$109.6 million for the nine months ended September 30, 2023, and was driven primarily by \$166.5 million of purchases of short-term investments and \$58.2 million of maturities of short-term investments.

Net cash provided by investing activities was \$12.8 million for the nine months ended September 30, 2022, and was driven primarily by the \$14.6 million proceeds from the sale of Design Manager.

Cash Flows from Financing Activities

Net cash used in financing activities was \$1.2 million for the nine months ended September 30, 2023, and was driven primarily by \$1.3 million of purchases of our common stock as part of our Stock Repurchase Program.

Net cash provided by financing activities for the nine months ended September 30, 2022, was \$1.5 million related to proceeds from the exercise of stock options.

Contractual Obligations

As of September 30, 2023, there were no material changes in commitments under contractual obligations compared to the contractual obligations disclosed in our Form 10-K.

Recent Accounting Pronouncements

See Note 1, “Basis of Presentation and Summary of Significant Accounting Policies” to our condensed consolidated financial statements for a description of recently issued accounting pronouncements that may potentially impact our financial position, results of operations, or cash flows.

Emerging Growth Company

We are an emerging growth company, as defined in the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that (i) we are no longer an emerging growth company or (ii) we affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, these financial statements may not be comparable to companies that comply with the new or revised accounting

pronouncements as of public company effective dates. We may choose to early adopt any new or revised accounting standards whenever such early adoption is permitted for private companies.

Critical Accounting Policies and Estimates

Our consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States, or GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses, and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances. We evaluate our estimates and assumptions on an ongoing basis. Actual results may differ from these estimates. To the extent that there are material differences between these estimates and our actual results, our future financial statements will be affected.

There have been no significant changes to our critical accounting policies and estimates included in our Form 10-K.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We have operations both within the United States and internationally, and we are exposed to market risks in the ordinary course of our business, including the effects of interest rate changes and foreign currency fluctuations. Information relating to quantitative and qualitative disclosures about these market risks are described below. At times, our cash balances with individual banking institutions are in excess of federally insured limits. We have not experienced any credit losses related to our cash, cash equivalents, and short-term investments balances.

Interest Rate Sensitivity

Interest rate risk relates to the loss we could incur in our cash portfolios due to a change in interest rates. As of September 30, 2023, we had cash, cash equivalents and short-term investments of \$143.0 million. We generally hold our cash for immediate operating needs in non-interest bearing checking accounts and the majority of the remaining cash and cash equivalents are held in interest bearing money market funds. Due to the nature of our cash, cash equivalents and short-term investments, we would expect a hypothetical 100 basis point change in interest rates that may result in an approximate \$0.7 million change in our cash, cash equivalents and short-term investments. While these are our best estimates of the impact of the specified interest rate scenario, actual results could differ from those projected. The sensitivity analysis presented assumes interest rate changes are instantaneous, parallel shifts in the yield curve. In reality, interest rate changes of this magnitude are rarely instantaneous or parallel.

Our principal use of cash, cash equivalents and short-term investments is to fund our operations and platform development to support our strategic initiatives. Additionally, in August 2023, the Board of Directors authorized a Stock Repurchase Program to repurchase up to an aggregate of \$20.0 million of our common stock. The remainder of cash, cash equivalents and short-term investments are held for working capital purposes. We do not enter into investments for trading or speculative purposes.

Foreign Currency Risk

Our net revenue is primarily denominated in U.S. dollars, Euros, and British pounds, depending on the currency selection of the seller. Our cost of revenue and operating expenses are primarily denominated in U.S. dollars. As our online marketplace continues to grow globally, our results of operations and cash flows may be subject to fluctuations due to the change in foreign exchange rates. To date, fluctuations due to changes in the Euro and British pound have not been significant, but we may experience material foreign exchange gains and losses in our statement of operations in the future. As of September 30, 2023, we would expect that an adverse 10% change in current exchange rates would not result in more than a \$2.2 million decrease in revenue for the nine months ended September 30, 2023.

Credit Risk

We are exposed to credit risk on accounts receivable balances. This risk is mitigated by requiring upfront payment for many of our services and due to our diverse customer base, dispersed over various geographic regions and industrial sectors. For the three and nine months ended September 30, 2023 and 2022, no single customer accounted for more than 10% of our net revenue. We maintain provisions for potential credit losses and such losses to date have been within our expectations. We evaluate the solvency of our customers on an ongoing basis to determine if additional allowances for doubtful accounts need to be recorded.

Inflation Risk

Our results of operations and financial condition are presented based on historical cost. While it is difficult to accurately measure the impact of inflation due to the imprecise nature of the estimates required, we believe certain metrics, including our GMV and net revenue, have been negatively impacted, both directly and indirectly, by macroeconomic factors, including inflation and as a result significant capital market and housing market volatility. Additionally, if our costs were to become

subject to inflationary pressures, we might not be able to fully offset such higher costs through net revenue and GMV increases. Our inability or failure to do so could harm our business, financial condition, and results of operations. We cannot assure you our business will not be affected in the future by inflation.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2023. “Disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is (i) recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms and (ii) accumulated and communicated to the company’s management, including its principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure. Based on the evaluation of our disclosure controls and procedures, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of September 30, 2023 at the reasonable assurance level.

Our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving the desired control objectives. Our management recognizes that any control system, no matter how well designed and operated, is based upon certain judgments and assumptions and cannot provide absolute assurance that its objectives will be met. Similarly, an evaluation of controls cannot provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been detected.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting identified during the three months ended September 30, 2023 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

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

Part II - Other Information

Item 1. Legal Proceedings

From time to time, we are involved in legal proceedings and subject to claims arising in the ordinary course of business. Although the results of litigation and claims cannot be predicted with certainty, we believe that the resolution of current matters will not have a material adverse effect on our business, financial condition, or results of operations. Even if any particular litigation or claim is not resolved in a manner that is adverse to our interests, such litigation can have a negative impact on us because of defense and settlement costs, diversion of management resources from our business, and other factors.

Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information in this Quarterly Report on Form 10-Q, including our condensed consolidated financial statements and related notes and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” before investing in our common stock. If any of the following risks are realized, in whole or in part, our business, financial condition, results of operations, and prospects could be materially and adversely affected. In that event, the price of our common stock could decline, and you could lose part or all of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business, financial condition, results of operations, and prospects.

Risks Related to Our Business and Industry

We have a history of operating losses, and we may not achieve or maintain profitability in the future, which in turn could negatively impact our financial condition and our stock price.

We incurred net losses of \$22.5 million, \$21.0 million, and \$12.5 million during the fiscal years ended December 31, 2022, 2021, and 2020, respectively, and \$19.8 million and \$15.7 million during the nine months ended September 30, 2023 and 2022, respectively. We had an accumulated deficit of \$310.8 million as of September 30, 2023. We expect to incur significant losses in the future. We will need to generate and sustain increased revenue levels or reduce operating costs materially in future periods to achieve profitability, and even if we achieve profitability, we may not be able to maintain or increase our level of profitability. Our operating expenses may increase substantially in the foreseeable future to the extent necessary that we may hire additional employees, invest in expanding our seller and buyer base and deepening our existing seller and buyer relationships, expand across and within product verticals, increase our marketing efforts and brand awareness, and invest in expanding our international operations. In addition, as a public company, we will incur significant legal, accounting, and other expenses that we did not incur as a private company. These expenditures will make it more difficult for us to achieve and maintain profitability. Our efforts to grow our business may be more costly than we expect, and we may not be able to increase our revenue enough to offset our higher operating expenses. If we were to reduce our expenses, it could negatively impact our growth and growth strategy. As a result, we can provide no assurance as to whether or when we will achieve profitability. If we are not able to achieve and maintain profitability, the value of our company and our common stock could decline significantly, and you could lose some or all of your investment.

Our annual and quarterly results of operations have fluctuated from period to period and may do so in the future, which could cause our stock price to fluctuate and the value of your investment to decline.

Our quarterly and annual net revenue and results of operations have historically fluctuated from period to period, and our future results of operations may vary significantly from quarter to quarter due to a variety of factors, many of which are beyond our control. You should not rely on period-to-period comparisons of our results of operations as an indication of our future performance. Factors that may cause fluctuations in our quarterly results of operations include, but are not limited to, the following:

- fluctuations in net revenue generated from sales of luxury design products through our online marketplace;
- our success in attracting sellers and buyers to, and retaining sellers and buyers on, our online marketplace, and our ability to do so in a cost-efficient manner;
- our ability to attract users to our website and convert users to Active Buyers on our online marketplace;
- the amount and timing of our operating expenses;
- our ability to continue to source and make luxury design products available on our online marketplace;
- the timing and success of new services, features, and offerings we introduce through our e-commerce platform, including our recently launched auction transaction format;
- our ability to compete successfully;

- our ability to increase brand awareness of our company and our online marketplace;
- our ability to manage our existing business and future growth;
- our ability to effectively scale our operations while maintaining high-quality service and seller and buyer satisfaction;
- the amount, timing, and results of our investments to maintain and improve our technology infrastructure and platform, and our ability to do so in a cost-effective manner;
- our ability to increase and manage the growth of our international operations, including our international seller and buyer base, and our ability to manage the risks associated therewith;
- changes in our key metrics or the methods used to calculate our key metrics;
- seasonality, including seasonal buying patterns, which may vary from quarter to quarter or year to year;
- changes in laws, regulations, or accounting principles that impact our business;
- disruptions or defects in our e-commerce platform, such as service interruptions or privacy or data security breaches;
- changes in the terms of our seller agreements;
- our ability to hire and retain talented employees and professional contractors at all levels of our business;
- the impact of the ongoing COVID-19 pandemic or other events, such as geopolitical crises, which may cause significant economic or social disruption; and
- economic and market conditions, particularly those affecting the luxury design products industry, such as fluctuations in inflation and interest rates or supply chain or global shipping disruptions.

Further, we make certain assumptions when planning our expenses based on our expected revenue based in part on historical results. Because our operating expenses are relatively fixed in the short term, any failure to achieve our revenue expectations would have a direct, adverse effect on our results of operations. If actual results differ from our estimates, the trading price of our common stock may decline. In addition, in the past, we have generally recognized higher net revenue in the fourth quarter. In anticipation of increased activity during the fourth quarter, we may incur significant additional expenses, including additional marketing and staffing in our support operations. If we experience lower than expected net revenue during any fourth quarter, it may have a disproportionate impact on our results of operations and financial condition for that year. Any factors that harm our fourth quarter results of operations, including disruptions in our sellers' willingness to list items or unfavorable economic conditions could have a disproportionate effect on our results of operations for our entire fiscal year. In the future, our seasonal sales patterns may become more pronounced, may strain our personnel, and may cause a shortfall in net revenue related to expenses in a given period, which could substantially harm our business, results of operations, and financial condition.

If we are unable to accomplish any of these tasks, our net revenue and revenue growth will be harmed. We also expect our operating expenses to increase in future periods, and if our revenue growth does not increase to offset these anticipated increases in our operating expenses, our business, financial condition, and results of operations will be harmed, and we may not be able to achieve or maintain profitability. Further, these and other factors may cause our net revenue and results of operations to fall below the expectations of market analysts and investors in future periods, which could cause the market price of our common stock to decline substantially. Any decline in the market price of our common stock would cause the value of your investment to decline.

Our historical growth may not be indicative of our future growth and our net revenue growth rate may decelerate compared to prior years.

We have experienced fluctuations in our net revenue growth, with net revenue of \$96.8 million, \$102.7 million and \$81.9 million during the fiscal years ended December 31, 2022, 2021, and 2020, respectively, and with net revenue of \$63.8 million and \$73.9 million during the nine months ended September 30, 2023 and 2022, respectively. You should not rely on our net revenue for any previous quarterly or annual period as any indication of our net revenue or revenue growth in future periods. As we grow our business, our net revenue growth rates have and may in the future decelerate compared to prior years for a number of reasons, which may include more challenging comparisons to prior periods as our net revenue grows, slowing demand for our online marketplace, increasing competition, a decrease in the growth of our overall market or market saturation, and our failure to capitalize on growth opportunities. In addition, notwithstanding the general increase in online transactions, including for luxury purchases, our growth rates are likely to experience increased volatility, and may decelerate, in future periods.

If we fail to generate a sufficient volume of listings of luxury design products on our online marketplace, our ability to grow our business and market share would suffer.

Our success depends on our ability to cost-effectively attract, retain, and grow relationships with sellers, and in turn, the volume of luxury design products listed and sold through our online marketplace. We cannot be certain that these efforts will attract more sellers, induce sellers to list and sell more luxury design products on our online marketplace or yield a sufficient return on investment. Moreover, sellers may choose not to continue to list with us or list items as frequently. Our historical seller marketplace services revenue may not be indicative of future revenue. We are highly selective in the sellers we allow onto our online marketplace and sellers must undergo a thorough vetting process with our vetting specialists before they are allowed to join our online marketplace. As a result, we may have difficulty identifying sellers who meet our standards for providing luxury design products and our customer service requirements. If we fail to attract new sellers or drive continued or increased listings, our ability to grow our business and our results of operations would suffer. See “Risk Factors—Risks Related to Our Business and Industry—We rely, in part, on sellers to provide a positive experience to buyers.”

Further, our vetting specialists curate luxury design products through a variety of methods, including meeting with potential sellers and working with leading estates and foundations. The process of identifying and hiring vetting specialists with the combination of skills and attributes required in these roles can be difficult and can require significant time. If we are not successful in attracting and retaining qualified vetting specialists, the quantity and quality of the luxury design products sold through our online marketplace may be negatively impacted, which would harm our business and results of operations.

If we are unable to establish the authenticity of the items listed and sold through our online marketplace, our business, brand, and reputation could suffer.

We have built a trusted online marketplace with a reputation for authentic luxury design products as a result of our extensive vetting process. Our success depends on our ability to accurately and cost-effectively determine whether an item offered for listing, such as a piece of jewelry or work of art, is an authentic product. Our sellers undergo a comprehensive evaluation by our vetting specialists to ensure the integrity of their business practices. Our vetting specialists come from many of the leading auction and retail houses, brands and industry recognized art and design businesses. We also seek to reassure buyers that the items they are purchasing meet the highest marketplace standards. Our vetting process is led by experts with degrees in fine art, gemology, restoration, and art, with certificates in appraisal services, jewelry expertise, and connoisseurship, among others. We also seek to proactively resolve issues through communication and follow-up. Factors that could undermine our ability to maintain trust in our online marketplace include:

- complaints or negative publicity about us or our online marketplace or platform, even if factually incorrect or based on isolated incidents;
- changes to our policies to which our seller and buyer network react negatively or that are not clearly articulated;
- our failure to enforce our policies fairly and transparently; and
- our failure to respond to feedback from our seller and buyer network.

From time to time, counterfeit goods have been and may be listed on our online marketplace. While we have invested heavily in our seller vetting process as described above, we cannot be certain that we will accurately authenticate every item that is listed with us. As the sophistication of counterfeiters increases, it may be increasingly difficult to identify counterfeit products. In many cases, we refund the cost of a product to a buyer if we determine that the item is not authentic. The sale of any counterfeit goods may damage our reputation as a trusted online marketplace for authenticated, luxury design products, which may impact our ability to attract and maintain repeat sellers and buyers. Additionally, we may be subject to allegations that an antique, vintage, or other luxury design product we listed and sold through our online marketplace is not authentic. Such controversy could negatively impact our reputation and brand and harm our business and results of operations. If we are unable to maintain the quality and authenticity of the items listed on our online marketplace, our ability to retain and attract sellers and buyers could be impaired and our reputation, brand, and business could suffer.

We may be subject to claims that items listed on our online marketplace are counterfeit, infringing, hazardous, or illegal, or otherwise subject to regulation or cultural patrimony considerations.

Although we do not create or take possession of the items listed on our online marketplace, we have from time to time received, and may in the future receive, communications alleging that items listed on our online marketplace infringe third-party copyrights, trademarks, patents, or other intellectual property rights, or that items we list from our sellers contain materials such as fur, python, ivory, and other exotic animal product components, that are subject to regulation or cultural patrimony considerations, or that may be deemed hazardous or illegal. We have complaint and take-down procedures in place to address these communications and listings, and we believe such procedures are important to promote confidence in our online marketplace. We follow these procedures to review complaints and relevant facts to determine the appropriate action to

take, which may include removal of the item from our online marketplace and, in certain cases, removing the sellers who repeatedly violate our policies.

Our procedures may not effectively reduce or eliminate our liability. In particular, we may be subject to civil or criminal liability for activities carried out by sellers on our online marketplace, especially outside the United States where we may be less protected under local laws than we are in the United States. Under current U.S. copyright law and the Communications Decency Act, we may benefit from statutory safe harbor provisions that protect us from liability for content posted by our sellers and buyers. However, trademark and patent laws do not include similar statutory provisions and liability for these forms of intellectual property is often determined by court decisions. These safe harbors and court rulings may change unfavorably. In that event, we may be held secondarily liable for the intellectual property infringement of sellers.

Regardless of the validity of any claims made against us, we may incur significant costs and efforts to defend against or settle them. If a governmental authority determines that we have aided and abetted the infringement of third-party intellectual property rights or the sale of counterfeit goods or if legal changes result in us potentially being liable for actions by sellers on our online marketplace, we could face regulatory, civil, or criminal penalties. Successful claims by third-party rights owners could require us to pay substantial damages or refrain from permitting any further listing of the relevant items. These types of claims could force us to modify our business practices, which could lower our revenue, increase our costs, or make our platform less user-friendly. Moreover, public perception that counterfeit or other unauthorized items are common on our online marketplace, even if factually incorrect, could result in negative publicity and damage to our reputation.

If we are deemed to be liable for fraudulent or unlawful activities of sellers who list stolen items on our online marketplace, our business and reputation could suffer.

Despite our vetting process, we may fail to prevent the listing of stolen goods on our online marketplace. Government regulators and law enforcement officials may allege that our services violate, or aid and abet violations of certain laws, including laws restricting or prohibiting the transferability and, by extension, the resale, of stolen goods. Our form of seller agreement includes a representation that the seller has the necessary right and title to the luxury design products the seller may list, and we include such a rule and requirement in our terms of service prohibiting the listing of stolen or otherwise illegal products. In addition, we have implemented other protective measures to detect such products. If these measures prove inadequate, we may be required to spend substantial resources to take additional protective measures which could negatively impact our operations. Any costs incurred as a result of potential liability relating to the alleged or actual sale of stolen goods could harm our business. In addition, negative publicity relating to the actual or perceived listing or sale of stolen goods using our services could damage our reputation and make our sellers and buyers reluctant to use our services. We could face liability for such unlawful activities. Despite measures taken by us to detect stolen goods, to cooperate fully with law enforcement, and to respond to inquiries regarding potentially stolen goods, any resulting claims or liabilities could harm our business.

Our growth depends on our ability to attract and maintain an active community of sellers and buyers.

In order to increase revenue and to achieve and maintain profitability, we must expand our seller and buyer network. We must also encourage sellers to list items and encourage buyers to purchase items through our online marketplace. If existing sellers are dissatisfied with their experience on our platform, they may stop listing items on our online marketplace and may stop referring others to us. Similarly, if existing buyers have a negative experience or if the interest in buying luxury design products declines, they may make fewer purchases and they may stop referring others to us. Under these circumstances, we may have difficulty attracting new sellers and buyers without incurring additional marketing expense.

To expand our buyer base, we must appeal to and attract buyers of luxury design products and convert users to Active Buyers on our online marketplace. New buyers may not purchase through our online marketplace as frequently or spend as much with us as existing buyers. As a result, the revenue generated from new buyer transactions may not be as high as the revenue generated from transactions with our existing buyers. Our historical growth rates for Active Buyers may not be indicative of future growth rates in new Active Buyers. Failure to attract new buyers and to maintain relationships with existing buyers, or to convert users to Active Buyers on our online marketplace, would harm our results of operations and our ability to attract and retain sellers.

Even if we are able to attract new sellers and buyers to replace those we lose, they may not maintain the same level of activity and generate the same level of revenue. If we are unable to retain existing, or attract new, sellers and buyers, our growth prospects would be harmed and our business could be harmed.

Our growth will also depend on the continued and increased acceptance of e-commerce and online shopping by buyers of luxury design products. Although we have seen increased acceptance of online transactions in the luxury design products sector, including as a result of the COVID-19 pandemic, we cannot predict whether this trend will continue. Further, if sellers and buyers elect to transact business through in-person interactions instead of through our online marketplace, our revenue could be negatively impacted and our business could be harmed.

We rely, in part, on sellers to provide a positive experience to buyers.

We have on occasion received reports from buyers that they have not received the items that they purchased, that the items received were not as represented by the seller or that we or a seller has not been responsive to their questions. Negative publicity and sentiment generated as a result of complaints could reduce our ability to attract or retain buyers or damage our reputation. A perception that our levels of responsiveness and seller and buyer support are inadequate could have similar results. Further, any disruption in the operations of a substantial number of sellers, such as interruptions in delivery services, disruption due to public health crises such as the COVID-19 pandemic, natural disasters, inclement weather, or political unrest, could also result in negative experiences for a substantial number of buyers. If buyers do not have a positive experience transacting business on our online marketplace for any reason, or if we or our sellers fail to provide a high level of customer support and responsiveness, it could harm our reputation and our business.

Sellers rely on shipping services to deliver orders received through our online marketplace and if the items sold through our online marketplace are not delivered on time, in proper condition, or at all, our business and reputation could suffer.

Sellers work with a number of third-party services to deliver their items to buyers, including FedEx, UPS, and the United States Postal Service. Anything that prevents timely delivery of goods to buyers could harm sellers and could negatively affect our reputation. Delays or interruptions may be caused by events that are beyond the control of the delivery services, such as inclement weather, natural disasters, transportation disruptions, delays in customs inspections, terrorism, public health crises such as the COVID-19 pandemic, or labor unrest. For example, in the event a potential third-party strike occurs, this may cause orders to be lost or delivered late, which could result in canceled customer orders, reduced GMV and net revenue, and negatively impact net loss. It is possible that a potential third-party strike could also result in increased shipping costs and buyer accommodations. These potential impacts may have a material adverse effect on our business, financial condition, including on our financial statements of operations and cash flow, operating results, and liquidity. The delivery services could also be affected by industry consolidation, insolvency, or government shut-downs. Although we have agreements with certain delivery services that enable us to provide pre-paid shipping labels as a convenience to sellers, our agreements do not require these providers to offer delivery services to sellers. Further, our competitors could obtain preferential rates or shipping services, causing sellers to pay higher shipping costs or find alternative delivery services. If the items sold through our online marketplace are not delivered in proper condition, on a timely basis or at shipping rates that buyers are willing to pay, our reputation and our business could be adversely affected.

We operate in an evolving industry and our past results may not be indicative of future operating performance.

Our online marketplace represents a substantial departure from the traditional market for luxury design products. The online market for luxury design products may not continue to develop in a manner that we expect or that otherwise would be favorable to our business. Changes in our market make it difficult to assess our future performance.

Our future success will depend in large part upon our ability to, among other things:

- cost-effectively acquire and engage with new and existing sellers and buyers and increase listings of luxury design products through our online marketplace;
- scale our revenue and achieve the operating efficiencies necessary to achieve and maintain profitability;
- increase awareness of our brand;
- anticipate and respond to changing seller and buyer preferences;
- manage and improve our business processes in response to changing business needs;
- anticipate and respond to macroeconomic changes generally, including changes in the market for luxury design products and fluctuating shipping costs;
- effectively scale our operations while maintaining high service quality and seller and buyer satisfaction;
- avoid or manage interruptions in our business from information technology downtime, cybersecurity breaches, and other factors affecting our physical and digital infrastructure;
- provide responsive, timely, and effective customer support through all phases of transactions conducted through our online marketplace;
- maintain the quality of our technology and operations infrastructure;
- expand internationally and manage our international operations;
- develop new technology, services, or features to enhance the seller and buyer experience; and

- comply with regulations applicable to our business.

If we fail to address the risks and difficulties that we face, including those associated with the challenges listed above as well as those described elsewhere in this “Risk Factors” section, our business and our results of operations would suffer.

If we do not compete effectively our results of operations and market position could suffer.

The market for luxury design products is highly competitive. We compete with a broad range of vendors of new and pre-owned luxury design products, including traditional brick-and-mortar entities, such as department stores, branded luxury goods stores, and specialty retailers, and entities providing access to more unique luxury goods, such as galleries, boutiques, independent retail stores, and auction houses. We also compete with the online offerings of these traditional retail competitors, resale players focused on niche or single categories, as well as technology-enabled online marketplaces that may offer the same or similar goods and services that we offer. We believe our current primary competitors include Amazon, eBay, Etsy Inc., Restoration Hardware, Inc., Wayfair Inc., Christie's Inc., and Sotheby's, Inc. We believe our ability to compete depends on many factors within and beyond our control, including:

- engaging and enhancing our relationships with existing sellers and buyers and attracting new sellers and buyers;
- maintaining favorable brand recognition and effectively delivering our online marketplace to sellers and buyers;
- identifying and delivering authentic luxury design products;
- the amount, diversity, and quality of luxury design products that we or our competitors offer;
- our ability to expand the verticals for luxury design products listed on our online marketplace;
- the price at which listed, authenticated luxury design products through our online marketplace are offered;
- the speed and cost at which we can authenticate and make available listed luxury design products; and
- the ease with which our sellers can list and sell, and our buyers can purchase and return, luxury design products sold and purchased on our online marketplace.

Failure to adequately meet these demands may cause us to lose potential sellers and buyers which could harm our business.

Many of our competitors have longer operating histories, larger fulfillment infrastructures, greater brand recognition and technical capabilities, larger databases, greater financial, marketing, institutional and other resources and larger seller and buyer bases than we do. As the market evolves, competitors may emerge. Some of our competitors may have greater resources than we do, which may allow them to derive greater revenue and profits from their existing buyer bases, attract sellers at lower costs, or respond more quickly than we can to new or emerging technologies and changes in consumer shopping behavior. These competitors may engage in more extensive technology development efforts, enter the business of online listing of luxury design products, undertake more far-reaching marketing campaigns and adopt more aggressive pricing policies, which may allow them to build larger seller or buyer bases or generate revenue from their existing seller and buyer bases more effectively than we do. If we fail to compete effectively, our business, results of operations, and market share may suffer.

Our net revenue could be negatively impacted as a result of greater than expected product returns.

We allow buyers to return certain purchases made through our online marketplace under the applicable seller's return policy. We record a reserve for returns against proceeds to us from the sale of items on our online marketplace in calculating net revenue. We estimate this reserve based on historical return trends. The introduction of new products in the retail market, changes in seller return policies, changes in consumer confidence, or other competitive and general economic conditions may cause actual returns to exceed our reserve for returns. Any significant increase in returns that exceeds our reserves could adversely affect our net revenue and results of operations.

Insufficient allowance for transaction losses could negatively impact our financial results.

We maintain an allowance for transaction losses, which consists primarily of losses resulting from our buyer protection program, including damages to products caused by shipping and transit, items that were not received or not as represented by the seller, and reimbursements to buyers at our discretion if they are dissatisfied with their experience. The provision for transaction losses also includes bad debt expense associated with our accounts receivable balance. Transaction loss expense associated with our buyer protection program accounted for approximately 85%, 81%, and 88% of the provision for transaction losses in the fiscal years ended December 31, 2022, 2021, and 2020, respectively, with discretionary buyer reimbursements, which are part of the buyer protection program, constituting a small portion thereof. However, our historical experience may not be indicative of future trends and transaction loss expense associated with our buyer protection program, including buyer reimbursements, or bad debt expense may increase or fluctuate from period to period. Further, our provision for transaction losses may fluctuate depending on many factors, including changes to our buyer protection programs and the impact of

regulatory changes, and we may see the provision for transaction losses increase proportionally with our on-platform GMV and net revenue. If our allowance for transaction losses is insufficient, it could adversely affect our results of operations.

Our metrics and market estimates used to evaluate our performance are subject to inherent challenges in measurement, and real or perceived inaccuracies in those estimates may harm our reputation and negatively affect our business.

The metrics we use to evaluate our growth, measure our performance, and make strategic decisions are calculated using internal company data and assumption and estimates, and have not been validated by a third party. Certain metrics presented in this Quarterly Report on Form 10-Q and other SEC filings are used by us in managing our business. Our metrics and market estimates may differ from estimates published by third parties or from similarly titled metrics of our competitors or peers due to differences in methodology or the assumptions on which we rely. Additionally, the metrics and forecasts relating to the size and expected growth of our addressable market may prove to be inaccurate. However, we believe that these figures are reasonable estimates, and we take measures to improve their accuracy, such as eliminating known fictitious or duplicate accounts. There are, nonetheless, inherent challenges in gathering accurate data across large online and mobile populations. For example, there may be individuals who have multiple email accounts in violation of our terms of service. If individuals have multiple unique email addresses that are undetected, then we could be overestimating the number of Active Buyers. Even if the markets in which we compete meet the size estimates and growth forecasted, our business could fail to grow at similar rates, if at all. If securities analysts or investors do not consider our market metrics to be accurate representations of our business, or if we discover material inaccuracies in such estimates, then the market price of our common stock could decline, our reputation and brand could be harmed, and our business, financial condition, and results of operations could be adversely affected.

Our business and results of operations may be more susceptible to other macroeconomic conditions or trends due to our reliance on consumer discretionary spending.

Our business and results of operations are subject to industry and global economic conditions and their impact on consumer discretionary spending, particularly in the market for luxury design products. If general economic conditions deteriorate in the United States or in other markets where we operate, consumer discretionary spending may decline and demand for the luxury design products available on our online marketplace may be reduced. This would cause sales through our online marketplace to decline and adversely impact our business. Exchange rates may also impact sales, with a strong U.S. dollar dampening demand for goods denominated in dollars from buyers outside the United States. Consumer purchases of luxury design products have generally declined during periods of economic uncertainty, when disposable income is reduced or when there is a reduction in consumer confidence. Other factors that may negatively influence consumer spending on luxury design products include unemployment levels, higher consumer debt levels, reductions in net worth, declines in asset values, market uncertainty, home foreclosures and reductions in home values, fluctuating interest rates and credit availability, changes to monetary policy, volatile currency exchange rates, fluctuating fuel and other energy costs, fluctuating commodity prices, government shutdowns, financial distress caused by recent or potential bank failures and the associated bank crisis and concerns about the stability and liquidity of certain financial institutions, volatility or disruption in the capital markets, and general uncertainty regarding the overall future political and economic environment. Economic conditions may also be affected by global health crises, such as the COVID-19 pandemic, natural disasters, such as earthquakes, hurricanes, and wildfires, and wars, social unrest, political tensions, or other unexpected events. Such economic uncertainty and decrease in the rate of purchases of luxury design products may slow the rate at which sellers choose to list their items with us, which could result in a decrease of items available through our online marketplace.

Additionally, adverse economic changes could reduce consumer confidence, and could thereby negatively affect our operating results. In the event of a prolonged economic downturn or acute recession, significant inflation, or supply chain shortages, consumer spending habits could be adversely affected, and our business, financial condition, and results of operations could be harmed.

Even without changes in economic conditions, the demand for the items listed on our online marketplace is dependent on consumer preferences. Consumer preferences can change quickly and may differ across generations and cultures. If demand for the luxury design products that sellers offer through our online marketplace declines, our business would be harmed.

National retailers and brands set their own retail prices and promotional discounts on new luxury design products, which could adversely affect our value proposition to our buyers.

National retailers and brands set pricing for new luxury design products. Although the luxury design products available through our online marketplace are generally exclusive, one-of-a-kind products, promotional pricing by these parties may nonetheless adversely affect the value of luxury design products listed with us, and, in turn, our GMV and results of operations. In order to attract buyers to our online marketplace, the prices for the luxury design products sold through our online marketplace may need to be lowered in order to compete with these pricing strategies, which could negatively affect GMV and in turn, our net revenue. Any of the foregoing risks could adversely affect our business, financial condition, and results of operations.

If we fail to successfully anticipate and respond to changing preferences among our sellers and buyers, our ability to grow our business and our results of operations may suffer.

Our success is in large part dependent upon our ability to anticipate and identify trends in the market for luxury design products in a timely manner and to curate and obtain listings of luxury design products that address those trends. We use data science to predict seller and buyer preferences, and there can be no assurance that our data science will accurately anticipate seller or buyer requirements. Lead times relating to these changing preferences may make it difficult for us to respond rapidly to new or changing trends. We have begun to expand our offerings and the impact on our business from these new offerings is not clear as it is difficult to accurately predict seller and buyer preferences. To the extent we do not accurately predict the evolving preferences of our buyers or are unable to identify and vet sellers of luxury design products who address such buyer preferences, our ability to grow our business and our results of operations would suffer.

If we fail to successfully expand our business model to encompass additional product verticals in a timely and cost-effective manner, our ability to increase our market share would suffer, which in turn could negatively impact our business, financial condition, and results of operations.

We intend to deepen our penetration in our existing verticals for luxury design products and continue to explore additional verticals to serve existing, and attract new, sellers and buyers. If these additional verticals do not attract new sellers or buyers, our revenue may fall short of expectations, our brand and reputation could suffer, and we may incur expenses that are not offset by revenue. In addition, our business may suffer if we are unable to attract new and repeat sellers that supply the necessary high-end, appropriately priced, and in-demand luxury design products in these additional verticals, and these verticals may also have a different range of margin profiles than the pieces currently sold through our online marketplace. Additionally, as we enter new verticals, potential sellers may demand lower commissions than our current verticals, which would adversely affect our take rate and results of operations. Expansion of our offerings may also strain our management and operational resources, specifically the need to hire and manage additional authentication and market experts. We may also face increased competition from companies that are more focused on these verticals. If any of these were to occur, it could damage our reputation, limit our growth and harm our results of operations.

If we fail to maintain and promote our brand and reputation, our business, market position, and future growth could suffer.

We believe that maintaining our brand reputation is critical to driving seller and buyer engagement and trust. An important goal of our brand promotion strategy is establishing trust with our seller and buyer network. Maintaining our brand will depend largely on our ability to continue providing our sellers with service that is consistent with the level of quality associated with the luxury design products they are listing and on the quality of our vetting specialists who represent our brand to new and existing sellers. Our vetting specialists cultivate relationships with our seller base and vet the luxury design products that our sellers want to list. While we do assess the qualifications of all vetting specialists, this may not prevent illegal, improper, or otherwise inappropriate actions, such as theft, from occurring in connection with our services. Any negative publicity related to the foregoing could adversely affect our reputation and brand or could negatively affect demand for our services and harm our business, financial condition, and results of operations.

For buyers, maintaining our brand requires that we foster trust through authentication and responsive and effective customer service, as well as ensuring that we have vetted sellers. If we fail to provide sellers or buyers with the service and experience they expect, or experience seller or buyer complaints or negative publicity about our online marketplace services, merchandise, delivery times or customer support, whether justified or not, the value of our brand would be harmed and our business may suffer.

If our marketing efforts are not effective, our ability to grow our business and maintain or expand our market share could suffer.

Maintaining and promoting awareness of our online marketplace is important to our ability to retain existing, and to attract new, sellers and buyers. To facilitate our future growth and profitability, we are investing in our advertising, promotion, public relations, and marketing programs. These brand promotion activities may not yield increased revenue and the efficacy of these activities will depend on a number of factors, including our ability to do the following:

- determine the effectiveness for advertising, marketing, and promotional expenditures;
- select the right markets, media, and media vehicles in which to advertise;
- identify the most effective and efficient level of spending in each market, media, and media vehicle; and
- effectively manage marketing costs, including creative and media expenses, to maintain acceptable seller and buyer acquisition costs.

We may adjust or re-allocate our advertising spend across channels, product verticals, and geographic markets to optimize the effectiveness of these activities. We expect to increase advertising spend in future periods to continue driving our growth.

Implementing new marketing and advertising strategies also could increase the risk of devoting significant capital and other resources to endeavors that do not prove to be cost effective or provide a meaningful return on investment. We also may incur marketing and advertising expenses significantly in advance of recognizing revenue associated with such expenses and our marketing and advertising expenditures may not generate sufficient levels of brand awareness or result in increased revenue. Even if our marketing and advertising expenses result in increased sales, the increase might not offset our related expenditures. If we are unable to maintain our marketing and advertising channels on cost-effective terms or replace or supplement existing marketing and advertising channels with similarly or more effective channels, our marketing and advertising expenses could increase substantially, our seller and buyer base could be adversely affected, and our business, results of operations, financial condition, and brand could suffer.

We rely on third parties to drive traffic to our website, and these providers may change their algorithms or pricing in ways that could damage our business, operations, financial condition, and prospects.

We rely in part on digital advertising, including search engine marketing, to promote awareness of our online marketplace, grow our business, attract new, and increase engagement with existing, sellers and buyers. In particular, we rely on search engines, such as Google, and the major mobile app stores as important marketing channels. Search engine companies change their search algorithms periodically, and our ranking in searches may be adversely impacted by those changes. Search engine companies or app stores may also determine that we are not in compliance with their guidelines and penalize us as a result. If search engines change their algorithms, terms of service, display or the featuring of search results, determine we are out of compliance with their terms of service or if competition increases for advertisements, we may be unable to cost-effectively add sellers and buyers to our website and apps. Our relationships with our marketing vendors are not long-term in nature and do not require any specific performance commitments. In addition, many of our online advertising vendors provide advertising services to other companies, including companies with whom we may compete. As competition for online advertising has increased, the cost for some of these services has also increased. Our marketing initiatives may become increasingly expensive and generating a return on those initiatives may be difficult. Even if we successfully increase revenue as a result of our paid marketing efforts, such increases may not offset the additional marketing expenses we incur.

If the mobile solutions available to sellers and buyers are not effective, the use of our platform could decline.

Visits and purchases made on mobile devices by consumers, including buyers, have increased significantly in recent years. The smaller screen size and reduced functionality associated with some mobile devices may make the use of our platform more difficult or less appealing to sellers and buyers. Visits to our online marketplace on mobile devices may not convert into purchases as often as visits made through personal computers, which could result in less revenue for us. Sellers are also increasingly using mobile devices to operate their businesses on our platform. If we are not able to deliver a rewarding experience on mobile devices, sellers’ ability to manage and grow their businesses may be harmed and, consequently, our business may suffer. Further, although we strive to provide engaging mobile experiences for sellers and buyers who visit our mobile website using a browser on their mobile device, we depend on sellers and buyers downloading our mobile apps to provide them the optimal mobile experience.

As new mobile devices and mobile platforms are released, we may encounter problems in developing or supporting apps for them. In addition, supporting new devices and mobile device operating systems may require substantial time and resources.

The success of our mobile apps could also be harmed by factors outside our control, such as:

- actions taken by providers of mobile operating systems or mobile app download stores;
- unfavorable treatment received by our mobile apps, especially as compared to competing apps, such as the placement of our mobile apps in a mobile app download store;
- increased costs in the distribution and use our mobile apps; or
- changes in mobile operating systems, such as iOS and Android, that degrade the functionality of our mobile website or mobile apps or that give preferential treatment to competitive products.

If our sellers or buyers encounter difficulty accessing or using our platform on their mobile devices, or if our sellers or buyers choose not to use our platform on their mobile devices, our growth prospects and our business may suffer.

We must continue to drive efficiencies in our operations or our business could suffer.

We seek to continue to drive efficiencies in our business operations. As we continue to add capacity, capabilities, and automation, our operations will become increasingly complex and challenging. While we expect these technologies to improve productivity in many aspects of our operations, including order processing, pricing, copywriting, authentication, photography

and photo retouching, any flaws or failures of such technologies could interrupt and delay our operations, which in turn may harm our business. Our investment in technology to support these efforts may not be effective in driving productivity, maintaining, or improving the experience for sellers and buyers, or providing a meaningful return on investment. We also rely on technology from third parties. If these technologies do not perform in accordance with our expectations, third parties change the terms and conditions that govern their relationships with us, or if competition increases for the technology and services provided by third parties, our business may be harmed. In addition, if we are unable to add automation to our operations, we may be unable to reduce the costs of processing listings and orders, which could cause delays in buyers receiving their purchases. Any of these outcomes could harm our reputation and our relationships with our sellers and buyers.

We may expand our business through acquisitions of other businesses, which may divert management’s attention and/or prove to be unsuccessful.

We have acquired a number of other businesses in the past and may acquire additional businesses or technologies in the future. For example, in May 2019, we acquired Design Manager, a project management and accounting software company for interior designers. In June 2022, we sold 100% of our equity interest in Design Manager. Acquisitions may divert management’s time and focus from operating our business. Acquisitions also may require us to spend a substantial portion of our available cash, incur debt or other liabilities, amortize expenses related to intangible assets, or incur write-offs of goodwill or other assets. In addition, integrating an acquired business or technology is risky. Completed and future acquisitions may result in unforeseen operational difficulties and expenditures associated with:

- incorporating and integrating new businesses, technologies, products, personnel, or operations of any company we may acquire, particularly if key personnel of the acquired company decide not to work for us;
- consolidating operational and administrative functions;
- coordinating outreach to our community;
- disruption to our ongoing business and distraction of our management;
- delay or reduction of transactions on our marketplace or in the business of the company we acquired due to uncertainty about continuity and effectiveness of service from either company;
- entry into geographic or business markets in which we have little or no prior experience or where competitors have stronger market positions;
- effectively managing an increased number of employees in diverse locations;
- if we use cash to pay for acquisitions, limiting other potential uses for our cash;
- incurring debt to fund such acquisitions, which may subject us to material restrictions on our ability to conduct our business;
- incurring impairment charges related to potential write-downs of acquired assets or goodwill;
- maintaining morale and culture and retaining and integrating key employees;
- maintaining or developing controls, procedures, and policies (including effective internal control over financial reporting and disclosure controls and procedures); and
- assuming liabilities related to the activities of the acquired business before the acquisition, including liabilities for violations of laws and regulations, commercial disputes, taxes, and other matters.

In addition, an acquisition may negatively affect our results of operations and financial condition because it may require us to incur charges or assume substantial debt or other liabilities, may cause adverse tax consequences or unfavorable accounting treatment, may expose us to claims and disputes by third parties, including intellectual property claims and disputes, or may not generate sufficient financial return to offset additional costs and expenses related to the acquisition.

Moreover, we may not benefit from our acquisitions as we expect, or in the time frame we expect, or we may elect to divest ourselves of prior acquisitions, such as our sale of Design Manager in June 2022. We also may issue additional equity securities in connection with an acquisition, which could cause dilution to our stockholders. Finally, acquisitions could be viewed negatively by analysts and investors or by our sellers and buyers. We may not succeed in addressing these or other risks, which could harm our business and results of operations.

If we fail to manage our growth effectively, or if we are unable to execute our business plan and grow our business, our results of operations, and financial condition could be materially and adversely harmed.

We have experienced rapid growth in our business in the past, such as in the number of sellers and the number of countries in which we have sellers and buyers, and we intend to continue to focus on growth, both in the United States and abroad. The

growth of our business, if any, places significant demands on our management team and pressure to expand our operational and financial infrastructure. As we continue to grow, our operating expenses will increase. If we do not manage our growth effectively, the increases in our operating expenses could outpace any increases in our revenue and our business could be harmed. In addition, we have in the past experienced, and may in the future experience, slower growth rates. For example, our net revenue decreased in the third quarter of 2023 as compared to the third quarter of 2022. Although we continue to focus on growth and are evaluating various approaches and alternatives to execute on our business strategies, the outcome of such evaluation or impact of any subsequent actions, if any, is uncertain. Failure to sustain or increase the growth of our business or to execute our business strategies would likely materially and adversely impact our business, financial condition, and results of operations.

We may require additional capital to support business growth, and we may be unable to obtain additional capital on acceptable terms, if at all, and any additional financing may dilute existing stockholders.

We believe that our existing cash, cash equivalents and short-term investments, together with any cash generated from operations, will be enough to meet our anticipated cash needs for at least the next 12 months. We may require additional capital to grow our business, including the need to develop our online marketplace services, expand across and within product verticals, enhance our operating infrastructure, expand the markets in which we operate, and potentially acquire complementary businesses and technologies. Our future capital requirements will depend on many factors, including the emergence of competing online marketplaces and other adverse marketing developments; the timing and extent of our sales and marketing and technology and development expenditures; and any investments or acquisitions we may choose to pursue in the future. Accordingly, we may need to engage in equity or debt financings to secure additional funds. If we raise additional funds through further issuances of equity or issuances of convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences, and privileges superior to those of holders of our common stock. Any debt financing secured by us in the future could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities. In addition, we may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, and our business and prospects could suffer.

If we fail to attract and retain key personnel on our executive team or to effectively manage leadership succession, our business, financial condition, and results of operations could be adversely impacted.

Our success depends in part on our ability to attract and retain key personnel on our executive team, including our Chief Executive Officer, David S. Rosenblatt. Senior employees have left our company in the past and others may in the future. We often cannot anticipate such departures and may not be able to promptly replace key leadership personnel. The loss of one or more of our key personnel or the inability to promptly identify a suitable successor to a key role could have an adverse effect on our business. Our key personnel are generally employed on an “at-will” basis.

Our strategic initiatives to reduce our cost structure towards cash flow positive operations could have long-term adverse effects on our business operations, and we may not realize the operational or financial benefits from such actions, including achieving our cash flow positive operations.

Our cost-reduction initiatives related to achieving cash flow positive operations are subject to many risks and uncertainties and may have an adverse impact on our performance. We identified that we had excess vacancy in our office spaces and entered into a sublease agreement with a third party for approximately 78% of the rentable office space, which will expand to 100% of the rentable office space. The sublease expires on our expiration date of our lease. While this is a cost-reduction initiative, factors beyond our control could materially and adversely affect our business, cash flows, results of operations, profitability, and financial condition, including if our subtenant fails to make lease payments or otherwise defaults on their obligation to us as we could incur such payment obligations to our landlord and we may not be successful in realizing our anticipated savings and efficiencies.

Further expansion into markets outside of the United States is important to the growth of our business but will subject us to risks associated with operations abroad.

Expanding our community into markets outside of the United States is an important part of our strategy. Although we have a significant number of sellers and buyers outside of the United States, we have limited experience in developing local markets outside the United States. Also, visits to our online marketplace from buyers outside the United States may not convert into sales as often as visits from within the United States, including due to the impact of the strong U.S. dollar relative to other currencies. Our success in markets outside the United States will be linked to our ability to attract local sellers and buyers to our online marketplace and to localize our online marketplace in additional languages. If we are not able to do so, our growth prospects could be harmed.

In addition, competition is likely to intensify in the international markets where we operate and plan to expand our operations. Local companies based in markets outside the United States may have a substantial competitive advantage because of their greater understanding of, and focus on, those local markets. Some of our competitors may also be able to develop and grow in international markets more quickly than we will.

We have made substantial investments to expand to markets outside of the United States and continued expansion in markets outside of the United States may require significant additional financial investment. For example, in the fiscal year ended December 31, 2022, we launched localized sites in Germany and France, which may require significant financial investments to maintain. These investments include marketing to attract and retain new sellers and buyers, developing localized services and web platforms, forming relationships with third-party service providers, supporting operations in multiple countries, and potentially acquiring companies based outside the United States and integrating those companies with our operations. These expansion efforts may not be successful and as a result, our business, results of operations, financial condition, and brand could suffer.

Doing business in markets outside of the United States also subjects us to increased risks and burdens such as:

- complying with different regulatory standards (including those related to the use of personal information, particularly in the European Union);
- managing and staffing operations over a broader geographic area with varying cultural norms and customs;
- adapting our online marketplace to local cultural norms and customs;
- potentially heightened risk of fraudulent transactions;
- limitations on the repatriation of funds and fluctuations of foreign exchange rates;
- exposure to liabilities under, and compliance challenges related to, multiple, conflicting, and changing governmental laws and regulations, including, but not limited to, employment, tax, privacy and data protection, U.S. anti-boycott authorities, anti-corruption, anti-money laundering and export control laws, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act of 2010, trade controls and sanctions administered by the U.S. Office of Foreign Assets Control, and similar laws and regulations in other jurisdictions;
- varying levels of Internet, e-commerce and mobile technology adoption and infrastructure;
- our ability to enforce contracts and intellectual property rights in jurisdictions outside the United States; and
- barriers to international trade, such as tariffs or other taxes.

Sellers face similar risks in conducting their businesses across borders. Even if we are successful in managing the risks of conducting our business across borders, if sellers are not, our business could be adversely affected.

Finally, operating in markets outside of the United States requires significant management attention. If we invest substantial time and resources to expand our operations outside of the United States and cannot manage these risks effectively, the costs of doing business in those markets may be prohibitive or our expenses may increase disproportionately to the revenue generated in those markets.

We may incur significant losses from fraud, which would harm our results of operations.

We have in the past incurred and may in the future incur losses from various types of fraudulent transactions, including the use of stolen credit card numbers and claims that a buyer did not authorize a purchase. In addition to the direct costs of these losses, if the fraud is related to credit card transactions and becomes excessive, it could result in us paying higher fees or losing the right to accept credit cards for payment. Under current credit card practices, we are liable for fraudulent credit card transactions because we do not obtain a cardholder’s signature. Our failure to adequately prevent fraudulent transactions could damage our reputation, result in litigation or regulatory action or lead to expenses that could substantially impact our results of operations.

Our payments system depends on third-party providers and is subject to evolving laws and regulations.

We rely on third-party payment processors to process payments made by buyers or to sellers on our online marketplace. We have engaged third-party service providers to perform underlying card processing, currency exchange, identity verification, and fraud analysis services. If these service providers do not perform adequately or if they terminate their relationships with us or refuse to renew their agreements with us on commercially reasonable terms, we will need to find an alternate payment processor and may not be able to secure similar terms or replace such payment processors in an acceptable timeframe. Further, the software and services provided by our third-party payment processors may not meet our expectations, contain errors or vulnerabilities, be compromised or experience outages. Any of these risks could cause us to lose our ability to accept online payments, make payments to sellers or conduct other payment transactions, any of which could make our platform less

convenient and attractive and harm our ability to attract and retain sellers and buyers. In addition, sellers' ability to accept orders could be negatively impacted and our business would be harmed. In addition, if these providers increase the fees they charge us, our operating expenses could increase. Alternatively, if we respond by increasing the fees we charge to sellers, some sellers may stop listing new items for sale.

The laws and regulations related to payments are complex and vary across different jurisdictions in the United States and globally. As a result, we are required to spend significant time and effort to comply with those laws and regulations. Any failure or claim of our failure to comply, or any failure by our third-party service providers to comply, could cost us substantial resources, could result in liabilities, or could force us to stop offering certain third-party payment services. As we expand the availability of new payment methods to our sellers and buyers in the future, we may become subject to additional regulations and compliance requirements.

Further, through our agreement with our third-party credit card processor, we are subject to payment card association operating rules and certification requirements, including the Payment Card Industry Data Security Standard. We are also subject to rules governing electronic funds transfers. Any change in these rules and requirements could make it difficult or impossible for us to comply.

If we fail to recruit and retain specialized employees and contractors, our business and operations could suffer.

Our ability to attract, retain and motivate employees and contractors, including our in-house vetting specialists, is important to our success. Other companies, including our competitors, may be successful in recruiting and hiring our employees and contractors, and it may be difficult for us to find suitable replacements on a timely basis or on competitive terms. In addition, we may face challenges in connection with recruiting, hiring, and retaining qualified engineers and IT staff to support our operations. Qualified individuals are limited and in high demand, and we may incur significant costs to attract, develop and motivate them. Further, our future work environment strategy is continuing to evolve and may not meet the needs of our existing and potential future employees and they may prefer work models offered by other companies. If we fail to recruit and retain specialized employees and contractors, our ability to grow our business and our operations could suffer.

If we experience labor disputes or other disruption, it could harm our operations.

None of our employees are currently represented by a union. If our employees decide to form or affiliate with a union, we cannot predict the negative effects such future organizational activities will have on our business and operations. If we were to become subject to work stoppages, we could experience disruption in our operations, including delays in technology development, customer servicing and shipping, and increases in our labor costs which could materially adversely affect our business, financial condition, or results of operations.

Geopolitical risks stemming from political instability and military hostilities could result in increased market volatility and uncertainty, which could negatively impact our business, financial condition, and results of operations.

The uncertain nature, magnitude, and duration of political instability and military hostilities in multiple geographies (including the Russia-Ukraine and Israel-Hamas conflicts), including recent military invasions, the potential effects of sanctions limitations, retaliatory cyber-attacks on the world economy and markets, and potential shipping delays, have contributed to increased market volatility and uncertainty, which could have an adverse impact on macroeconomic factors that affect our business. For example, if our shipping carriers are unable to fulfill orders in impacted regions, as has been the case, the resultant disruptions to our delivery chain could negatively affect the timely delivery of our other orders, which could adversely affect our business and reputation. In addition, we rely on our payment processors to understand the destination of our payments to sellers. If our payment processors fail to follow newly imposed sanctions limitations, we may be at risk of being deemed to have violated such sanctions limitations. In addition, if we are overly conservative in our approach to canceling or pausing orders in impacted regions due to general instability in the area, the value of our brand could be harmed, which could negatively impact our business, financial condition, and results of operations.

The COVID-19 pandemic has impacted, and may continue to impact, our business, key metrics, and results of operations in volatile and unpredictable ways.

The uncertainty around the COVID-19 pandemic in the United States and worldwide will likely continue to adversely impact the national and global economy. The full extent of the impact of the pandemic on our business, key metrics, and results of operations depends on future developments that are uncertain and unpredictable, including the duration, severity, and spread of the pandemic, its impact on capital and financial markets, and any new information that may emerge concerning the virus or vaccines or other efforts to control the virus.

As a result of the COVID-19 pandemic, we have transitioned to an almost fully remote work environment. More recently, we have re-opened our offices, and have implemented a flexible work model that we anticipate will have us continue to operate on a significantly remote and geographically (including internationally) dispersed basis for the foreseeable future. This remote and dispersed work environment could have a negative impact on the execution of our business plans and operations. For

example, if a natural disaster, power outage, connectivity issue, or other event occurs that impacts our employees’ ability to work remotely, it may be difficult or, in certain cases, impossible, for us to continue our business for a substantial period of time. The increase in remote working may also result in consumer privacy, IT security, and fraud vulnerabilities, which, if exploited, could result in significant recovery costs and harm to our reputation. Transitioning to a fully or predominantly remote work environment and providing and maintaining the operational infrastructure necessary to support a remote work environment also present significant challenges to maintaining compliance with state requirements such as employee income tax withholding, remittance and reporting, payroll registration, and workers’ compensation insurance. It may also negatively impact our corporate culture, including employee engagement and productivity, both during the immediate pandemic crisis and beyond.

In addition, we may experience a decline in the supply of luxury design products available through our online marketplace if our sellers face difficulty sourcing products in the event of any extended lockdowns or similar restrictions or measures implemented in response to the COVID-19 pandemic. Further, any prolonged economic downturn due to the COVID-19 pandemic (or otherwise) may negatively impact demand for luxury design products, including as a result of any significant or extended reduction in disposable incomes across our buyer base.

The COVID-19 pandemic has also led to broader economic consequences, such as global shipping disruptions and changes in consumer behavior associated with the easing of pandemic-related restrictions and perceived risks, that may heighten other risks presented in this Quarterly Report on Form 10-Q. Public health concerns, such as COVID-19, could also result in social, economic and labor instability in the localities in which we or our vendors, sellers, and buyers reside. Any of these uncertainties and actions we take to mitigate the effects of the COVID-19 pandemic and uncertainties related to the COVID-19 pandemic could harm our business, financial condition, and results of operations.

Our NFT platform (utilizing Ether, a cryptocurrency generated using the Ethereum protocol) may expose us to legal, regulatory, and other risks. Given the nascent and evolving nature of cryptocurrencies, NFTs, and our NFT platform, we may be unable to accurately anticipate or adequately address such risks or the potential impact of such risks. The occurrence of any such risks could materially and adversely affect our business, financial condition, results of operations, reputation, and prospects.

In August 2021, we announced the launch of our non-fungible token (“NFT”) platform where creators can make blockchain-encrypted design items, such as artwork, available as NFTs for digital purchase through 1stDibs, utilizing Ethereum, a blockchain technology. NFTs are digital assets recorded on a blockchain ledger for verification of authenticity and ownership of a unique digital asset, such as artwork. In February 2023, we determined to cease further investment in the NFT platform; however, previously-minted NFTs remain available for sale. Given the increased scrutiny of digital assets as well as cryptocurrencies for regulatory and anti-money laundering purposes, it is possible that the United States and other jurisdictions will engage in increased scrutiny and regulation of NFTs and our business. While NFTs and cryptocurrencies are similar in that both are based on blockchain technology, unlike cryptocurrency units, which are fungible, NFTs have unique identification codes and represent content on the blockchain. The record of ownership of the NFT, which establishes authenticity and may also carry other rights, cannot be duplicated. As NFTs are a relatively new and emerging type of digital asset, the regulatory, commercial, and legal framework governing NFTs (as well as cryptocurrencies) is likely to evolve both in the United States and internationally and implicates issues regarding a range of matters, including, but not limited to, intellectual property rights, privacy and cybersecurity, fraud, anti-money laundering, sanctions, and currency, commodity, and securities law implications.

If our insurance coverage is insufficient or our insurers are unable to meet their obligations, our insurance may not mitigate the risks facing our business.

We contract for insurance to cover a number of risks and potential liabilities. Our insurance policies cover areas such as general liability, errors and omissions liability, employment liability, business interruptions, data breach, crime, product liability and directors’ and officers’ liability. For certain types of business risk, we may not be able to, or may choose not to, acquire insurance. In addition, we may not obtain enough insurance to adequately mitigate the risks we face, or we may have to pay high premiums and/or deductibles for the coverage we do obtain. Additionally, if any of our insurers becomes insolvent, it would be unable to pay any claims that we make.

Our cash, cash equivalents and short-term investments may be exposed to failure of our banking institutions.

While we seek to minimize our exposure to third-party losses of our cash, cash equivalents and short-term investments, our cash held in non-interest bearing and interest-bearing accounts may exceed any applicable Federal Deposit Insurance Corporation (“FDIC”) insurance limits. Should events, including limited liquidity, defaults, non-performance or other adverse developments occur with respect to the banks or other financial institutions that hold our funds, or that affect financial institutions or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, our liquidity may be adversely affected. For example, on March 10, 2023, Silicon Valley Bank (“SVB”) was unable to continue their operations and the Federal Deposit Insurance Corporation was appointed as receiver for SVB and created the

National Bank of Santa Clara to hold the deposits of SVB after SVB was unable to continue their operations. Although we did not have any material funds in SVB or other institutions that have been closed, we cannot guarantee that the banks or other financial institutions that hold our funds will not experience similar issues. If further failures in financial institutions occur where we hold deposits, we could experience additional risk. Any such loss or limitation on our cash, cash equivalents and short-term investments would adversely affect our business.

Risks Related to Privacy, Cybersecurity, and Infrastructure

If sensitive information about our sellers and buyers or other third parties with whom we transact business is disclosed, or if we or our third-party providers are subject to cyber-attacks, use of our online marketplace could be curtailed, we may be exposed to liability, and our reputation would suffer.

Although we do not directly collect, transmit, and store personal financial information such as credit cards and other payment information, we utilize third-party payment processors who provide these services on our behalf. We also collect and store certain personally identifiable information provided by our sellers and buyers and other third parties with whom we transact business, such as names, email addresses, and the details of transactions. The collection, transmission, and storage of such information is subject to stringent legal and regulatory obligations. Some of our third-party service providers, such as identity verification and payment processing providers, also regularly have access to seller and buyer data. In an effort to protect sensitive information, we rely on a variety of security measures, including encryption and authentication technology licensed from third parties. However, advances in computer capabilities, increasingly sophisticated tools and methods used by hackers and cyber terrorists, new discoveries in the field of cryptography, or other developments may result in our failure or inability to adequately protect sensitive information.

Our platform is vulnerable to power outages, telecommunications failures, and catastrophic events, as well as computer viruses, worms, malicious code, break-ins, phishing attacks, denial-of-service attacks, and other cyber-attacks. Any of these incidents could lead to interruptions or shutdowns of our platform, loss of data, or unauthorized disclosure of personally identifiable or other sensitive information. Cyber-attacks could also result in the theft of our intellectual property. If we gain greater visibility, we may face a higher risk of being targeted by cyber-attacks. Advances in computer capabilities, new technological discoveries, or other developments may result in cyber-attacks becoming more sophisticated and more difficult to detect.

Any failure or perceived failure by us to comply with our privacy policies, our privacy or data protection obligations to sellers and buyers or other third parties, or our privacy or data protection legal obligations, or any compromise of security that results in the unauthorized release or transfer of sensitive information, which may include personally identifiable information or other data, may result in governmental enforcement actions, litigation or public statements against us by consumer advocacy groups or others and could cause sellers and buyers to lose trust in us, which could have an adverse effect on our business.

We have experienced cybersecurity incidents in the past and may experience them in the future. Further, if we or our third-party service providers experience security breaches that result in online marketplace performance or availability problems or the loss or unauthorized disclosure of personal and other sensitive information, people may become unwilling to provide us the information necessary to set up seller and buyer accounts, and we could be subject to third-party lawsuits, regulatory fines, or other action or liability. Existing sellers and buyers may also stop listing new items for sale or decrease their purchases or close their accounts altogether. Further, any reputational damage resulting from breach of our security measures could create distrust of our company by sellers and buyers.

We and our third-party service providers may not have the resources or technical sophistication to anticipate or prevent all such cyber-attacks. Moreover, techniques used to obtain unauthorized access to systems change frequently and may not be known until launched against us or our third-party service providers. Security breaches can also occur as a result of non-technical issues, including intentional or inadvertent breaches by our employees or employees of our third-party service providers.

We expect to incur ongoing costs associated with the detection and prevention of security breaches and other security-related incidents. We may incur additional costs in the event of a security breach or other security-related incident. Any actual or perceived compromise of our systems or data security measures or those of third parties with whom we do business, or any failure to prevent or mitigate the loss of personal or other confidential information and delays in detecting or providing notice of any such compromise or loss could disrupt our operations, harm the perception of our security measures, damage our reputation, cause some sellers and buyers to decrease or stop their use of our online marketplace, and could subject us to litigation, government action, increased transaction fees, regulatory fines or penalties, or other additional costs and liabilities that could harm our business, financial condition, and results of operations.

We cannot be certain that our insurance coverage will be adequate for data handling or data security liabilities, that insurance will continue to be available to us on economically reasonable terms, or at all, or that any insurer will not deny

coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could have a material and adverse effect on our business, including our financial condition, results of operations, and reputation.

Our use and other processing of personal information and other data is subject to laws and obligations relating to privacy and data protection, and our failure to comply with such laws and obligations could harm our business.

Numerous state, federal and international laws, rules and regulations govern privacy, data protection and the collection, use and protection of personal information and other types of data we collect, use, disclose and otherwise process. These laws, rules and regulations are constantly evolving, and we expect that there will continue to be new proposed laws, regulations and industry standards concerning privacy, data protection and information security in the United States, the EU and other jurisdictions. For example, California enacted legislation in June 2018, the California Consumer Privacy Act (the “CCPA”) that, among other things, requires covered companies to provide new disclosures to California consumers and afford such consumers new abilities to opt-out of certain sales of personal information. California also adopted the California Privacy Rights Act in November 2020 (the “CPRA”), which amended provisions of the CCPA and became effective on January 1, 2023. Similarly, the European Commission adopted a General Data Protection Regulation that became fully effective on May 25, 2018, imposing stringent EU data protection requirements.

We cannot yet fully determine the impact these or future laws, rules, and regulations may have on our business or operations. These laws, rules and regulations may be inconsistent from one jurisdiction to another, subject to differing interpretations and may be interpreted to conflict with our practices. The CCPA and CPRA could mark the beginning of a trend toward more stringent privacy legislation in the United States. For example, Colorado and Virginia adopted individual state privacy laws in 2021 and other states are also considering privacy legislation. The CCPA has prompted a number of additional proposals for federal and state privacy legislation that, if passed, could increase our potential liability, add layers of complexity to compliance in the U.S. market, increase our compliance costs, and adversely affect our business. Additionally, we may be bound by contractual requirements applicable to our collection, use, processing and disclosure of various types of data, including personal information, and may be bound by, or voluntarily comply with, self-regulatory or other industry standards relating to these matters.

Any failure or perceived failure by us or any third parties with which we do business to comply with these laws, rules and regulations, or with other obligations to which we or such third parties are or may become subject, may result in actions against us by governmental entities, private claims and litigation, the expenditure of legal and other costs and of substantial time and resources, and fines, penalties or other liabilities. Any such action would be expensive to defend, may require the expenditure of substantial legal and other costs and substantial time and resources, and likely would damage our reputation and adversely affect our business and results of operations.

Further, in view of new or modified federal, state or foreign laws and regulations, industry standards, contractual obligations and other legal obligations, or any changes in their interpretation, we may find it necessary or desirable to fundamentally change our business activities and practices or to expend significant resources to modify our product and otherwise adapt to these changes. We may be unable to make such changes and modifications in a commercially reasonable manner or at all, and our ability to develop new products and features could be limited. Privacy, data protection and information security concerns, whether valid or not valid, may inhibit the use and growth of our online marketplace, particularly in certain foreign countries.

Use of social media, emails, and push notifications may harm our reputation or subject us to fines or other penalties.

We use social media, emails, and push notifications as part of our omni-channel approach to marketing and communications with sellers and buyers. As laws and regulations evolve to govern the use of these channels, the failure by us, our employees or third parties acting at our direction to comply with applicable laws and regulations in the use of these channels could adversely affect our reputation or subject us to fines or other penalties. In addition, our employees or third parties acting at our direction may knowingly or inadvertently make use of social media in ways that could lead to the loss or infringement of intellectual property, as well as the public disclosure of proprietary, confidential, or sensitive personal information of our business, employees, consumers, or others. Information concerning us or our sellers and buyers, whether accurate or not, may be posted on social media platforms at any time and may have an adverse impact on our brand, reputation, or business. The harm may be immediate without affording us an opportunity for redress or correction and could have a material adverse effect on our reputation, business, results of operations, financial condition, and prospects.

If we fail to successfully expand the features, services, and offerings on our online marketplace, our ability to grow our business may suffer.

Our industry is characterized by rapidly changing technology, new service and feature introductions, and changing seller and buyer demands. We spend substantial time and resources creating new features, services, and offerings to attract new

constituents to our online marketplace and to open new sales channels for sellers. Our efforts to expand the features, services, and offerings on our online marketplace could fail for many reasons, including lack of acceptance by existing or new constituents, our failure to market these features, services, and offerings effectively to new constituents, or negative publicity related to our features, services, and offerings. For example, we launched 1stDibs Auctions to provide additional opportunities to optimize price discovery and leverage alternative payment methods. We may not be able to educate and/or commercialize buyers and sellers about how to use this new purchase format, which differs from our historical transaction models and may create confusion. Our new initiatives may not drive increases in revenue, may require substantial investment and planning, and may bring us more directly into competition with companies that are better established or have greater resources than we do. They may require additional investment of time and resources in the development and training of our personnel and our sellers and buyers. Further, our efforts to diversify and expand our features, services, and offerings involve significant technological risk, such as encountering software bugs, defects, or errors in connection with the introduction of new or enhanced features of our technology platform. If we are unable to cost-effectively expand our features, services, and offerings, then our growth prospects and competitive position may be harmed.

Any significant disruption in service provided by, or termination of our relationship with, third parties that host our website and mobile app and process payments made by buyers or to sellers on our online marketplace could damage our reputation and result in loss of sellers and buyers, which in turn would harm our business and results of operations.

Our brand and ability to attract and retain sellers and buyers depends in part on the reliable performance of our cloud-hosted servers, network infrastructure and content delivery process. If the services provided by third parties are disrupted or if we are unable to maintain and scale the technology underlying our platform, our operations and business could suffer. The volume of traffic and activity on our online marketplace spikes on certain days and during certain periods of the year, such as during the fourth quarter due to the seasonality of our business, and any interruption would be particularly problematic if it were to occur at such a high volume time.

The software and operation of the technology underlying our platform is expensive and complex, and we could experience operational failures. If we fail to accurately predict the rate or timing of the growth of our platform, we may be required to incur significant additional costs to maintain reliability. These costs could include, but are not limited to, adding additional hosting capacity or platforms, additional network providers, web application firewalls or other bot-mitigation technologies or additional content distribution networks. Additionally, as we rely on a fast, secure, and stable Internet, we could be required to adapt to any changes to global standards.

We have experienced, and expect that in the future we will experience, interruptions, delays, and outages in service and availability from time to time due to a variety of factors, including infrastructure changes, human or software errors, website hosting disruptions, and capacity constraints which could affect the availability of services on our platform and prevent or inhibit the ability of buyers to access our online marketplace or complete purchases on our online marketplace and app. Third-party providers host much of our technology infrastructure. Any disruption in their services, or any failure of our providers to handle the demands of our online marketplace could significantly harm our business and damage our reputation. Third-party providers also have systems that are constantly evolving, it is difficult to predict the challenges that we may encounter in developing our platform for use in conjunction with such third-party systems, and we may not be able to modify our integrations to assure its compatibility with the systems of other third parties following any of their changes to their systems. Further, if we experience failures in our technology infrastructure or do not expand our technology infrastructure successfully, then our ability to attract and retain sellers and buyers and our growth prospects and our business would suffer. We do not have control over the operations of the facilities of these third-party providers that we use. These facilities may be vulnerable to damage or interruption from natural disasters, cybersecurity attacks, terrorist attacks, power outages and similar events or acts of misconduct.

Our business depends on continued and unimpeded access to the Internet and mobile networks.

To access our online marketplace, our sellers and buyers rely on access to the Internet. Internet service providers may choose to disrupt or degrade access to our online marketplace or increase the cost of such access. Similarly, to download our mobile applications, application store providers must allow our applications to be listed. Internet service providers or application store providers could also attempt to charge us for providing access to our online marketplace. The adoption of any laws or regulations that adversely affect the popularity or growth in use of the Internet or our services, including laws or regulations that undermine open and neutrally administered Internet access, could decrease user demand for our service offerings and increase our cost of doing business. In January 2018, the Federal Communications Commission (the “FCC”) released an order reclassifying broadband Internet access as an information service, subject to certain provisions of Title I of the Communications Act. Among other things, the order eliminates rules adopted in 2015 that prohibited broadband providers from blocking, impairing, or degrading access to legal content, applications, services, or non-harmful devices, or engaging in the practice of “paid prioritization” of content or services by Internet service providers. A number of states have also enacted or are considering legislation or executive actions that would regulate the conduct of broadband providers. On July 9, 2021, President

Biden signed an executive order which, among other things, instructed the FCC to restore the net neutrality rules. We cannot predict whether the FCC order or state initiatives will be modified, overturned, or vacated by legal action of the court, federal or state legislation, or the FCC. If net neutrality rules are not implemented, or Internet service providers engage in blocking, throttling, or paid prioritization or similar practices, our business, financial condition, and results of operations could be materially and adversely affected. Outside of the United States, government regulation of the Internet, including the idea of network neutrality, may be developing or non-existent. As a result, we could face discriminatory or anti-competitive practices that could impede both our and sellers’ growth prospects, increase our costs and harm our business.

Climate change may have an adverse impact on our business.

Risks related to rapid climate change may have an increasingly adverse impact on our business, our sellers’ businesses, and our buyers in the longer term. Any of our primary locations and the locations of our buyers and sellers may be vulnerable to the adverse effects of climate change. For example, our New York headquarters has experienced, and is projected to continue to experience, climate-related events at an increasing frequency, including floods, severe storms, and heat waves. Furthermore, it is more difficult to mitigate the impact of these events on our employees in light of our flexible work model, which has allowed for a remote and dispersed work environment. Changing market dynamics, global policy developments, and the increasing frequency and impact of extreme weather events on critical infrastructure in the U.S. and elsewhere have the potential to disrupt our business and the transactions consummated between our sellers and buyers, which could have a material adverse effect on our financial condition and results of operations.

Risks Related to Regulatory Matters and Litigation

Our business is subject to a large number of U.S. and non-U.S. laws, many of which are evolving.

We are subject to a variety of laws and regulations in the United States and around the world, including those relating to traditional businesses, such as employment laws and taxation, and newer laws and regulations focused on the Internet, online commerce, and the resale market, such as payment systems, personal privacy, anti-spam, data security, electronic contracts, unfair and deceptive trade practices, and consumer protection. These laws and regulations are continuously evolving, and compliance is costly and can require changes to our business practices and significant management time and effort. Additionally, it is not always clear how existing laws apply to the Internet as many of these laws do not address the unique issues raised by the Internet or online commerce.

For example, laws relating to online privacy are evolving differently in different jurisdictions. Federal, state, and non-U.S. governmental authorities, as well as courts interpreting the laws, continue to evaluate the privacy implications of the use of third-party “cookies,” “web beacons,” and other methods of online tracking. The United States, the European Union, and other governments have enacted or are considering legislation that could significantly restrict the ability of companies and individuals to collect and store user information, such as by regulating the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools. In some cases, non-U.S. privacy, data protection, consumer protection and other laws and regulations are more restrictive than those in the United States. For example, the European Union traditionally has imposed stricter obligations under such laws than the United States. Consequently, the expansion of our operations internationally may require changes to the ways we collect and use consumer information.

Existing and future laws and regulations enacted by federal, state, or non-U.S. governments could impede the growth or use of the Internet or online commerce. It is also possible that governments of one or more countries may seek to censor content available on our online marketplace or may even attempt to block access to our online marketplace. If we are restricted from operating in one or more countries, our ability to attract or retain sellers and buyers may be adversely affected and we may not be able to grow our business as we anticipate.

Some providers of consumer devices and web browsers have implemented, or have announced plans to implement, ways to block tracking technologies which, if widely adopted, could also result in online tracking methods becoming significantly less effective. Any reduction in our ability to make effective use of such technologies could harm our ability to personalize the experience of buyers, increase our costs and limit our ability to attract new, and retain existing, sellers and buyers on cost-effective terms. As a result, our business could be adversely affected.

We strive to comply with all applicable laws, but they may conflict with each other, and by complying with the laws or regulations of one jurisdiction, we may find that we are violating the laws or regulations of another jurisdiction. Despite our efforts, we may not have fully complied in the past and may not in the future. If we become liable under laws or regulations applicable to us, we could be required to pay significant fines and penalties, and we may be forced to change the way we operate. That could require us to incur significant expenses or to discontinue certain services, which could negatively affect our business. Additionally, if third parties with whom we work violate applicable laws or our policies, those violations could result in other liabilities for us and could harm our business.

If we fail to comply with applicable laws or regulations, including those relating to the sale of antique and vintage items, we may be subject to fines, penalties, loss of licensure, registration, and approval, or other governmental enforcement action.

The sale of certain items through our online marketplace is subject to regulation, including by regulatory bodies such as the U.S. Consumer Product Safety Commission, the Federal Trade Commission, the U.S. Fish and Wildlife Service and other international, federal, state, and local governments and regulatory authorities. These laws and regulations are complex, vary from state to state and change often. We monitor these laws and regulations and adjust our business practices as warranted to comply. We list luxury design products from numerous sellers located throughout the United States and from over 85 countries, and the items listed by our sellers may contain materials such as fur, python, ivory, and other exotic animal product components, that are subject to regulation or cultural patrimony considerations. Our standard seller terms and conditions require sellers to comply with applicable laws when listing their items. Failure of our sellers to comply with applicable laws, regulations and contractual requirements could lead to litigation or other claims against us, resulting in increased legal expenses and costs. Moreover, failure by us to effectively monitor the application of these laws and regulations to our business, and to comply with such laws and regulations, may negatively affect our brand and subject us to penalties and fines.

Numerous U.S. states and municipalities, including the States of California and New York, have regulations regarding the handling of antique and vintage items and licensing requirements of antique and vintage dealers. Such government regulations could require us to change the way we conduct business or our buyers conduct their purchases in ways that increase costs or reduce revenues, such as prohibiting or otherwise restricting the sale or shipment of certain items in some locations. We could also be subject to fines or other penalties which in the aggregate could harm our business.

Additionally, the luxury design products our sellers sell could be subject to recalls and other remedial actions and product safety, labeling, and licensing concerns may require us to voluntarily remove selected items from our online marketplace. Such recalls or voluntary removal of items can result in, among other things, lost sales, diverted resources, potential harm to our reputation, and increased customer service costs and legal expenses, which could harm our results of operations.

Some of the luxury design products sold through our online marketplace on behalf of our sellers may expose us to product liability claims and litigation or regulatory action relating to personal injury, environmental, or property damage. We cannot be certain that our insurance coverage will be adequate for liabilities actually incurred or that insurance will continue to be available to us on economically reasonable terms or at all. In addition, while all of our seller agreements contain a standard indemnification provision, certain sellers may not have sufficient resources or insurance to satisfy their indemnity and defense obligations which may harm our business.

We are subject to governmental export and import controls and anti-corruption laws and regulations that could impair our ability to compete in international markets and subject us to liability if we are not in full compliance with applicable laws.

Our business activities are subject to various restrictions under U.S. export and similar laws and regulations, including the U.S. Department of Commerce's Export Administration Regulations and various economic and trade sanctions administered by the OFAC. The U.S. export control laws and U.S. economic sanctions laws include restrictions or prohibitions on the provision of certain goods and services to U.S. embargoed or sanctioned countries and regions, governments, persons, and entities. In addition, various countries regulate the import of certain technology and have enacted or could enact laws that could limit our ability to provide sellers and buyers access to our online marketplace or could limit our sellers' and buyers' ability to access or use our services in those countries.

Our online marketplace could be utilized in violation of such laws, despite the precautions we take to prevent such violations. In the past, we may have facilitated transactions involving products or sellers that are the subject of U.S. sanctions or located in countries or regions subject to U.S. sanctions in apparent violation of U.S. economic sanction laws. In relation to certain compliance issues, we have submitted to OFAC an initial notification of voluntary self-disclosure concerning potential violations. If we fail to comply with these laws and regulations or are found to be in violation of U.S. sanctions or export control laws, including by facilitating unlawful transactions, we and certain of our employees could be subject to civil or criminal penalties, including the possible loss of export privileges and fines. We may also be adversely affected through penalties, reputational harm, loss of access to certain markets, or otherwise. Actions to remediate past potential violations may include internal reviews, voluntary self-disclosures, or other measures.

In addition, various countries regulate the import and export of certain encryption and other technology, including import and export permitting and licensing requirements, and have enacted laws that could limit the sale of items through our online marketplace or could limit our sellers' and buyers' ability to access our online marketplace in those countries. Changes in our online marketplace, or future changes in export and import regulations, may prevent our international sellers and buyers from utilizing our online marketplace or, in some cases, prevent the export or import of our sellers' items to certain countries, governments, or persons. Any change in export or import regulations, economic sanctions, or related legislation or changes in

the countries, governments, persons, or technologies targeted by such regulations, could result in decreased use of our online marketplace by, or in our decreased ability to facilitate transactions through our online marketplace among, existing or potential sellers and buyers internationally. Any decreased use of our online marketplace or limitation on our sellers' ability to export or sell items would adversely affect our business, results of operations, and financial results.

We are also subject to various domestic and international anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, as well as other similar anti-bribery and anti-kickback laws and regulations. These laws and regulations generally prohibit companies, their employees, and their intermediaries from authorizing, offering, providing, and/or accepting improper payments or other benefits for improper purposes. These laws also require that we keep accurate books and records and maintain compliance procedures designed to prevent any such actions. Although we take precautions to prevent violations of these laws, our exposure for violating these laws increases as our international presence expands and as we increase sales and operations in foreign jurisdictions.

The increasing impact of and focus on ESG matters could increase our costs, harm our reputation, harm our relationships with employees, and adversely affect our financial results.

There has been increased focus, including by consumers, investors, employees, and other stakeholders, as well as by governmental and non-governmental organizations, on ESG matters. We intend to operate in line with our guiding principles and focus on the long-term sustainability of our business. From time to time, we may announce certain initiatives, including goals, regarding our focus areas, which may include environmental and sustainability matters, responsible sourcing, social investments and inclusion and diversity. We aim to create more economic opportunity for sellers, greater diversity in our workforce, and build long-term resilience by reducing our carbon footprint. Any failure by us to meet our commitments with regard to environmental, sustainability, responsible sourcing, social, and inclusion and diversity matters could negatively affect our brand, including harming our relationship with our employees, employee engagement, and retention, the willingness of our sellers and buyers to do business with us, or investors' willingness to purchase or hold shares of our common stock, any of which could adversely affect our business, financial performance, and growth. Our reputation could be damaged if we, our sellers, and other relevant parties do not (or are perceived not to) act responsibly regarding ESG standards, or if we fail to appropriately respond to concerns raised by our consumers, investors, and other interested persons, which could have a material adverse effect on our business, financial condition, and results of operations. The costs to achieving our ESG goals, and the costs or potential impact from business decisions informed by ESG matters could have a material adverse effect on our business and financial condition. In addition, standards regarding ESG matters could develop and become more onerous both for us which could also result in costs that have a material adverse effect on our business and financial condition.

We may become involved in claims, lawsuits, government investigations, and other proceedings that could adversely affect our business, financial condition, and results of operations.

From time to time, we may become involved in litigation matters, such as matters incidental to the ordinary course of our business, including intellectual property, commercial, employment, class action, whistleblower, accessibility, and other litigation and claims, and governmental and other regulatory investigations and proceedings. Such matters can be time-consuming, divert management's attention and resources, cause us to incur significant expenses or liability, or require us to change our business practices. Further, our general liability insurance may not cover all potential claims made against us or be sufficient to indemnify us for all liability that may be imposed. In addition, the expense of litigation and the timing of these expenses from period to period are difficult to estimate, subject to change, and could adversely affect our financial condition and results of operations. Because of the potential risks, expenses, and uncertainties of litigation, we may, from time to time, settle disputes, even where we have meritorious claims or defenses, by agreeing to settlement agreements. Any of the foregoing could adversely affect our business, financial condition, and results of operations.

Expanding and evolving regulations in the areas of privacy and user data protection could create technological, economic and complex cross-border business impediments to our business and those of our sellers.

Data protection has become a significant issue in the United States, countries in the European Union, and in many other countries in which we operate. In addition to the actual and potential changes in data protection laws described elsewhere in these Risk Factors, global developments in privacy and data security regulations have changed and may continue to change some of the ways we, our sellers, vendors, and other third parties collect, use, and share personal information and other proprietary or confidential information, and have created and will continue to create additional compliance obligations for us and our sellers, vendors, and other third parties.

In the European Union, the E.U. General Data Protection Regulation ("GDPR") contains strict requirements for processing the personal data of individuals residing in E.U. member states, the European Economic Area ("EEA"), and certain additional territories. The GDPR contains numerous requirements, including robust obligations on data controllers and data processors, greater rights for data subjects, including, for example, the "right to be forgotten," and increased data portability, access, and redress rights for E.U. data subjects, security and accountability obligations (including stringent data breach

notification requirements), increased rules for online and email marketing, compliance requirements related to our sellers, vendors, and other third parties, stronger regulatory enforcement regimes, and significantly heavier documentation and record-keeping requirements. The GDPR is subject to changing interpretations due to decisions of data protection authorities, courts, and related legislative efforts both E.U.-wide and in particular jurisdictions. Due to the GDPR and the implementation following Brexit of the U.K. General Data Protection Regulation (“U.K. GDPR”) (i.e., a version of the GDPR as implemented into U.K. law that combines the GDPR and the U.K. Data Protection Act of 2018), we may experience difficulty retaining or obtaining new E.U. or U.K. sellers, or current and new sellers may limit their selling into the European Union, due to the legal requirements, compliance cost, potential risk exposure, and uncertainty for them about their own compliance obligations with respect to the GDPR and U.K. GDPR. Furthermore, while the GDPR and U.K. GDPR remain substantially similar for the time being, the U.K. GDPR is currently under review in the United Kingdom and there may be further changes made to it over the next few years, including in ways that may differ from the GDPR, which could result in further compliance obligations. In addition, although our sellers are independent businesses, it is possible that a privacy authority could deem us jointly and severally liable for actions of our sellers or vendors, which would increase our potential liability exposure and costs of compliance, which could negatively impact our business. We could face potential liability, regulatory investigation, and costly litigation, which may not be adequately covered by insurance.

In the United States, rules and regulations governing data privacy and security include those promulgated under the authority of the Federal Trade Commission Act, the Electronic Communications Privacy Act, the Computer Fraud and Abuse Act, California’s California Consumer Privacy Act of 2018 (“CCPA”) and California Privacy Rights Act of 2020 (“CPRA”), and other state and federal laws relating to privacy, consumer protection, and data security. The CCPA and CPRA, and other recent and/or proposed state privacy laws, include requirements regarding the handling of personal information of consumers and households, including compliance and record keeping obligations, the right to request access to and deletion of their personal information, and the right to opt out of the sale and other uses of their personal information. Certain states provide a private right of action and statutory damages for data breaches.

Aspects of certain newly enacted state privacy statutes remain unclear, resulting in further legal uncertainty and potentially requiring us to modify our data practices and policies and to incur substantial additional costs and expenses in an effort to comply. If more stringent privacy legislation arises in the United States, E.U., or other jurisdictions where we operate, it could increase our potential liability and adversely affect our business, results of operations, and financial condition.

GDPR, CCPA, and similar laws in other jurisdictions, and future changes to or interpretations of any of these laws, may continue to change the data protection landscape globally, may be potentially inconsistent or incompatible, and could result in potentially significant operational costs for internal compliance and risk to our business. Some of these requirements introduce friction into the buying and selling experience on our platforms and may impact the scope and effectiveness of our marketing efforts, which could negatively impact our business and future outlook. Complying with these laws and contractual or other obligations relating to privacy, data protection, data transfers, data localization, or information security may require us to make changes to our services to enable us or our customers to meet new legal requirements, incur substantial operational costs, modify our data practices and policies, and restrict our business operations. Any actual or perceived failure by us to comply with these laws, regulations, or other obligations may lead to significant fines, penalties, regulatory investigations, lawsuits, significant costs for remediation, damage to our reputation, or other liabilities. For example, under the GDPR alone, noncompliance could result in fines of up to 20 million Euros or up to 4% of the annual global revenue of the noncompliant company, whichever is greater. We may not be entirely successful in our compliance efforts due to various factors either within our control (such as limited internal resource allocation) or outside our control (such as a lack of vendor cooperation, new regulatory interpretations, or lack of regulatory guidance in respect of certain requirements).

We also publish privacy policies and other documentation regarding our collection, processing, use, and disclosure of personal data. Although we endeavor to comply with our published policies and documentation, we may at times fail to do so or may be perceived to have failed to do so. Moreover, despite our efforts, we may not be successful in achieving compliance, such as if our employees or vendors fail to comply with our published policies and documentation. We are or may also be subject to the terms of our own and third-party external and internal privacy and security policies, codes, representations, certifications, industry standards, publications and frameworks and contractual obligations to third parties related to privacy, information security, including contractual obligations to indemnify and hold harmless third parties from the costs or consequences of non-compliance with data protection laws, or other obligations.

Our sellers and vendors may have been and may now and in the future be subject to similar privacy requirements, which may significantly increase costs and resources dedicated to their compliance with such requirements. We have varying contractual and other legal obligations to notify relevant stakeholders of security breaches related to us or, in some cases, our third-party service providers. Many jurisdictions have enacted laws requiring companies to notify individuals, regulatory authorities, and others of security breaches involving certain types of data in some circumstances. In addition, our agreements with certain stakeholders may require us to notify them in the event of such a security breach. Such mandatory disclosures, even if only related to actions of a third-party vendor, are costly, could lead to negative publicity, may cause members of our

communities to lose confidence in the effectiveness of our security measures and require us to expend significant capital and other resources to respond to and/or alleviate problems caused by the actual or perceived security breach, and may cause us to breach customer contracts. Our contracts, our representations or industry standards, to varying extents, require us to use industry-standard or reasonable measures to safeguard sensitive personal information or confidential information. A cyber incident or security breach could lead to claims by members of our communities, or other relevant stakeholders that we have failed to comply with such legal or contractual obligations. As a result, we could be subject to legal action or members of our communities could end their relationships with us. There can be no assurance that any indemnifications, limitations of liability or other remedies in our contracts would be enforceable or adequate or would otherwise protect us from liabilities or damages.

We may not have adequate insurance coverage for security incidents or data breaches, including fines, judgments, settlements, penalties, costs, attorneys’ fees, and other impacts that arise out of incidents or breaches. If the impacts of a security incident or data breach, or the successful assertion of one or more large claims against us that exceeds our available insurance coverage, is of a type not subject to insurance, or results in changes to our insurance policies (including premium increases or the imposition of large deductible or co-insurance requirements), it could have an adverse effect on our business. In addition, we cannot be sure that our existing insurance coverage, cyber coverage, and coverage for errors and omissions will continue to be available on acceptable terms or that our insurers will not deny coverage as to all or part of any future claim or loss. Our risks are likely to increase as we continue to expand, grow our customer base.

Risks Related to Intellectual Property

If we cannot successfully protect our intellectual property, our business could suffer.

We rely on a combination of intellectual property rights, contractual protections, and other practices to protect our brand, proprietary information, technologies and processes. We primarily rely on copyright and trade secret laws to protect our proprietary technologies, and processes, including the algorithms we use throughout our business. Others may independently develop the same or similar technologies and processes, or may improperly acquire and use information about our technologies and processes, which may allow them to provide a service similar to ours, which could harm our competitive position. Our principal trademark assets include the registered trademark “1stDibs” and our logos and taglines. Our trademarks are valuable assets that support our brand and consumers’ perception of our services and merchandise. We also hold the rights to the “1stDibs.com” Internet domain name and various related domain names, which are subject to Internet regulatory bodies and trademark and other related laws of each applicable jurisdiction. If we are unable to protect our trademarks or domain names, our brand recognition and reputation could suffer, we could incur significant expense establishing new brands and our results of operations could be adversely impacted. Although we do not currently have any issued patents, we may pursue patent protection for aspects of our technology in the future. We cannot predict whether any pending patent application will result in an issued patent that will effectively protect our intellectual property. Even if a patent issues, the patent may be circumvented or its validity may be challenged. In addition, we cannot provide assurance that every significant feature of technology and services will be protected by any patent or patent application. Further, to the extent we pursue patent protection for our innovations, patents applications may not result in issued patents, and patents that do issue or that we acquire may not provide us with any competitive advantages or may be challenged by third parties. There can be no assurance that any patents we obtain will adequately protect our inventions or survive a legal challenge, as the legal standards relating to the validity, enforceability, and scope of protection of patent and other intellectual property rights are uncertain.

Third parties may challenge any patents, copyrights, trademarks, and other intellectual property and proprietary rights owned or held by us or may knowingly or unknowingly infringe, misappropriate or otherwise violate our patents, copyrights, trademarks, and/or other proprietary rights. We may be required to spend significant resources to monitor and protect our intellectual property rights, and the efforts we take to protect our proprietary rights may not be sufficient. Even if we do detect violations, we may need to engage in litigation to enforce our intellectual property rights. Any enforcement efforts we undertake, including litigation, could be time-consuming and expensive and could divert our management’s attention away from standard business operations. In addition, our efforts may be met with defenses and counterclaims challenging the validity and/or enforceability of our intellectual property rights or may result in a court determining that our intellectual property rights are unenforceable. If we are unable to cost-effectively protect our intellectual property rights, then our business could be harmed. An adverse decision in any of these legal actions could limit our ability to assert our intellectual property or proprietary rights, limit the value of our intellectual property or proprietary rights or otherwise negatively impact our business, financial condition, and results of operations. If the protection of our intellectual property and proprietary rights is inadequate to prevent use or misappropriation by third parties, the value of our brand and other intangible assets may be diminished, competitors may be able to more effectively mimic our service and methods of operations, the perception of our business and service to existing or potential sellers and buyers may become confused in the marketplace and our ability to attract sellers and buyers may be adversely affected.

We may be subject to intellectual property claims, which are extremely costly to defend, could require us to pay significant damages and could limit our ability to use certain technologies in the future.

We may receive notices that claim we have infringed, misappropriated, or misused other parties’ intellectual property rights. To the extent we gain greater public recognition, we may face a higher risk of being the subject of intellectual property claims. Third-party intellectual property rights may cover significant aspects of our technologies or business methods or block us from expanding our offerings. Any intellectual property claims against us, with or without merit, could be time consuming and expensive to settle or litigate and could divert the attention of our management. Litigation regarding intellectual property rights is inherently uncertain due to the complex issues involved, and we may not be successful in defending ourselves in such matters.

Many potential litigants, including some of our competitors and patent holding companies, have the ability to dedicate substantial resources to enforcing their intellectual property rights. Any claims successfully brought against us could subject us to significant liability for damages and we may be required to stop using technology or other intellectual property alleged to be in violation of a third party’s rights. We also might be required to seek a license for third-party intellectual property. Even if a license is available, we could be required to pay significant royalties or submit to unreasonable terms, which would increase our operating expenses. We may also be required to develop alternative non-infringing technology, which could require significant time and expense. If we cannot license or develop technology for any allegedly infringing aspect of our business, we could be forced to limit our service and may be unable to compete effectively. Any of these results could harm our business.

We are subject to the terms of open source licenses because our platform incorporates open source software.

The software powering our online marketplace incorporates software covered by open source licenses. The terms of many open source licenses have not been interpreted by U.S. courts and there is a risk that the licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to operate our online marketplace. If we were to combine or connect our proprietary source code or software with open source software in a certain manner, we could, under certain of the open source licenses, be required to publicly release the source code of our software or to make our software available under open source licenses. To avoid the public release of the affected portions of our source code in the event of our inappropriate use of open source software, we could be required to expend substantial time and resources to re-engineer some or all of our software. In addition, use of open source software can lead to greater risks than use of third-party commercial software because open source licensors generally do not provide warranties or controls on the origin of the software. Use of open source software may also present additional security risks because the public availability of such software may make it easier for hackers and other third parties to determine how to compromise our platform. We have established processes to help alleviate these risks, but we cannot be sure that all of our use of open source software is in a manner that is consistent with our current policies and procedures or will not subject us to liability.

Risks Related to our Operations as a Public Company

If our internal control over financial reporting or our disclosure controls and procedures are not effective, we may not be able to accurately report our financial results, prevent fraud or file our periodic reports in a timely manner, which may cause investors to lose confidence in our reported financial information and may lead to a decline in our stock price.

We have been a private company and, as such, we have not been subject to the internal control and financial reporting requirements applicable to a publicly traded company. We are required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act following the later of the date we are deemed to be an “accelerated filer” or a “large accelerated filer,” each as defined in the Exchange Act, or the date we are no longer an “emerging growth company,” as defined in the JOBS Act. In addition, as a public company, we will be subject to Section 404(a), which requires us to include a report on our internal controls, including an assessment of the effectiveness of our internal controls and financial reporting procedures. Section 404 of the Sarbanes-Oxley Act (“Section 404”) requires that we maintain effective internal control over financial reporting and disclosure controls and procedures. In particular, we must perform system and process evaluations, document our controls and perform testing of our key controls over financial reporting to allow management and our independent public accounting firm to report on the effectiveness of our internal control over financial reporting. Our testing, or the subsequent testing by our independent public accounting firm, may reveal deficiencies in our internal control over financial reporting that are deemed to be material weaknesses. If we are not able to comply with the requirements of Section 404 in a timely manner, or if we or our accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock would likely decline and we could be subject to lawsuits, sanctions, or investigations by regulatory authorities, which would require additional financial and management resources.

We may encounter difficulties in the timely and accurate reporting of our financial results, which would impact our ability to provide our investors with information in a timely manner. As a result, our investors could lose confidence in our reported financial information, and our stock price could decline.

We are an emerging growth company, and any decision on our part to comply only with certain reduced reporting and disclosure requirements applicable to emerging growth companies could make our common stock less attractive to investors.

We are an “emerging growth company,” as defined in the JOBS Act. We intend to take advantage of certain exemptions under the JOBS Act from various public company reporting requirements, including not being required to have our internal control over financial reporting audited by our independent registered public accounting firm pursuant to Section 404(b) of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and any golden parachute payments not previously approved. We may take advantage of these exemptions for up to five years or until we are no longer an “emerging growth company,” whichever is earlier.

In addition, Section 107 of the JOBS Act provides that an “emerging growth company” can take advantage of an extended transition period for complying with new or revised accounting standards. This provision allows an emerging growth company to delay the adoption of some accounting standards until those standards would otherwise apply to private companies. We have elected to use the extended transition period under the JOBS Act. Accordingly, our consolidated financial statements may not be comparable to the financial statements of public companies that comply with such new or revised accounting standards.

We cannot predict if investors will find our common stock less attractive if we choose to rely on any of the exemptions afforded to emerging growth companies. If some investors find our common stock less attractive because we rely on any of these exemptions, there may be a less active trading market for our common stock and the market price of our common stock may be more volatile.

We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year (a) in which the fifth anniversary of the completion of our IPO, (b) in which we have total annual gross revenue of at least \$1.235 billion or (c) in which we become a large accelerated filer, which means that we have been public for at least 12 months, have filed at least one annual report and the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the last day of our then-most recently completed second fiscal quarter, and (2) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period.

We may not be able to manage our transition effectively or efficiently to a public company.

We have incurred, and will continue to incur, significant legal, accounting, and other expenses that we did not incur as a private company. Our management team and other personnel will need to devote a substantial amount of time to, and we may not effectively or efficiently manage, our transition into a public company. For example, we are now subject to the reporting requirements of the Exchange Act, the applicable requirements of the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the rules and regulations of the SEC and Nasdaq. To comply with the various requirements applicable to public companies, we must maintain effective disclosure and financial controls and corporate governance practices. If, notwithstanding our efforts to comply with these laws, regulations, and standards, we fail to comply, regulatory authorities may initiate legal proceedings against us and our business may be harmed. Further, failure to comply with these rules might make it more difficult for us to obtain some types of insurance, including director and officer liability insurance, and we might be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these events could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, on committees of our board of directors or as members of senior management. As such, we intend to continue to invest resources to comply with evolving laws, regulations and standards, and this investment has resulted, and may continue to result in, increased general and administrative expenses and a diversion of management’s time and attention from revenue-generating activities to compliance activities.

Many members of our management and other personnel have limited experience managing a public company and preparing public filings. In addition, our management and other personnel have had, and may in the future need to divert attention from other business matters, to devote substantial time to the reporting and other requirements applicable to a public company. In particular, we have incurred, and expect to continue to incur, significant expense and devote substantial management effort to complying with the requirements of Section 404. We have hired, and intend to hire, additional accounting and finance personnel with system implementation experience and expertise regarding compliance with the Sarbanes-Oxley Act. We may be unable to locate and hire qualified professionals with requisite technical and public company experience when and as needed. In addition, new employees will require time and training to learn our business and operating processes and procedures. If we are unable to recruit and retain additional finance personnel or if our finance and accounting team is unable for any reason to respond adequately to the increased demands that will result from being a public company, the quality and timeliness of our financial reporting may suffer, which could result in the identification of material weaknesses in our internal controls. Any consequences resulting from inaccuracies or delays in our reported consolidated financial statements could cause our stock price to decline and could harm our business, financial condition, and results of operations.

If we fail to strengthen our financial reporting systems, infrastructure, and internal control over financial reporting to meet the demands that will be placed upon us as a public company, including the requirements of the Sarbanes-Oxley Act, we may be unable to report our financial results timely and accurately or prevent fraud. We expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404.

As a result of becoming a public company, we are, and will become, subject to additional regulatory compliance requirements, including Section 404, and if we fail to maintain an effective system of internal controls, we may not be able to accurately report our financial results or prevent fraud.

The rules and regulations such as the Sarbanes-Oxley Act have increased our legal and finance compliance costs and made some activities more time-consuming and costly. For example, Section 404 requires that our management report on, and our independent auditors attest to, the effectiveness of our internal control structure and procedures for financial reporting. Beginning with our second annual report following our IPO, we will be required to provide a management report on internal control over financial reporting. However, our auditors will not be required to formally attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 until we are no longer an “emerging growth company,” as defined in the JOBS Act.

Effective internal controls are necessary for us to provide reliable financial reports and effectively prevent fraud. Section 404 compliance may divert internal resources and will take a significant amount of time and effort to complete. We may not be able to successfully complete the procedures and certification and attestation requirements of Section 404 by the time we will be required to do so. Implementing these changes may take a significant amount of time and may require specific compliance training of our personnel. In the future, we may discover areas of our internal controls that need improvement. If our auditors or we discover a material weakness or significant deficiency, the disclosure of that fact, even if quickly remedied, could reduce the market’s confidence in our consolidated financial statements and harm our stock price. Any inability to provide reliable financial reports or prevent fraud would harm our business. We may not be able to effectively and timely implement necessary control changes and employee training to ensure continued compliance with the Sarbanes-Oxley Act and other regulatory and reporting requirements. If we fail to successfully complete the procedures and certification and attestation requirements of Section 404, or if in the future our Chief Executive Officer, Chief Financial Officer or independent registered public accounting firm determines that our internal controls over financial reporting are not effective as defined under Section 404, we could be subject to investigations or sanctions by Nasdaq, the SEC, FINRA or other regulatory authorities. Furthermore, investor perceptions of the Company may suffer, and this could cause a decline in the market price of our shares of common stock. We cannot assure you that we will be able to fully comply with the requirements of the Sarbanes-Oxley Act or that management or, when applicable, our auditors will conclude that our internal controls are effective in future periods. Irrespective of compliance with Section 404, any failure of our internal controls could have a material adverse effect on our stated results of operations and harm our reputation.

Risks Related to Tax and Accounting Matters

We could be required to pay or collect sales taxes in jurisdictions in which we do not currently do so, with respect to past or future sales. This could adversely affect our business and results of operations.

An increasing number of states have considered or adopted laws that impose tax collection obligations on out-of-state sellers of goods. Additionally, the Supreme Court of the United States ruled in *South Dakota v. Wayfair, Inc.* et al (“*Wayfair*”), that online sellers can be required to collect sales tax despite not having a physical presence in the state of the customer. In response to *Wayfair*, or otherwise, state or local governments and taxing authorities may adopt, or begin to enforce, laws requiring us to calculate, collect and remit taxes on sales in their jurisdictions. In addition, our transition to an almost fully remote work environment in response to the COVID-19 pandemic may result in an increased number of states in which we have employees, which may result in sales tax obligations that we did not previously have. While we believe that we collect and remit sales taxes in every state that requires sales taxes to be collected, including states where we do not have a physical presence, the adoption of new laws by, or a successful assertion by the taxing authorities of, one or more state or local governments requiring us to collect taxes where we presently do not do so, or to collect more taxes in a jurisdiction in which we currently do collect some taxes, could result in substantial tax liabilities, including taxes on past sales, as well as penalties and interest. The imposition by state governments and taxing authorities of sales tax collection obligations on out-of-state e-commerce businesses could also create additional administrative burdens for us, put us at a competitive disadvantage if they do not impose similar obligations on our competitors, and decrease our future sales, which could harm our business and results of operations.

Our business and our sellers may be subject to sales tax, value-added tax (“VAT”), provincial taxes, goods and services tax, and other taxes.

The application of indirect taxes, such as sales and use tax, VAT, provincial taxes, goods and services tax, business tax and gross receipt tax, to businesses like ours and to our sellers and buyers is a complex and evolving issue. Significant judgment is

required to evaluate applicable tax obligations and as a result amounts recorded are estimates and could change. In many cases, the ultimate tax determination is uncertain because it is not clear how existing statutes apply to our business or to sellers’ businesses. For example, it is unclear whether sales tax statutes on digital goods apply to NFTs. One or more states, the federal government or other countries may seek to impose additional reporting, record-keeping, or indirect tax collection obligations on businesses like ours that facilitate online commerce. For example, the U.S. Congress considered the “Marketplace Fairness Act,” which would have granted states the authority to require certain online merchants to collect sales tax on online sales at the time a transaction is completed. Although this legislation was not passed, there is no assurance that it, or similar legislation, will not be re-introduced or adopted in the future. In addition, EU reforms to the VAT obligations for business to consumer e-commerce sellers and marketplaces went into effect in July 2021. In connection with these reforms, certain marketplaces will become the deemed supplier when they facilitate certain cross-border business to consumer transactions of their third-party sellers. As a result, marketplaces will be liable to collect, report, and remit the VAT due from the consumer. The United Kingdom has implemented similar VAT marketplace rules which went into effect in January 2021 and make facilitating marketplaces liable for the VAT collections for their overseas sellers. We are currently assessing the impact of these changes, which could materially affect our business operations. New taxes, both domestically and internationally, could also require us or sellers to incur substantial costs to capture data and collect and remit taxes. If such obligations were imposed, the additional costs associated with tax collection, remittance, and audit requirements could make selling through our online marketplace less attractive and more costly for sellers, which could harm our business.

Our facilitation of transactions in cryptocurrencies such as Ether on our NFT platform exposes us to risks under U.S. and foreign tax laws.

Although under U.S. federal tax laws, cryptocurrencies are currently considered property versus currency, we are obligated to report transactions involving cryptocurrencies in U.S. dollars and must determine their fair market value on each transaction date. The U.S. federal taxing authorities have issued limited guidance on cryptocurrency transactions. The current guidance treats the use of cryptocurrency to purchase a NFT as a taxable disposition of the cryptocurrency, which subjects the holder to taxable gain that such holder must report for federal and state tax purposes. Similarly, a seller of a NFT is subject to tax on the sale of the NFT. Congress is currently proposing legislation that could require us to report such transactions to the IRS. Our failure to accurately record or report the cryptocurrency and NFT sales transacted through our NFT platform, or held by us, would expose us to adverse tax consequences, penalties, and interest. Moreover, the IRS, in connection with audits of cryptocurrency exchanges, has successfully sued to obtain account holder transaction and tax information. The applicability of tax laws in the United States and foreign jurisdictions with respect to cryptocurrency and NFTs will continue to evolve. This uncertainty increases the risk of non-compliance with tax laws, which in turn could result in adverse tax consequences, penalties, investigations or audits, litigation, account holder lawsuits, or the need to revise or restate our financial statements and associated consequences therewith, among other things. Any of the foregoing could materially and adversely affect our business, financial condition, results of operations, reputation, and prospects.

Application of existing tax laws, rules or regulations are subject to interpretation by taxing authorities.

The application of income and other tax laws is subject to interpretation. Although we believe our tax methodologies are compliant, a taxing authority’s final determination in the event of a tax audit could materially differ from our past or current methods for determining and complying with our tax obligations, including the calculation of our tax provisions and accruals, in which case we may be subject to additional tax liabilities, possibly including interest and penalties. Furthermore, taxing authorities have become more aggressive in their interpretation and enforcement of such laws, rules and regulations over time, as governments are increasingly focused on ways to increase revenues. This focus has contributed to an increase in audit activity and stricter enforcement by taxing authorities. As such, additional taxes or other assessments may be in excess of our current tax reserves or may require us to modify our business practices to reduce our exposure to additional taxes going forward, any of which may have a material adverse effect on our business, results of operations, financial condition, and prospects.

We may experience fluctuations in our tax obligations and effective tax rate.

We are subject to taxation in the United States and in numerous other jurisdictions. We record tax expense based on current tax payments and our estimates of future tax payments, which may include reserves for estimates of probable settlements of tax audits. At any time, multiple tax years could be subject to audit by various taxing jurisdictions. As a result, we expect that throughout the year there could be ongoing variability in our quarterly tax rates as taxable events occur and exposures are re-evaluated. Further, our effective tax rate in a given financial statement period may be adversely impacted by changes in tax laws, changes in the mix of revenue among different jurisdictions, changes to accounting rules, and changes to our ownership or capital structure. Fluctuations in our tax obligations and effective tax rate could adversely affect our business.

Amendments to existing tax laws, rules, or regulations or enactment of new unfavorable tax laws, rules, or regulations could have an adverse effect on our business and results of operations.

Many of the underlying laws, rules, and regulations imposing taxes and other obligations were established before the growth of the Internet and e-commerce. U.S. federal, state, and local taxing authorities are currently reviewing the appropriate treatment of companies engaged in Internet commerce and considering changes to existing tax or other laws that could levy sales, income, consumption, use, or other taxes relating to our activities, and/or impose obligations on us to collect such taxes. If such tax or other laws, rules, or regulations are amended, or if new unfavorable laws, rules or regulations are enacted, the results could increase our tax payments or other obligations, prospectively or retrospectively, subject us to interest and penalties, decrease the demand for our services if we pass on such costs to our sellers or buyers, result in increased costs to update or expand our technical or administrative infrastructure, or effectively limit the scope of our business activities if we decided not to conduct business in particular jurisdictions. As a result, these changes may have a material adverse effect on our business, results of operations, financial condition, and prospects.

The Tax Cuts and Jobs Act of 2017 made a number of significant changes to the current U.S. federal income tax rules, including the reduction of the generally applicable corporate tax rate from 35% to 21%, the limitation of the tax deduction for net interest expense to 30% of adjusted taxable income (except for certain small businesses), the limitation of the deduction for net operating losses from taxable years beginning after December 31, 2017 to 80% of current year taxable income and the elimination of net operating loss carrybacks generated in taxable years ending after December 31, 2017 (though any such net operating losses may be carried forward indefinitely), and the modification or repeal of many business deductions and credits. Additionally, the Coronavirus Aid, Relief, and Economic Security Act, which, among other things, suspends the 80% limitation on the deduction for net operating losses in taxable years beginning before January 1, 2021, permits a five-year carryback of net operating losses arising in taxable years beginning after December 31, 2017 and before January 1, 2021, and generally caps the limitation on the deduction for net interest expense at 50% of adjusted taxable income for taxable years beginning in 2019 and 2020. It cannot be predicted whether, when, in what form, or with what effective dates, tax laws, regulations and rulings may be enacted, promulgated or issued, which could result in an increase in our or our stockholders’ tax liability or require changes in the manner in which we operate in order to minimize or mitigate any adverse effects of changes in tax law.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

We have incurred substantial net operating losses (“NOLs”), during our history. Unused NOLs may carry forward to offset future taxable income if we achieve profitability in the future, unless such NOLs expire under applicable tax laws. However, under the rules of Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the “Code”), if a corporation undergoes an “ownership change,” generally defined as a greater than 50 percentage point change (by value) in its equity ownership over a three-year period, the corporation’s ability to use its NOLs and other pre-change tax attributes to offset its post-change taxable income or other taxes may be limited. The applicable rules generally operate by focusing on changes in ownership among stockholders considered by the rules as owning, directly or indirectly, 5% or more of the stock of a company, as well as changes in ownership arising from new issuances of stock by the company. We completed formal studies through December 31, 2022 to determine if any ownership changes within the meaning of Sections 382 and 383 of the Code have occurred. As a result of the studies, we determined that although we experienced an ownership change on July 28, 2015, the limitation from the ownership change will not result in any of the NOLs or tax credits expiring unutilized. No additional ownership changes have occurred through the date of the most recent study. It is possible that we may experience an ownership change as a result of this study. In the event that we experience an ownership change within the meaning of Sections 382 and 383 of the Code as a result of the study or any future transactions in our stock, then we may be limited in our ability to use our NOL carryforwards to offset our future taxable income, if any.

Our reported results of operations may be adversely affected by changes in generally accepted accounting principles.

Generally accepted accounting principles are subject to interpretation by the Financial Accounting Standards Board (“FASB”), the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported results of operations and could affect the reporting of transactions completed before the announcement of a change. It is difficult to predict the impact of future changes to accounting principles or our accounting policies, any of which could negatively affect our reported results of operations.

Risks Related to Our Common Stock

An active trading market for our common stock may not develop or be sustained and the price of our common stock could be volatile. Declines in the price of our common stock could subject us to litigation.

Prior to our IPO, there was no public market for our common stock. An active market in our common stock may not develop or, if it does develop, it may not be sustainable or liquid enough for investors to sell their shares.

The market prices of the securities of other newly public companies have historically been highly volatile and markets in general have been highly volatile in light of the COVID-19 pandemic. Our stock price may be volatile and may decline, resulting in a loss of some or all of your investment. For example, our common stock has traded both above and below our initial public offering (“IPO”) price. The trading price and volume of our common stock could fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- variations in our results of operations and other financial and operational metrics, including the key financial and operating metrics, as well as how those results and metrics compare to analyst and investor expectations;
- speculation about our results of operations;
- the financial projections we may provide to the public, if any, any changes in these projections, or our failure to meet these projections;
- failure of securities analysts to initiate or maintain coverage of us, changes in financial estimates or ratings by any securities analysts who follow us, or our failure to meet these estimates or the expectations of investors;
- announcements of new services or offerings, strategic alliances, or significant agreements or other developments by us or our competitors;
- announcements by us or our competitors of mergers or acquisitions or rumors of such transactions involving us or our competitors;
- changes in our board of directors, management, or other key personnel;
- disruptions in our online marketplace due to hardware, software or network problems, security breaches, or other issues;
- global economic conditions or economic conditions in the jurisdictions in which we operate, and market conditions in our industry and those affecting our sellers and buyers;
- trading activity by our principal stockholders and other market participants;
- price and volume fluctuations in the overall stock market;
- the performance of the equity markets in general and in our industry;
- the operating performance of other similar companies;
- actual or anticipated developments in our business or our competitors’ businesses or the competitive landscape generally;
- new laws or regulations or new interpretations of existing laws, or regulations applicable to our business;
- litigation or other claims against us;
- the number of shares of our common stock that are available for public trading;
- other events or factors, including those resulting from global health crises such as the COVID-19 pandemic, war, incidents of terrorism, or responses to these events; and
- any other factors discussed in this Quarterly Report on Form 10-Q or other periodic reports and filings we make with the SEC, including our most recent Annual Report on Form 10-K.

In addition, if the market for technology stocks or the stock market in general experiences a loss of investor confidence, the price of our common stock could decline for reasons unrelated to our business, results of operations, or financial condition. The price of our common stock might also decline in reaction to events that affect other companies, even if those events do not directly affect us. Some companies that have experienced volatility in the trading price of their stock have been the subject of securities class action litigation. If we are the subject of such litigation, it could result in substantial costs and could divert our management’s attention and resources, which could adversely affect our business.

Moreover, because of these fluctuations, comparing our results of operations on a period-to-period basis may not be meaningful. You should not rely on our past results as an indication of our future performance. This variability and unpredictability could also result in our failing to meet the expectations of industry or financial analysts or investors for any period. If our net revenue or results of operations fall below the expectations of analysts or investors or below any forecasts we may provide to the market, or if the forecasts we provide to the market are below the expectations of analysts or investors, the price of our common stock could decline substantially. Such a stock price decline could occur even when we have met any previously publicly stated net revenue or earnings forecasts that we may provide.

Sales of a substantial number of shares of our common stock in the public market, such as the perception that sales might occur, could cause the price of our common stock to decline.

The market price of our common stock could decline as a result of substantial sales of our common stock, particularly sales by our directors, executive officers, and significant stockholders, a large number of shares of our common stock becoming available for sale, or the perception in the market that such sales could occur. All of the shares of common stock sold in our IPO are freely transferable without restriction or additional registration under the Securities Act of 1933, as amended (the “Securities Act”).

We have registered all of the shares underlying outstanding options and any shares underlying other equity incentives we may grant in the future for public resale under the Securities Act. Accordingly, these shares will be able to be freely sold in the public market upon issuance to the extent permitted by any applicable vesting requirements. Sales of stock by these equity holders or the perception that such sales could occur could adversely affect the trading price of our common stock.

In addition, the registration of shares with existing registration rights would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares held by our affiliates as defined in Rule 144 under the Securities Act, which are subject to the limitations of Rule 144. Sales of securities by any of these stockholders or the perception that such sales could occur could adversely affect the trading price of our common stock.

We cannot guarantee that our share repurchase program will be fully consummated or that it will enhance long-term stockholder value. Share repurchases could also increase the volatility of the trading price of our stock and will diminish our cash reserves.

Although our board of directors has authorized a share repurchase program that does not have an expiration date, the program does not obligate us to repurchase any specific dollar amount or to acquire any specific number of shares of our common stock. We cannot guarantee that the program will be fully consummated or that it will enhance long-term stockholder value. The program could affect the trading price of our stock and increase volatility, and any announcement of a termination of this program may result in a decrease in the trading price of our stock. In addition, this program will diminish our cash reserves.

Future sales and issuances of our common stock or rights to purchase common stock could result in additional dilution to our stockholders and could cause the price of our common stock to decline.

We may issue additional common stock, convertible securities, or other equity in the future. We also expect to issue common stock to our employees, directors, and other service providers pursuant to our equity incentive plans. Additionally, as part of our business strategy, we may acquire or make investments in complementary companies, products or technologies and issue equity securities to pay for any such acquisition or investment. Any such issuances could be dilutive to investors and could cause the price of our common stock to decline. New investors in such issuances could also receive rights senior to those of holders of our common stock.

Our actual results of operations may not meet our guidance and investor expectations, which would likely cause our stock price to decline.

From time to time, we may release guidance in our earnings releases, earnings conference calls, or otherwise, regarding our future performance that represent our management’s estimates as of the date of release. If given, this guidance, which will include forward-looking statements, will be based on projections prepared by our management. Projections are based upon a number of assumptions and estimates that, while presented with numerical specificity, are inherently subject to significant business, economic, and competitive uncertainties and contingencies, many of which are beyond our control. The principal reason that we may release guidance is to provide a basis for our management to discuss our business outlook with analysts and investors. With or without our guidance, analysts, and other investors may publish expectations regarding our business, financial condition, and results of operations. We do not accept any responsibility for any projections or reports published by any such third parties. Guidance is necessarily speculative in nature, and it can be expected that some or all of the assumptions of the guidance furnished by us will not materialize or will vary significantly from actual results. Any change in previously released guidance or in our practice of releasing guidance could materially and adversely affect the trading price of our common stock. Further, if our actual performance does not meet or exceed our guidance or investor expectations, the trading price of our common stock is likely to decline.

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

The market price and trading market for our common stock will continue to be influenced by the research and reports that industry or securities analysts publish about us, our business, and our market. If one or more analysts adversely change their recommendation regarding our stock or change their recommendation about our competitors’ stock, our stock price could decline. If one or more analysts cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline or become volatile.

We do not intend to pay dividends on our common stock, so any returns on your investment will be limited to changes in the value of our common stock.

We have never declared or paid any dividends on our common stock. We currently anticipate that we will retain future earnings for the development, operation, and expansion of our business and do not anticipate declaring or paying any dividends for the foreseeable future. In addition, if we were to enter into loan or similar agreements in the future, these agreements may contain restrictions on our ability to pay dividends or make distributions. Any return to stockholders will therefore be limited to the increase, if any, in our stock price, which may never occur.

Our directors, executive officers and principal stockholders beneficially own a substantial percentage of our stock and will be able to exert significant control over matters subject to stockholder approval.

Our directors, executive officers, greater than 5% stockholders and their respective affiliates beneficially own a significant percentage of our outstanding common stock. Therefore, these stockholders will continue to have the ability to influence us through their ownership position. If these stockholders act together, they may be able to determine all matters requiring majority stockholder approval. For example, these stockholders will be able to control elections of directors, amendments of our charter documents or approval of any merger, sale of assets or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our capital stock that other stockholders may feel are in their best interests.

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

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

- authorize our board of directors to issue, without further action by the stockholders, shares of undesignated preferred stock with terms, rights, and preferences determined by our board of directors that may be senior to our common stock;
- require that any action to be taken by our stockholders be effected at a duly called annual or special meeting and not by written consent;
- specify that special meetings of our stockholders can be called only by our board of directors, the Chairperson of our board of directors (“Chairperson”), or our Chief Executive Officer;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our board of directors, which requires, without limitation, compliance with Rule 14a-19 under the Exchange Act, as applicable;
- establish that our board of directors is divided into three classes, with each class serving three-year staggered terms;
- prohibit cumulative voting in the election of directors;
- provide that our directors may be removed only for cause;
- provide that vacancies on our board of directors may be filled by a majority of directors then in office, even if less than a quorum; and
- require the approval of our board of directors or the holders of at least 66 2/3% of our outstanding shares of capital stock to amend our bylaws and certain provisions of our certificate of incorporation.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in a broad range of business combinations with any interested stockholder for a period of three years following the date on which such stockholder became an interested stockholder. Any delay or prevention of a change of control transaction or changes in our management could cause our stock price to decline or could prevent or deter a transaction that a shareholder might support.

Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce cash resources.

Our directors and executive officers may be subject to litigation for a variety of claims or disputes. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any transaction from which the director derives an improper personal benefit;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- any unlawful payment of dividends or redemption of shares; or
- any breach of a director’s duty of loyalty to the corporation or its stockholders.

Such limitation of liability does not apply to liabilities arising under federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission. Our amended and restated bylaws provide that we are required to indemnify our directors and officers to the fullest extent permitted by Delaware law and may indemnify our other employees and agents. Our amended and restated bylaws also provide that, on satisfaction of certain conditions, we will advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee, or other agent for any liability arising out of his or her actions in that capacity regardless of whether we would otherwise be permitted to indemnify him or her under the provisions of Delaware law. We have entered into, and intend to enter into, agreements to indemnify our directors and executive officers. With certain exceptions, these agreements provide for indemnification for related expenses, including attorneys’ fees, judgments, fines, and settlement amounts incurred by any of these individuals in connection with any action, proceeding, or investigation. Such provisions in our amended and restated bylaws and our indemnification agreements may discourage stockholders from bringing a lawsuit against our directors and executive officers for breach of their fiduciary duties. Such provisions may also reduce the likelihood of derivative litigation against our directors and executive officers, even though an action, if successful, might benefit us and other stockholders.

While we maintain directors’ and officers’ liability insurance, such insurance may not be adequate to cover all liabilities that we may incur, which may reduce our available funds to satisfy third-party claims and could harm our business, results of operations, and financial condition. Further, a stockholder’s investment may be harmed to the extent that we pay the costs of settlement and damage awards against our directors and executive officers as required by these indemnification provisions.

Our amended and restated certificate of incorporation and amended and restated bylaws designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, and provides that federal district courts will be the sole and exclusive forum for Securities Act claims, which could limit our stockholders’ ability to obtain what they believe to be a favorable judicial forum for disputes with us or our directors, officers, or other employees.

Our amended and restated certificate of incorporation and our amended and restated bylaws provide that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the Court of Chancery of the State of Delaware (or, if that court lacks subject matter jurisdiction, another federal or state court situated in the State of Delaware) shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on our behalf, (b) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, or other employees to us or our stockholders, (c) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, our certificate of incorporation or our bylaws, or (d) any action asserting a claim against us governed by the internal affairs doctrine (collectively, the “Delaware Forum Provision”). Our amended and restated certificate of incorporation and our amended and restated bylaws further provide that, unless we consent in writing to the selection of an alternative forum, the federal district courts are the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act (the “Federal Forum Provision”).

Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. As a result, the enforceability of this provision is uncertain, and a court may determine that such provision will not apply to suits brought to enforce any duty or liability created by the Securities Act or any other claim for which the federal and state courts have concurrent jurisdiction. Further, compliance with the federal securities laws and the rules and regulations thereunder cannot be waived by investors in our common stock.

Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have

exclusive jurisdiction. Accordingly, the Delaware Forum Provision does not designate the Court of Chancery as the exclusive forum for any derivative action arising under the Exchange Act, as there is exclusive federal jurisdiction in such instances.

Any person or entity purchasing or otherwise acquiring any interest in our capital stock shall be deemed to have notice of and consented to the Delaware Forum Provision and the Federal Forum Provision of our bylaws described above. These choice of forum provisions may impose additional litigation costs on stockholders in pursuing any such claims. Additionally, these choice of forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage such lawsuits against us and our directors, officers, or other employees. Alternatively, if a court were to find these provisions of our bylaws inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, financial condition, and results of operations and result in a diversion of the time and resources of our management and board of directors.

In addition, while the Delaware Supreme Court ruled in March 2020 that federal forum selection provisions purporting to require claims under the Securities Act be brought in federal court are "facially valid" under Delaware law, there is uncertainty as to whether other courts will enforce our Federal Forum Provision. If the Federal Forum Provision is found to be unenforceable, we may incur additional costs associated with resolving such matters. The Federal Forum Provision may also impose additional litigation costs on stockholders who assert that the provision is not enforceable or invalid. The Court of Chancery of the State of Delaware and the federal district courts of the United States may also reach different judgments or results than would other courts, including courts where a stockholder considering an action may be located or would otherwise choose to bring the action, and such judgments may be more or less favorable to us than our stockholders.

Item 2. Unregistered Sales of Equity Securities, Use of Proceeds, and Issuer Purchases of Equity Securities

(a) Recent Sales of Unregistered Equity Securities

There were no unregistered sales of equity securities during the period covered by this report.

(b) Use of Proceeds

None.

(c) Issuer Purchases of Equity Securities

In August 2023, the Company's Board of Directors authorized the Company to repurchase up to an aggregate of \$20.0 million of its common stock ("Stock Repurchase Program"). The repurchase may be effected, from time-to-time, through open market purchases, privately negotiated transactions, Rule 10b5-1 plans, accelerated stock repurchases, block trades, derivative contracts or otherwise in compliance with Rule 10b-18 of the Exchange Act. The repurchase program is not subject to a termination or expiration date, and it does not obligate the Company to acquire any specific number of shares. The timing, price and volume of repurchases will be based on a number of factors, including market conditions, relevant securities laws, and other considerations.

During the three months ended September 30, 2023, 334,959 shares were purchased for a total cost of \$1.4 million and approximately \$18.6 million remains available for future purchases.

The Company's officers and directors are required to comply with the Company's securities trading policy at all times, including during a repurchase program. The securities trading policy, among other things, prohibits trading in the Company's securities when in possession of material non-public information and restricts the ability of certain officers or director from transacting in the Company's securities during specific blackout periods, subject to certain limited exceptions, including transactions pursuant to a Rule 10b5-1 trading plan that complies with the conditions of Securities Exchange Act Rule 10b5-1.

Item 6. Exhibit Index

Exhibit No.	Description
3.1	Restated Certificate of Incorporation of 1stdibs.com, Inc. (incorporated by reference from Exhibit 3.1 filed with the registrant's Current Report on Form 8-K filed June 14, 2021).
3.2	Amended and Restated Bylaws (incorporated by reference from Exhibit 3.1 filed with the registrant's Current Report on Form 8-K filed March 1, 2023).
4.1	Specimen Common Stock Certificate of the Registrant (incorporated by reference from Exhibit 4.1 to the registrant's registration statement on Form S-1 (File No. 333-256188), as declared effective by the SEC on June 9, 2021 (the "Form S-1")).
4.2	Description of Capital Stock (incorporated by reference from Exhibit 4.2 to the registrant's Annual Report on Form 10-K filed March 3, 2022).
10.1*	Lease Agreement, dated as of November 3, 2023, by and between 300 Park Ave. So. L.L.C. and 1stdibs.com, Inc.
26*	Purchases of Equity Securities by the Issuer
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*#	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*#	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document: the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Inline XBRL for the cover page of this Quarterly Report on Form 10-Q, included in the Exhibit 101 Inline XBRL Document Set

* Filed herewith.

In accordance with Item 601(b)(32)(ii) of Regulation S K and SEC Release No. 34 47986, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Form 10 Q and will not be deemed "filed" for purposes of Section 18 of the Exchange Act or deemed to be incorporated by reference into any filing under the Exchange Act or the Securities Act of 1933 except to the extent that the Company specifically incorporates it by reference.

SIGNATURES

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

1STDIBS.COM, INC.

/s/ Thomas Etergino

Thomas Etergino

Chief Financial Officer

(Principal Financial Officer)

Date: November 9, 2023

OFFICE LEASE

between

300 PARK AVE. SO. L.L.C.,
as Landlord

and

1STDIBS.COM, INC.,
as Tenant

300 Park Avenue South
New York, New York

November 3, 2023

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Exhibits

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Exhibit E	Tenant Deliveries
Exhibit F	Form of Letter of Credit
Exhibit G	Provisions re Use of Roof Deck
Exhibit H	Form of Commencement Date Agreement

OFFICE LEASE

THIS **OFFICE LEASE** (this "**Lease**") is made as of November 3, 2023 (the "**Effective Date**"), between **300 PARK AVE. SO. L.L.C.**, a New York limited liability company ("**Landlord**"), and **1STDIBS.COM, INC.**, a Delaware corporation ("**Tenant**").

Landlord and Tenant hereby agree as follows:

ARTICLE 1

BASIC LEASE PROVISIONS; ADDITIONAL DEFINITIONS

Section 1.1 Basic Lease Terms. The following terms ("**Basic Lease Terms**") have the following meanings when used in this Lease:

Premises	The entire leasable area of the 10 th floor of the Building, as more particularly shown as the hatched area on Exhibit A, collectively (together with any other premises at the Building leased to Tenant hereunder from time to time).
Building	The building, fixtures, equipment and other improvements and appurtenances now located or hereafter erected, located or placed upon the land known as 300 Park Avenue South, New York, New York.
Real Property	The Building, together with the plot of land upon which it stands.
Commencement Date	The date on which the Premises are delivered to Tenant in the Delivery Condition (hereinafter defined), provided that Landlord shall provide Tenant with notice at least three (3) days prior to such delivery.
Rent Commencement Date	The date that is seven (7) months after the Commencement Date.
Expiration Date	The last day of the fifth (5th) Lease Year (the " Initial Expiration Date "), or the last day of any renewal or extended term, if the Term is extended in accordance with the express provisions hereof.
Initial Term	The period beginning on the Commencement Date and ending on the Initial Expiration Date.
Term	The period beginning on the Commencement Date and ending on the Expiration Date.
Permitted Uses	Executive, general, administrative, and executive offices and incidental and related uses in connection therewith.

Base Tax Year	The Tax Year commencing on July 1, 2024 and ending on June 30, 2025.		
Base Expense Year	Calendar year 2024.		
Tenant's Tax Share	7.14%.		
Tenant's Expense Share	7.69%.		
Fixed Rent (Initial Term)			
	Lease Years 1-5	Per Annum \$970,641.00	Per Month \$80,886.75
Additional Rent	All sums (other than Fixed Rent) payable by Tenant to Landlord under this Lease, including Tenant's Tax Payment, Tenant's Expense Payment, late charges, overtime or excess service charges, damages, interest and other actual out-of-pocket costs incurred by Landlord resulting from Tenant's failure to perform any of its obligations under this Lease (beyond the expiration of any applicable grace, notice and/or cure periods), and all other amounts due hereunder.		
Rent	Fixed Rent and Additional Rent, collectively.		
Interest Rate	The lesser of (i) 4% per annum above the then-current Base Rate, and (ii) the maximum rate permitted by applicable law.		
Security Deposit	\$242,660.25 (Letter of Credit)		
Tenant's Addresses For Notices	<p>Until Tenant gives Landlord notice that Tenant is commencing business operations from the Premises:</p> <p>1stdibs.com, Inc. 51 Astor Place, 3rd Floor New York, New York 10003 Attn: Melanie Goins E-mail: melanie.goins@1stdibs.com</p>		

Thereafter:

1stdibs.com, Inc.
300 Park Avenue South, 10th Floor
New York, New York 10010
Attn: Melanie Goins
E-mail: melanie.goins@1stdibs.com

With a copy at all times to:

Mintz & Gold LLP
600 Third Avenue, 25th Floor
New York, New York 10016
Attn: Heath Loring
E-mail: loring@mintzandgold.com

**Landlord's
Addresses For
Notices**

300 Park Ave. So. L.L.C.
c/o Rockrose Development L.L.C.
15 East 26th Street, 7th Floor
New York, NY 10010
Attn: Ted Traum
E-mail: ted.traum@rockrose.com

with a copy to:

300 Park Ave. So. L.L.C.
c/o Rockrose Development L.L.C.
15 East 26th Street, 7th Floor
New York, NY 10010
Attn: Alyssa J. Zabell, Esq., General Counsel
E-mail: Alyssa.Zabell@rockrose.com

with a copy to:

Hunton Andrews Kurth LLP
200 Park Avenue
New York, NY 10166
Attn: Anthony Bonan, Esq.
E-mail: abonan@hunton.com

Tenant's Broker Jones Lang LaSalle Brokerage, Inc.

Landlord's Broker Cushman & Wakefield, Inc.

Landlord's Agent	Rockrose Development L.L.C. (or any other Person designated from time to time by Landlord as Landlord's Agent)
Landlord's Furniture Contribution	Up to \$478,485.00

Section 1.2 Additional Definitions. The following capitalized terms have the following meanings when used in this Lease:

"Affiliate" means any entity Controlling, Controlled by or under common Control with Tenant.

"Base Rate" means the annual rate of interest publicly announced from time to time by Citibank, N.A. or its successor in New York, New York as its "base rate" (or such other term as may be used by Citibank, N.A., from time to time, for the rate presently referred to as its "base rate").

"Base Years" means the base years in effect from time to time for the calculation of Tenant's Tax Payment and Tenant's Expense Payment for each portion of the Premises (and initially means the Base Tax Year and the Base Expense Year).

"Building Holidays" means New Year's Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day, plus days observed as holidays by the state of New York, the city of New York and the labor unions servicing the Building as holidays.

"Building Systems" means the mechanical, electrical, plumbing, sanitary, sprinkler, heating, ventilation and air conditioning, security, life-safety, elevator and other service systems or facilities of the Building up to the point of connection (if any) of localized distribution to the Premises (or other leased or leasable Premises), excluding, however, supplemental HVAC systems of tenants, sprinklers and the horizontal distribution systems within and servicing the Premises and by which mechanical, electrical, plumbing, sanitary, heating, ventilating and air conditioning, security, life-safety and other service systems are distributed from the base Building risers, feeders, panel boards, etc. for provision of such services to the Premises.

"Business Days" means all days other than Saturdays, Sundays and Building Holidays.

"Business Hours" means 8 a.m. to 6 p.m. on Business Days.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as amended.

“Common Areas” means the lobbies, Roof Deck (if any) and sidewalk areas and other similar areas of general access and the areas on individual multitenant floors in the Building devoted to corridors, elevator lobbies, restrooms, and other similar facilities serving the Premises.

“Comparable Buildings” means first-class office buildings of age and quality comparable to the Building and located in the Park Avenue South submarket of Manhattan.

“Control” means ownership of not less than 25% of all of the direct or indirect Ownership Interests of any Person that is a business entity and/or the power to direct or cause the direction of the management and policy of such Person.

“Deficiency” means the difference between (a) the Fixed Rent and Additional Rent for the period which otherwise would have constituted the unexpired portion of the Term (assuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding such termination or re-entry), and (b) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of the Lease for any part of such period (after first deducting from such rents all actual out-of-pocket expenses incurred by Landlord in connection with the termination of this Lease, Landlord’s re-entry upon the Premises and such reletting, including repossession costs, brokerage commissions, reasonable attorneys’ fees and disbursements, and alteration costs).

“Delivery Condition” means the Premises are in the following condition: (i) vacant, broom clean and free of all tenancies or other rights of use and/or possession; (ii) in compliance in all material respects with all Requirements, including, without limitation, the Americans with Disabilities Act of 1990, as amended; (iii) all known hazardous materials either abated or encapsulated as required by Requirements; (iv) with all building systems serving the Premises (including, without limitation, the heating and ventilating and air conditioning systems, the sprinkler system and the life/fire safety system) in good working order and condition; and (v) with Landlord’s Work Substantially Completed.

“Excluded Expenses” means the following: (a) leasing commissions, rental concessions, promotional and advertising expenses incurred in leasing or for procuring tenants for the Building; (b) the cost and expenses of repairs or replacements or other work incurred by reason of condemnation or fire or other casualty to the extent that a condemnation award or insurance proceeds are recovered or recoverable by Landlord therefor; (c) costs for services rendered (including supervisory) or performed directly for the account of tenants and for which a separate charge is made, but only to the extent that such work or service is in excess of any work or service Landlord, at its own expense, is obligated to furnish to or for Tenant under this Lease; (d) Taxes (and any taxes expressly excluded from the definition of “Taxes” hereunder) or the cost of challenging Taxes or consulting services with respect to Taxes; (e) depreciation (subject to the inclusion in Operating Expenses of amounts of depreciation expressly included in **Section 7.1(e)**); (f) financing or refinancing costs and payments of principal and interest and any other sum due and payable under any mortgage loan and other debt service with respect to the Building and/or the real property and any costs directly related to the sale or other disposition of all or any part of the Building and/or real property or of any interest therein; (g) rent payable under any Superior Lease; (h) expenditures for the costs of performing capital improvements, or painting, repainting,

decoration or redecorating, space leased to other tenants other than Tenant or available for lease for tenants other than Tenant to the extent that such work is in excess of any work Landlord is obligated to furnish (whether by completion of such work directly or making a payment, whether in cash or by rent credit, in lieu of such work) to or for Tenant at Landlord's expense; (i) any specific expenditure for which Landlord is directly reimbursed by any particular tenant (other than a general sharing, as through operating expense clauses) or other party, including any of its insurers; (j) the cost of Landlord's Work (as defined herein) (if applicable); (k) legal, appraisal and accounting fees, and disbursements and charges in connection with disputes with Tenant or other tenants in the Building; (l) fines or penalties imposed on Landlord by Governmental Authorities having jurisdiction; (m) capital expenditures other than those expressly included in Operating Expenses pursuant to **Section 7.1(e)**; (n) damages awarded to another tenant in the Building against Landlord by reason of a breach of that lease by Landlord; (o) interest, fines, penalties or other late payment charges paid by Landlord as a result of Landlord's failure to make payments when due unless Landlord's failure to make such payments when due was in good faith; and (p) fines or penalties imposed by Local Law 97 of 2019 or the purchase of renewable energy credits or greenhouse gas offsets to avoid such fines or penalties (collectively, "**Local Law 97 Costs**"); (q) amounts otherwise includable in Operating Expenses but which are reimbursed to Landlord directly by Tenant or other tenants of the Building except as a regular reimbursement of operating expenses; (r) the cost incurred in respect of any addition to or enlargement of the Building; (s) costs relating to any retail space or garage in the Building or on the Real Property; (t) any cost with respect to unfunded pension plans relating to compliance with law or any union contract; (u) salaries, expenses, fringe benefits and other compensation of employees above the grade of building manager; (v) any expense for which Landlord is entitled to be reimbursed by any tenant as an additional charge in excess of Fixed Rent, Operating Expenses and/or Taxes; (w) amounts paid to affiliates of Landlord for services or goods to the extent that such costs exceed the costs at market rates of such services or goods were they not rendered or delivered by an affiliate; (x) advertising and promotional expenses with respect to the Building and/or real property; (y) all electrical costs incurred and furnished to leasable areas of the Building; (z) cost of works of art of the quality and nature of "fine art" rather than decorative art work customarily found in first-class Park Avenue office buildings which are similar to the Building; (aa) bad debt expenses, and reserves; bad debt loss, rent loss or reserve for bad debt loss or rent loss for the Building; (bb) any fines or penalties incurred due to violations by Landlord of any Requirements; (cc) any costs necessitated by or resulting from the negligence or willful misconduct of Landlord, its agents, employees, and/or independent contractors; (dd) charitable or political contributions; (ee) costs of installing any specialty services operated by Landlord, such as an athletic club, cafeteria, child care facility, conference center or retail space, and the cost of operating any such services, to the extent such services are not made available to Tenant to the same extent made available to other office tenants of the Building; (ff) general corporate and administrative overhead, including legal and other costs in connection with or relating to the operation and/or maintenance of the entity comprising the Landlord, as distinguished from the costs of operation and maintenance of the Building; (gg) costs related to the conversion of the Building or any portion thereof to condominium ownership and/or the establishment of a condominium regime; (hh) any costs or expenses associated or related with the abatement, remediation or removal of asbestos or other Hazardous Materials in the Building or on or under the land and/or real property; (ii) any and all costs incurred in connection with Local Law 97 other than capital expenditures that are permitted

to be included in Operating Expenses pursuant to clause (xxiv) of **Section 7.1(e)** and (jj) for the Initial Term only, any and all costs incurred in connection with Local Law 11.

“Governmental Authority” means the United States of America, the city of New York, County of New York, or state of New York, or any political subdivision, agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Real Property.

“Hazardous Materials” means any substances, materials or wastes currently or in the future deemed or defined in any Requirement as “hazardous substances,” “toxic substances,” “contaminants,” “pollutants” or words of similar import.

“HVAC System” means the Building System designed to provide heating, ventilation and air conditioning.

“Incentive Programs” means incentive programs administered by various Governmental Authorities (such as, by way of example, programs granting tax abatements or discounts in connection with development, job creation or “green” initiatives).

“Landlord Indemnitees” means Landlord, Landlord’s Agent, each Mortgagee and Superior Lessor, and each of their respective direct and indirect partners, officers, shareholders, directors, members, managers, trustees, beneficiaries, employees, principals, contractors, servants, agents, and representatives.

“Landlord Party” means each of Landlord, Landlord’s Agent, each Mortgagee and Superior Lessor, and each of their respective direct and indirect partners, officers, shareholders, directors, members, managers, trustees, beneficiaries, employees, principals, contractors, servants, agents, and representatives.

“Lease Year” means (i) as to the first Lease Year, the period commencing on the Commencement Date and ending on the last day of the calendar month in which occurs the 1st anniversary of the day prior to the Rent Commencement Date; and (ii) as to each succeeding Lease Year, the 12-month period commencing on the day following the last day of the preceding Lease Year; *provided, however*, that the last Lease Year shall expire on the Expiration Date, or such other date the Lease terminates, and accordingly may be less than 12 months.

“Losses” means any and all losses, liabilities, damages, claims, judgments, fines, suits, demands, costs, interest and expenses of any kind or nature (including reasonable attorneys’ fees and disbursements) to the extent incurred in connection with any third party claim, proceeding or judgment and the defense thereof, and including all reasonable actual out-of-pocket costs of repairing any damage to the Premises or the Building or the appurtenances of any of the foregoing to which a particular indemnity and hold harmless agreement applies.

“Mortgage” means any mortgage, trust indenture or other financing document that may now or hereafter affect the Premises, the Real Property, the Building or any Superior Lease or the leasehold interest created thereby, and all renewals, extensions, supplements,

amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder.

"Mortgagee" means any mortgagee, trustee or other holder of a Mortgage.

"Named Tenant" means Original Named Tenant or any Successor Entity or Affiliate of 1STDIBS.COM, INC. that becomes Tenant hereunder pursuant to an assignment of this Lease in accordance with the terms and conditions hereof.

"Occupancy Requirements" means the requirements that the Named Tenant is the Tenant hereunder; the Named Tenant leases the entire Premises; and the Named Tenant has not subleased more than twenty-five (25%) percent of the Premises to an unaffiliated third party.

"Original Named Tenant" means 1STDIBS.COM, INC., a Delaware corporation.

"Ownership Interests" means stock or other beneficial ownership interests in a Person.

"Person" means any natural person, partnership, corporation, limited liability company, joint venture, or any other form of business or legal association or entity.

"Prohibited Use" means (a) any use or occupancy of the Premises (or of any Common Areas of the Building) that in Landlord's reasonable judgment would cause damage to the Building or any equipment, facilities or other systems therein; impair the appearance of the Building; interfere with the efficient and economical maintenance, operation and repair of the Premises or the Building or the equipment, facilities or systems thereof; adversely affect any service provided to, and/or the use and occupancy by, any tenant or occupants of the Building; violate the certificate of occupancy issued for the Premises or the Building (if any); materially and adversely affect the first-class image of the Building or result in protests or civil disorder or commotions at, or other disruptions of the normal business activities in, the Building or (b) any of the following uses: (i) a restaurant or bar for sale to customers (provided the foregoing does not exclude not-for-sale pantry(ies) and/or bar for use solely by Tenant and its employees, clients, guests and invitees); (ii) the preparation, consumption, storage, manufacture or sale of (x) food or beverages except in connection with vending machines (provided that each machine, where necessary, shall have a waterproof pan thereunder and be connected to a drain) and/or microwave ovens, toaster ovens and refrigerators installed for the use of Tenant's employees only, or (y) tobacco or drugs; (iii) the business of photocopying, or multilith or offset printing (except photocopying in connection with Tenant's own business); (iv) a school or classroom; (v) lodging or sleeping; (vi) savings and loan association or retail facilities of any financial, lending, securities brokerage or investment activity; (vii) a payroll office; (viii) a barber, beauty or manicure shop; (ix) an employment agency or similar enterprise; (x) offices of any Governmental Authority, any foreign government, the United Nations, or any agency or department of the foregoing; (xi) the manufacture, retail sale, storage of merchandise or auction of merchandise, goods or property of any kind to the general public; (xii) the rendering of medical, dental or other therapeutic or diagnostic services; (xiii) any other retail use or use contemplating visits to the Premises by the

general public; (xiv) the sale of alcohol under any circumstance, or (xv) any illegal purposes or any activity constituting a nuisance.

"Requirements" means all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, extraordinary and ordinary of (i) all Governmental Authorities, including (A) the Americans With Disabilities Act, 42 U.S.C. §12101 (et seq.), New York City Local Law 58 of 1987, and (B) any law of like import, and all rules, regulations and government orders with respect thereto, and any of the foregoing relating to Hazardous Materials, environmental matters, public health and safety matters, and landmarks preservation, (ii) any applicable fire rating bureau or other body exercising similar functions, affecting the Real Property or the maintenance, use or occupation thereof, or any street, avenue or sidewalk comprising a part of or in front thereof or any vault in or under the same, (iii) all requirements of all insurance bodies affecting the Premises, (iv) utility service providers, and (v) Mortgagees or Superior Lessors. The term **"Requirements"** also includes the terms and conditions of the certificate of occupancy issued for the Premises or the Building (if any), and any other covenants, conditions or restrictions affecting the Building and/or the Real Property from time to time.

"Roof Deck" is defined in **Section 3.2(a)**.

"Roof Deck Occupancy Requirements" means the requirements that the Named Tenant is the Tenant hereunder; the Named Tenant leases the entire Premises; and the Named Tenant has not subleased more than thirty three (33%) percent of the Premises to an unaffiliated third party.

"Rules and Regulations" means the rules and regulations annexed to and made a part of this Lease as **Exhibit D**, as they may be modified and supplemented from time to time by Landlord.

"Soft Costs" means architectural, engineering and consulting fees incurred by Tenant in connection with the Initial Installations.

"Specialty Alterations" means Alterations made by Tenant (which shall exclude Landlord's Work for avoidance of doubt) which are not standard office installations, such as kitchens (but specifically excluding pantries without grease traps or venting), executive bathrooms, raised computer floors, computer room installations, supplemental HVAC and/or air conditioning equipment, safe deposit boxes, vaults, libraries or file rooms requiring reinforcement of floors, internal staircases, slab penetrations, conveyors, dumbwaiters, and other Alterations of a similar character.

"Substantial Completion" (as well as **"Substantially Completed"** and words of similar import) means, as to any construction performed by any party, such construction has been completed in a good, workmanlike manner using Building standard materials in accordance with the provisions of this Lease applicable thereto, the plans and specifications for such work and all applicable Requirements, except for minor details of construction, decoration and mechanical adjustments, if any, the noncompletion of which does not in any material way interfere with the

use of the Premises for conduct of Tenant business, or Tenant's access to the Premises, or Tenant's ability to commence and diligently perform, using ordinary construction practices, (without the need for work at overtime or premium rates), the Initial Installations with respect to the Premises, or which in accordance with good construction practice should be completed after the completion of other work in the Premises or the Building (such items, "**Punch List Items**"). Landlord shall use commercially reasonable efforts to complete any such Punch List Items promptly after the Commencement Date (and no later than thirty (30) days after such date).

"Superior Lease" means any ground or underlying lease of the Real Property or any part thereof heretofore or hereafter made by Landlord and all renewals, extensions, supplements, amendments, modifications, consolidations, and replacements thereof.

"Superior Lessor" means a lessor under a Superior Lease.

"Tenant Delay" means any actual delay that Landlord encounters in the performance of Landlord's obligations under this Lease by reason of (i) any act, negligence or omission (where Tenant has a duty to act) of any nature of any Tenant Party (ii) postponement of any such work at the request of a Tenant Party, (iii) any long-lead time items requested by Tenant, provided that in the case of changes, postponements or long-lead time items requested by Tenant, Landlord shall have promptly notified Tenant of the potential that same shall constitute a Tenant Delay (along with the estimated delay) and Tenant shall have had an opportunity to rescind the request in question, or (iv) any changes in or additions to, or interference with any work to be done by Landlord, or delays beyond the timeframes set forth in this Lease by Tenant in submission of information, approving working drawings or estimates, or giving authorizations or approvals. Landlord shall endeavor to promptly notify Tenant after Landlord has actual knowledge of a Tenant Delay and state in reasonable detail the basis of such Tenant Delay, provided that any failure by Landlord to provide such notice shall in no event vitiate any claim by Landlord that a Tenant Delay has occurred. Any such period of Tenant Delay shall not exceed the time period Landlord was actually delayed as a result of such Tenant Delay and any simultaneous Tenant Delays shall be deemed to run concurrently and not consecutively and shall not be "double" counted. Any period of Tenant Delay shall not actually commence until one (1) Business Day after Landlord delivers to Tenant notice (which notice can be by email) of such Tenant Delay and an opportunity to cure such Tenant Delay within such one (1) Business Day.

"Tenant Party" and **"Tenant Parties"** means each of Tenant, its subtenants and occupants of the Premises and their respective agents, contractors, subcontractors, employees, invitees or licensees.

"Tenant's Property" means Tenant's movable fixtures and movable partitions, telephone and other equipment, computer systems, telecommunications data and other cabling, trade fixtures, furniture, furnishings, and other items of personal property which are removable without material damage to the Building.

"Unavoidable Delays" means a party's inability to fulfill or delay in fulfilling any of its obligations under this Lease expressly or impliedly to be performed by such party or such party's inability to make or delay in making any repairs, additions, alterations, improvements or

decorations or inability to supply or delay in supplying any equipment or fixtures, if (in each case) such party's inability or delay is due to or arises by reason of strikes, labor troubles or by accident, or by any cause whatsoever beyond such party's reasonable control, including governmental preemption in connection with a national emergency, Requirements or shortages, or pandemics and epidemics and governmental restrictions in connection therewith, unavailability of labor, fuel, steam, water, electricity or materials, or delays caused by the other party, mechanical breakdown, acts of God, enemy action, civil commotion, fire or other casualty.

"Untenantable" means unusable by Tenant for the normal operation of its business in the Premises or if Tenant is unable to access the Premises or is unable to perform any work in the Premises that is necessary for Tenant's use of or access to the Premises.

Section 1.3 Certain Interpretational Rules. For purposes of this Lease, whenever the words "include", "includes", or "including" are used, they shall be deemed to be followed by the words "without limitation." Whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. For purposes of this Lease, "reasonable efforts" by Landlord shall not include an obligation to employ contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses whatsoever. This Lease shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question. The captions and headings in this Lease are inserted for convenience only, and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof. Unless otherwise indicated, references in this Lease to articles, sections or subsections are to articles, sections or subsections of this Lease. Unless otherwise expressly provided to the contrary in this Lease, wherever a consent or approval is required not to be unreasonably withheld, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

ARTICLE 2

PREMISES, TERM, RENT

Section 2.1 Lease of Premises. Subject to the terms of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises for the Term. In addition, Landlord grants to Tenant the right to use, on a non-exclusive basis and in common with other tenants, the Common Areas, as more particularly provided herein.

Section 2.2 Commencement Date. (a) The term of this Lease (the **"Term"**) shall commence on the Commencement Date, and unless sooner terminated or extended as hereinafter provided, shall end on the Expiration Date. Except as otherwise expressly provided herein, if Landlord does not tender possession of the Premises to Tenant on or before any specified date, for any reason whatsoever, Landlord shall not be liable for any damage thereby, this Lease shall not be void or voidable, and the Term shall not commence until the Commencement Date actually occurs. Landlord shall be deemed to have tendered possession of the Premises to Tenant upon the giving of at least three (3) days advance notice by Landlord to Tenant stating that the Premises is vacant, in the condition required by this Lease and available

for Tenant's occupancy. No failure to tender possession of the Premises to Tenant on or before any specified date shall affect any other obligations of Tenant hereunder. There shall be no postponement of the Commencement Date (or the Rent Commencement Date) for (i) any delay in the delivery of possession of the Premises which results from any Tenant Delay or (ii) any delay by Landlord in the performance of any Punch List Items.

(b) Notwithstanding the foregoing or anything to the contrary contained in this Lease, if the Commencement Date does not occur on or before February 1, 2024 (other than due to Tenant Delay or Unavoidable Delay), then, as Tenant's sole remedy therefor, and as liquidated damages and not as a penalty, for each day after February 1, 2024 until the Commencement Date occurs, or would have occurred except for Tenant Delay or Unavoidable Delay (each such day, a "Late Delivery Day"), the period from the Commencement Date until the Rent Commencement Date shall be extended by: (a) one (1) day for each Late Delivery Day, for the first sixty (60) Late Delivery Days, and (b) two (2) days for each Late Delivery Day, for any Late Delivery Days in excess of the first sixty (60) Late Delivery Days, and if the Commencement Date does not occur (and would not have occurred except for Tenant Delay or Unavoidable Delay) on or before September 1, 2024, then Tenant may thereafter give Landlord notice terminating this Lease as of the date that is forty five (45) days after the giving of such notice; and if by such 45th day, the Commencement Date has not occurred (and would not have occurred except for Tenant Delay or Unavoidable Delay), then on such 45th day, this Lease shall terminate; Tenant shall have no further rights to lease the Premises hereunder; and Landlord shall return to Tenant any Advance Rent and Security Deposit.

(c) Fixed Rent shall be payable during the Term in the amounts set forth in the Basic Lease Provisions, commencing on the Commencement Date and ending on the Initial Expiration Date; *provided, however*, that (provided that Tenant is not in monetary or material non-monetary default of its obligations hereunder beyond the expiration of any applicable grace, notice and/or cure periods during such periods) the Fixed Rent shall be abated for the period from the Commencement Date through and including the calendar day prior to the Rent Commencement Date. Notwithstanding the foregoing, in the event the abatement of Fixed Rent provided for above is suspended as a result of a default by Tenant, then upon the cure of any such default, Tenant shall receive the remainder of any abated Fixed Rent not received.

(d) Once the Commencement Date is determined, Landlord and Tenant shall execute an agreement stating the Commencement Date, the Rent Commencement Date and the Initial Expiration Date, in substantially the form attached hereto as **Exhibit H**, but the failure to execute such agreements will not affect the determination of such dates.

(e) The provisions of this **Section 2.2** are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law or any successor Requirement.

Section 2.3 Payment of Rent.

(a) Tenant shall pay to Landlord, without notice or demand, and without any set-off, counterclaim, abatement or deduction whatsoever, except as may be expressly set forth

in this Lease, in lawful money of the United States by check drawn upon a bank which clears through the New York Clearing House Association or Federal Reserve Bank of New York, or by wire transfer of immediately available funds, during the Term, (A) commencing on the Commencement Date (except as otherwise set forth herein), Fixed Rent in equal monthly installments, in advance, on the first day of each month during the Term, and (B) Additional Rent, at the times and in the manner set forth in this Lease.

(b) **First Month's Rent.** Upon the execution of this Lease, Tenant shall deliver to Landlord the Tenant Deliveries (as set forth on **Exhibit E**) and shall pay to Landlord the Advance Rent (as defined on **Exhibit E**). If the Rent Commencement Date is the first day of a month, the Advance Rent shall be credited against Fixed Rent first coming due after the Rent Commencement Date. If the Rent Commencement Date is not the first day of a month, then on the Rent Commencement Date, Tenant shall pay Fixed Rent for the period from the Rent Commencement Date through the last day of the month in which the Rent Commencement Date occurs, and the Advance Rent shall be credited towards Fixed Rent for the next succeeding calendar month.

ARTICLE 3

USE AND OCCUPANCY

Section 3.1 Premises. Tenant shall use and occupy the Premises for the Permitted Uses and for no other purpose. Tenant shall not use or occupy or permit the use or occupancy of any part of the Premises in a manner constituting a Prohibited Use. If Tenant uses the Premises for a purpose constituting a Prohibited Use, violating any Requirement, or causing the Building to be in violation of any Requirement, then Tenant shall promptly discontinue such use upon notice of such violation. Tenant, at its expense, shall procure and at all times maintain and comply with the terms and conditions of all licenses and permits required for the lawful conduct of its business in the Premises.

Section 3.2 Roof Deck.

(a) Subject to Unavoidable Delay, Landlord shall continue to operate a roof deck on the roof of the Building for the use of the tenants of the Building as a Building amenity during the Initial Term (the "**Roof Deck**"). Commencing on the date Tenant first occupies the Premises for the conduct of its business, and for so long as Landlord continues to operate the Roof Deck as a Building amenity, Tenant shall have the right to non-exclusive use the Roof Deck as a Building amenity subject to the Roof Deck rules and regulations set forth in **Exhibit G** and all of the other terms of this Lease including without limitation **Articles 11** and **25** hereof, as if for purposes of **Articles 11** and **25** hereof, the Roof Deck were part of the Premises.

(b) Provided that Tenant is in compliance with the Roof Deck Occupancy Requirements, then commencing on the date Tenant first occupies the Premises for the conduct of its business, for so long as Tenant complies with the Roof Deck Occupancy Requirements (and Landlord operates the Roof Deck as a Building amenity), Tenant shall have the right to use, from time to time, on one occasion per calendar quarter (but excluding holidays and other event days (e.g. the Super Bowl), the Roof Deck for private after-hours (including on weekends) business

functions, subject to the terms of this Lease, including **Exhibit G**, provided that Landlord shall waive the Roof Deck Fee (as specified on **Exhibit G**) for the first two (2) hours of such usage on each such occasion.

ARTICLE 4

CONDITION OF THE PREMISES

Section 4.1 Condition. Tenant has inspected the Premises and except as otherwise provided herein hereby accepts possession of the Premises in its condition existing on the Effective Date (provided that the Premises are delivered in Delivery Condition on the Commencement Date); and except for Landlord's Work, Landlord has no obligation to perform any work, supply any materials, incur any expense or make any alterations or improvements to prepare the Premises for Tenant's occupancy. Any work to be performed by Tenant in connection with Tenant's initial occupancy of the Premises is referred to in this Lease as "**Initial Installations.**" Tenant's occupancy of any part of the Premises shall be presumptive evidence, as against Tenant, that Landlord has Substantially Completed any work to be performed by Landlord under this Lease; that Tenant has accepted possession of the Premises in its then current condition; and at the time such possession was taken, the Premises and the Building were in the condition required by this Lease.

Section 4.2 Landlord's Work. Landlord will perform at Landlord's expense the work described in **Exhibit B ("Landlord's Work")** in the Premises, subject to Tenant's compliance with the provisions of this **Section 4.2**, in a good and workmanlike manner, consistent with the standards applicable to the Building. Following the Commencement Date, Landlord and its employees, contractors and agents shall have access to the Premises at all reasonable times for the performance of the Punch List Items and for the storage of materials reasonably required in connection therewith, and Tenant will not interfere with Landlord's performance of the Punch List Items; *provided, however*, that Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of the Punch List Items. Except as otherwise provided in this Lease, there shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from the performance of Punch List Items or the storage of any materials in connection therewith. Notwithstanding anything else to the contrary contained in this Lease, on the Commencement Date the Premises shall be in Delivery Condition. Notwithstanding the foregoing or anything to the contrary contained in this Lease, in addition to Landlord's repair, maintenance and other continuing obligations under this Lease, Landlord shall remain liable for and shall promptly repair any (a) punch-list items and/or patent defects in Landlord's Work identified within thirty (30) days of the Commencement Date and (b) latent defects in Landlord's Work identified within one (1) year of the Commencement Date; provided that the foregoing shall not affect the determination of the Commencement Date.

Section 4.3 Landlord's Furniture Contribution. Landlord shall pay to Tenant, in accordance with the terms and conditions of this **Sections 4.3**, an amount not to exceed

Landlord's Furniture Contribution toward the cost of acquiring, assembling and installing furniture to be installed in the Premises. Landlord shall not be obligated to fund any portion of Landlord's Furniture Contribution unless, as of the date on which Landlord is required to make any payment thereof to Tenant pursuant to this **Section 4.3**, (A) this Lease is in full force and effect and (B) no Event of Default then exists. Tenant shall pay all costs of acquiring furniture to be installed in the Premises and the Initial Installations in excess of the portions of Landlord's Furniture Contribution paid to Tenant. On the 18 month anniversary of the Commencement Date, any amount of Landlord's Furniture Contribution that has not been previously disbursed, or is not then due and payable to Tenant in accordance with the terms of this **Section 4.3** shall be retained by Landlord, and Tenant shall have no further right thereto. Disbursement of Landlord's Furniture Contribution shall be made as set forth herein no later than thirty (30) days after submission of a requisition therefor, which requisition shall be signed by an officer of Tenant and accompanied by invoices therefor, which invoices shall be (x) marked "paid" and include such other evidence of payment as Landlord may reasonably request, in which case Landlord shall make such disbursement by paying same to Tenant in reimbursement of such expenditure or (y) unpaid, in which case Landlord shall make such disbursement by paying same directly to the applicable vendor. The right to receive Landlord's Furniture Contribution is for the exclusive benefit of the Named Tenant and in no event may such right be assigned to or be enforceable by or for the benefit of any third party, including any subtenant, assignee, contractor, subcontractor, materialman, vendor, laborer, architect, engineer, attorney or other Person. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that (a) the furniture that is purchased (in part or fully) with Landlord's Furniture Contribution (the "**Landlord Purchased Furniture**") may be used by Tenant (and any other occupant) in the Premises during the term of the Lease, (b) Landlord makes no representations or warranties as to the Landlord Purchased Furniture, (c) the Landlord Purchased Furniture shall be deemed the property of Landlord and shall not be deemed Tenant's Property or removed from the Premises by Tenant, and (d) during the term of the Lease, Tenant shall maintain, repair and replace the Landlord Purchased Furniture as needed so that Tenant can turn over the Landlord Purchased Furniture to Landlord at the end of the term of the Lease in good condition (ordinary wear and tear excepted). If (x) Landlord fails to pay any installment of Landlord's Furniture Contribution when due in accordance with the terms and conditions hereof, (y) Tenant gives Landlord notice of such failure (a "**Landlord's Furniture Contribution Failure**") which Landlord's Furniture Contribution Failure states in bold capital letters: "IF LANDLORD FAILS TO PAY AN INSTALLMENT OF LANDLORD'S FURNITURE CONTRIBUTION IN THE AMOUNT OF \$[] WITHIN THIRTY (30) DAYS FOLLOWING LANDLORD'S RECEIPT OF THIS NOTICE, THEN TENANT SHALL BE ENTITLED TO AN OFFSET AGAINST THE NEXT INSTALLMENT(S) OF RENT DUE UNDER THE LEASE IN THE AMOUNT OF \$[] IN ACCORDANCE WITH SECTION 4.3 OF THE LEASE", and (z) such failure continues for thirty (30) days after receipt of such notice of Landlord's Furniture Contribution Failure, then, in such event, Tenant shall be entitled to an offset against the next installment(s) of Rent due hereunder in the amount of such installment of Landlord's Furniture Contribution (plus interest thereon at the Interest Rate from the date such payment became due until the date the offset is applied) to the extent such installment remain unpaid.

ARTICLE 5

ALTERATIONS

Section 5.1 Tenant's Alterations. (a) Tenant shall not make any alterations, additions or other physical changes in or about the Premises (collectively and including the Initial Installations, "**Alterations**") other than decorative Alterations such as painting, wall coverings and floor coverings (collectively, "**Decorative Alterations**") or Premises Alterations (as defined below), without Landlord's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed with respect to Alterations that would qualify as Premises Alterations but for costing \$250,000 or more, and may be withheld in Landlord's sole discretion with respect to all other Alterations. "**Premises Alterations**" shall mean Alterations that (i) are non-structural and do not affect any Building Systems (excluding the requirement for a connection to such Building Systems that do not otherwise have any effect on any Building Systems), (ii) affect only the Premises and are not visible from outside of the Premises, (iii) do not require any permits, approvals or certificates from any Governmental Authority, (iv) do not violate any Requirement and (v) cost less than \$250,000 in the aggregate together with any related Alterations.

Section 5.2

(a) **Plans and Specifications.** Prior to making any Alterations, Tenant, at its expense, shall (i) submit to Landlord for its approval, detailed plans and specifications ("**Plans**") of each proposed Alteration (other than Decorative Alterations and/or Premises Alterations), and with respect to any Alteration affecting any Building System, evidence that the Alteration has been designed by, or reviewed and approved by, Landlord's designated engineer for the affected Building System, (ii) obtain all permits, approvals and certificates required by any Governmental Authorities, (iii) furnish to Landlord duplicate original policies or certificates of Tenant's contractors worker's compensation (covering all persons to be employed by Tenant and Tenant's contractors and subcontractors in connection with such Alteration) and commercial general liability (including property damage coverage) insurance and builder's risk coverage (as described in **Article 11**), all in such form, with such companies, for such periods and in such amounts as required in **Article 11**, naming the Insured Parties (hereinafter defined) as additional insureds,. Tenant shall give Landlord not less than five (5) Business Days' notice prior to performing any Decorative Alterations or Premises Alterations, which notice shall contain a description of such Decorative Alterations or Premises Alterations (as applicable).

(b) **Specialty Alterations.** At the time that Tenant submits any Plans for Specialty Alterations for approval, Landlord shall designate which Specialty Alterations (if any) Landlord will require Tenant to remove at the end of the Term along with Landlord's response for approval to any such Plans; provided, however, any Specialty Alterations performed by Landlord as part of Landlord's Work, or otherwise performed by Landlord, or existing in the Premises as of the Commencement Date, along with the Initial Installations shall not be required to be removed by Tenant at the end of the Term. Except as specifically provided herein with respect to Specialty Alterations performed by Tenant during the Term, Tenant shall have no obligation remove any Alteration at the end of the Term.

(c) **Governmental Approvals; As-Built Plans.** Tenant, at its expense, shall, as and when required, promptly obtain any certificates of partial and final approval required by any Governmental Authority in connection with any Alterations and shall, within sixty (60) days after completion of any Alterations, furnish Landlord with copies thereof, together with "as-built" Plans for such Alterations (other than Decorative Alterations) prepared on an AutoCAD Computer Assisted Drafting and Design System (or such other system or medium as Landlord may accept), using naming conventions issued by the American Institute of Architects in June, 1990 (or such other naming conventions as are from time to time customary and as Landlord may reasonably require) and magnetic computer media of such record drawings and specifications translated in DWG format or another format reasonable requested to Landlord.

Section 5.3 Manner and Quality of Alterations. All Alterations shall be performed by or on behalf of Tenant (a) in a good and workmanlike manner and free from defects, (b) substantially in accordance with the Plans, and by contractors, reasonably approved by Landlord, (c) in compliance with all Requirements, the terms of this Lease and all reasonable construction procedures and regulations then prescribed by Landlord, and (d) (except as otherwise expressly provided herein) at Tenant's expense. All materials and equipment shall be of first quality and at least equal to the applicable standards for the Building then established by Landlord, and no such materials or equipment (other than Tenant's Property) shall be subject to any lien or other encumbrance.

Section 5.4 Removal of Tenant's Property. Tenant's Property shall remain the property of Tenant, and Tenant may remove the same at any time on or before the Expiration Date. On or prior to the Expiration Date, Tenant shall, at Tenant's expense, (i) remove all of Tenant's Property (provided that Tenant shall not be required to remove its cabling and wiring in the Premises if and to the extent that such cabling and wiring is bundled and tagged in accordance with Landlord's commercially reasonable requirements therefor) and, unless otherwise directed by Landlord or as otherwise provided in this Lease, any Specialty Alterations from the Premises, (ii) close up any slab penetrations in the Premises made by or on behalf of Tenant, and (iii) comply with **Article 28** regarding removal of signs. Tenant shall repair and restore, in a good and workmanlike manner, any damage to the Premises or the Building caused by Tenant's removal of any Specialty Alterations, Tenant's Property or signage or by the closing of any slab penetrations, and upon default thereof, Tenant shall reimburse Landlord for Landlord's reasonable and actual out-of-pocket cost of repairing and restoring such damage. Any Specialty Alterations or Tenant's Property or signage not so removed shall be deemed abandoned and Landlord may retain or remove and dispose of same, and repair and restore any damage caused thereby, at Tenant's cost and without accountability to Tenant. Except as expressly provided above in this **Section 5.3**, all Alterations shall become Landlord's property upon termination of this Lease. Notwithstanding anything to the contrary herein, and without limiting any other rights of Landlord hereunder, if Tenant fails to timely comply with its obligations under this **Section 5.3** on or before the last day of the Term, Tenant shall be deemed to be holding over in the Premises, and thus subject to the provisions of **Section 18.2** below.

Section 5.5 Mechanic's Liens. Tenant, at its expense, shall discharge any lien or charge recorded or filed against the Real Property in connection with any work done or claimed

to have been done by or on behalf of, or materials furnished or claimed to have been furnished to, Tenant, within thirty (30) days after Tenant's receipt of notice thereof by payment, filing the bond required by law or otherwise in accordance with law.

Section 5.6 Labor Relations. Tenant shall not employ, or permit the employment of, any contractor, mechanic or laborer, or permit any materials to be delivered to or used in the Building, if, in Landlord's sole reasonable judgment, such employment, delivery or use will interfere or cause any conflict with other contractors, mechanics or laborers engaged in the construction, maintenance or operation of the Building by Landlord, Tenant or others. If such interference or conflict occurs, upon Landlord's request, Tenant shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Building immediately.

Section 5.7 Tenant's Costs. Tenant shall pay to Landlord, within thirty (30) days of demand, all actual out-of-pocket costs actually incurred by Landlord in connection with any of Tenant's Alterations, including costs incurred in connection with (a) Landlord's review of the Plans for the Alterations (including review of requests for approval thereof) and (b) the provision of Building personnel during the performance of any Alteration, to operate elevators or otherwise to facilitate Tenant's Alterations; provided, however, that Tenant shall not be liable for any amounts under this clause (b) for its Initial Installations. Tenant shall, upon request, provide Landlord with reasonable evidence of all amounts expended by it for Alterations (including Soft Costs).

Section 5.8 Tenant's Equipment. Tenant shall provide notice to Landlord prior to moving any heavy machinery, heavy equipment, furniture freight, bulky matter or fixtures (collectively, "Equipment") into or out of the Building and shall pay to Landlord any reasonable and actual out-of-pocket costs actually incurred by Landlord in connection therewith. If such Equipment requires special handling, Tenant agrees (a) to employ only persons holding all necessary licenses to perform such work, (b) all work performed in connection therewith shall comply with all applicable Requirements and (c) such work shall be done only during hours designated by Landlord.

Section 5.9 Legal Compliance. Landlord's approval of Plans, or consent by Landlord to the making of any Alterations, does not constitute Landlord's representation that such Plans or Alterations comply with any Requirements. Landlord shall not be liable to Tenant or any other party in connection with Landlord's approval of any Plans, or Landlord's consent to Tenant's performing any Alterations. If any Alterations made by or on behalf of Tenant require Landlord to make any alterations or improvements to any part of the Building in order to comply with any Requirements, Tenant shall pay all reasonable, actual out-of-pocket costs and expenses incurred by Landlord in connection with such alterations or improvements.

Section 5.10 Floor Load. Tenant shall not place a load upon any floor of the Premises that exceeds the per-square-foot "live load" limit for such floor. Landlord reserves the right to reasonably designate the position of all Equipment which Tenant wishes to place within the Premises, and to place limitations on the weight thereof.

Section 5.11 Early Access. From time to time during the period from the Effective Date through the Commencement Date, Landlord shall allow Tenant to access the Premises for purposes of installing certain items of Tenant's equipment (including any supplemental air conditioning equipment and IT equipment and wiring and cabling) and personal property (including delivery and installation of furniture); provided if any such access or the performance by Tenant of any such work in the Premises interferes with the performance by Landlord of Landlord's Work, Landlord shall, notwithstanding the foregoing, have the right to notify Tenant of such interference (which notification may be oral) and Tenant shall immediately discontinue such work and vacate the Premises. Such access to the Premises by Tenant prior to the Commencement Date shall not be deemed to be use and occupancy by Tenant of the Premises nor Tenant having taken possession of the Premises for purposes of determining the Commencement Date but shall otherwise be subject to all of the terms of this Lease except for the payment of Fixed Rent, Tenant's Tax Payment and Tenant's Expense Payment.

ARTICLE 6

REPAIRS

Section 6.1 Landlord's Repair and Maintenance. Landlord shall operate, maintain and except as provided in **Section 6.2** hereof, make all necessary repairs (both structural and nonstructural) to (i) the Building Systems, (ii) the Common Areas, and (iii) the structural elements of the Building, including without limitation the foundations of the Building, the structural soundness of the roof and the exterior supports of the Building (collectively, the "**Structural Elements**"), provided however, to the extent any damage is caused by any act, alteration, negligence or omission of Tenant, Tenant shall be required to repair such damage, or reimburse Landlord, within 30 days of demand, for the cost thereof, if Landlord makes such repair. Nothing contained herein shall require Landlord to undertake any such work on a so-called priority or overtime basis, unless Tenant elects to pay the additional cost of performance in that manner. Notwithstanding anything to the contrary contained herein, Landlord shall only be obligated under this Lease to repair Building Systems, Common Areas and Structural Elements that are not part of the Premises if the condition requiring the repair adversely affects Tenant's use of the Premises.

Section 6.2 Tenant's Repair and Maintenance. Without limitation of Landlord's obligation to deliver the Premises in the Delivery Condition, Tenant shall promptly, at its expense and in compliance with **Article 5**, make all nonstructural repairs to the Premises and the fixtures, equipment and appurtenances therein, including all electrical, plumbing, sprinklers and life safety systems, and all heating, ventilation and air conditioning equipment (except the Base Building A/C Unit, repair of which is provided for under **Section 10.3**), in and serving the Premises from the point of connection to the Building Systems (collectively, "**Tenant Fixtures**"), as and when needed to preserve the Premises in good working order and condition, except for reasonable wear and tear and damage for which Tenant is not responsible hereunder. All damage to the Building (including the Roof Deck), or to any Tenant Fixtures to the extent caused by or resulting from any act, omission, neglect or improper conduct of a Tenant Party or the moving of Tenant's Property or Equipment into, within or out of the Premises by a Tenant Party, shall be repaired at

Tenant's expense by (i) Tenant, if the required repairs are nonstructural in nature and do not affect any Building System or areas outside the Premises, or (ii) Landlord, if the required repairs are structural in nature, involve replacement of exterior window glass or affect any Building System or any area outside the Premises. All Tenant repairs shall be of good quality utilizing new construction materials of a similar nature and quality to the then existing materials of the Building.

Section 6.3 Restorative Work. Landlord reserves the right to make all changes, alterations, additions, improvements, repairs or replacements to the Building and Building Systems, including changing the arrangement or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets or other Common Areas (collectively, "**Restorative Work**"), as Landlord deems necessary or desirable, and to take all materials into the Premises required for the performance of such Restorative Work, provided that (a) the level of any Building service shall not decrease in any material respect from the level required of Landlord in this Lease as a result thereof (other than temporary changes in the level of such services during the performance of any such Restorative Work) and (b) Tenant is not deprived of access to the Premises or substantially deprived of use of any material portion thereof except for periods of limited duration. Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of such Restorative Work and shall provide at least two (2) Business Days prior written notice of such Restorative Work, except in the case of emergency. Except as otherwise expressly provided in this Lease, there shall be no abatement of Rent or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant or others performing, or failing to perform, any Restorative Work.

ARTICLE 7

TAXES AND OPERATING EXPENSES

Section 7.1 Definitions. For the purposes of this **Article 7**, the following terms shall have the meanings set forth below:

- (a) "**Assessed Valuation**" means the amount for which the Real Property is assessed pursuant to the applicable provisions of the City Charter and the Administrative Code of New York, or any successor Requirements, for the purpose of imposition of Taxes.
- (b) "**Base Operating Expenses**" means the Operating Expenses for the Base Expense Year.
- (c) "**Base Taxes**" means the Taxes payable for the Base Tax Year.
- (d) "**Comparison Year**" means (i) with respect to Taxes, each Tax Year commencing on July 1st subsequent to the first day of the Base Tax Year, and (ii) with respect to Operating Expenses, each calendar year commencing subsequent to the first day of the Base Expense Year.

(e) **“Operating Expenses”** means the aggregate of all costs and expenses paid or incurred by or on behalf of Landlord in connection with the ownership, operation, repair and maintenance of the Real Property, including the following: (i) base Building air conditioning, ventilation, and heating; (ii) interior and exterior cleaning and rubbish removal; (iii) window washing; (iv) elevators and escalators; (v) hand tools and other movable equipment; (vi) porter service; (vii) electricity, gas, oil, steam, water rates, sewer rents and other utilities; (viii) intentionally omitted; (ix) insurance premiums; (x) supplies used in the maintenance and operation of the Building; (xi) wages, salaries, disability benefits, pensions, hospitalization, retirement plans, severance packages and group insurance for employees of Landlord, up to and including the level of building managers; (xii) uniforms and working clothes for the employees included in clause (xi) and the cleaning thereof; (xiii) expenses imposed pursuant to any collective bargaining agreement with respect to such employees included in clause (xi); (xiv) payroll, social security, unemployment and other similar taxes with respect to such employees; (xv) sales, use and similar taxes; (xvi) vault charges; (xvii) franchise and license fees; (xviii) charges of independent contractors performing work in connection with the operation, maintenance and repair of the Real Property; (xix) legal, accounting and other professional fees but only to the extent in connection with the operation of the Building; (xx) installation, operation and maintenance of reasonable holiday decorations; (xxi) landscaping costs; (xxii) management fees, or if no management fee is being charged, an imputed management fee not in excess of the amount that would be paid to a property manager for managing a comparable first-class office building in downtown Manhattan (but in no event in excess of four percent (4%) percent of the gross rent for the office portion of the Building); (xxiii) any expenses incurred by Landlord in connection with compliance by Landlord with the terms of any Incentive Programs (if any); (xxiv) with respect to any capital costs incurred after the Base Operating Year for any equipment, device or other improvement made or acquired which is intended as a labor-saving measure or to effect other economies in the operation, maintenance or repair of the Real Property, the annual depreciation or amortization, on a straight-line basis, over the shorter of (1) the useful life of the capital improvement in accordance with GAAP standards or (2) the period of time Landlord reasonably estimates will be required to achieve aggregate savings (excluding savings of Local Law 97 Costs) as a result of the performance of such capital improvement equal to the cost of such capital improvement, but in no event greater than the amount of savings (excluding savings of Local Law 97 Costs) reasonably estimated by Landlord to be achieved in one (1) year (with interest on the unamortized portion at the Base Rate as in effect at the completion of such capital work, plus two percent (2%) per annum); (xxv) with respect to any capital costs incurred after the Base Operating Year that are incurred to comply with any Requirements (other than Local Law 97 of 2019 and, for the Initial Term, Local Law 11) enacted after the date of this Lease or first applicable to the Building or the Premises after the date of this Lease or in effect or applicable to the Building or the Premises as of the date of this Lease and for which periodic or cyclical compliance is or will be required from and after the date of this Lease, or modified or reinterpreted after the date of this Lease, the annual depreciation or amortization, on a straight-line basis, over the useful life of the capital improvement in accordance with GAAP standards (with interest on the unamortized portion at the Base Rate as in effect at the completion of such capital work, plus two percent (2%) per annum); and (xxvi) protection and security services. Operating Expenses do not include Excluded Expenses. If during all or part of the Base Expense Year or any Comparison Year, Landlord shall not furnish any particular item(s) of work or service (which would otherwise

constitute an Operating Expense) to any leasable portions of the Building for any reason, then, for purposes of computing Operating Expenses for such period, the amount included in Operating Expenses for such period shall be increased by an amount equal to the costs and expenses that would have been reasonably incurred by Landlord during such period if Landlord had furnished such item(s) of work or service to such portion of the Building. In determining the amount of Operating Expenses for any Base Expense Year or any Comparison Year, if less than 100% of the Building rentable area is occupied by tenants at any time during such Base Expense Year or any such Comparison Year, Operating Expenses shall be determined for such Base Expense Year or such Comparison Year to be an amount equal to the like expenses which would normally be expected to be incurred had such occupancy been 100% throughout such Base Expense Year or such Comparison Year. All Operating Expenses shall be calculated in accordance with generally accepted accounting principles, consistently applied, or such other accounting standard then being used by Landlord for its internal financial record keeping, in either case consistently applied (the "**Landlord's Accounting Standard**"). All costs and expenses included or deducted from Operating Expenses shall be calculated at the actual net cost to Landlord. No cost or expense shall be included more than once in Operating Expenses, and any cost or expense which should be allocated, in accordance with Landlord's Accounting Standard, between the Building, on the one hand, and any other property owned by Landlord or an affiliate of Landlord, on the other hand, or to a different period shall be properly allocated in accordance therewith.

(f) "**Statement**" means a statement containing a comparison of (i) the applicable Base Taxes and the Taxes for any Comparison Year, or (ii) the applicable Base Operating Expenses and the Operating Expenses for any Comparison Year.

(g) "**Tax Year**" means the 12-month period from July 1 through June 30 (or such other period as hereinafter may be duly adopted by the City of New York as its fiscal year for real estate tax purpose).

(h) "**Taxes**" means (i) all real estate taxes, assessments (including assessments made as a result of the Building being within a business improvement district) and other governmental levies, impositions or charges, whether general, special, ordinary, extraordinary, foreseen or unforeseen, which may be assessed, levied or imposed upon all or any part of the Real Property, and (ii) (as to any Tax Year after the Base Tax Year) all reasonable actual out-of-pocket expenses (including reasonable attorneys' fees and disbursements and the fees of experts and other witnesses) incurred in contesting any of the foregoing or the Assessed Valuation of the Real Property. Taxes shall not include (x) interest or penalties incurred by Landlord or liens imposed on Landlord or the Building or Real Property as a result of Landlord's late payment of Taxes or (y) franchise or "value added" tax, transfer, gift, inheritance, estate or net income taxes, or mortgage and/or ground lease recordation taxes and charges imposed upon Landlord or the Building or Real Property. If Landlord elects to pay any assessment in annual installments, then (i) such assessment shall be deemed to have been so divided and to be payable in the maximum number of installments permitted by law, and (ii) there shall be deemed included in Taxes for each Comparison Year the installments of such assessment becoming payable during such Comparison Year. If at any time the methods of taxation shall be altered so that in lieu of or as an addition to the whole or any part of Taxes, there shall be assessed, levied or imposed (1) a tax,

assessment, levy, imposition or charge based on the income or rents received from the Real Property whether or not wholly or partially as a capital levy or otherwise, (2) a tax, assessment, levy, imposition or charge measured by or based in whole or in part upon all or any part of the Real Property and imposed upon Landlord, (3) a license fee measured by the rents, or (4) any other tax, assessment, levy, imposition, charge or license fee however described or imposed, then all such taxes, assessments, levies, impositions, charges or license fees or the part thereof so measured or based shall be deemed to be Taxes, provided that (i) the tax, assessment, levy, imposition, fee or other charge shall be calculated as if the Building or Real Property were the sole asset of Landlord and (ii) any such tax, assessment, levy, imposition, fee or other charge shall be deemed Taxes only to the extent it is also generally calculated in real estate taxes for purposes of real estate tax escalations in other reasonably comparable office buildings in Manhattan under leases with similar provisions.

Section 7.2 Tenant's Tax Payments. (a) If the Taxes payable for any Tax Year after the Base Tax Year exceed the Base Taxes, Tenant shall pay to Landlord Tenant's Tax Share of such excess ("**Tenant's Tax Payment**"); provided that Tenant shall not be required to make any Tenant's Tax Payment on account of any period prior to the date that is nineteen (19) months following the Commencement Date. For each Comparison Year in which any such Tax Year commences, Landlord shall furnish to Tenant a statement setting forth Landlord's reasonable estimate of the Tenant's Tax Payment for such Tax Year (the "**Tax Estimate**"). Tenant shall pay to Landlord on the 1st day of each month during such Comparison Year an amount equal to 1/12th of the applicable Tax Estimate for such Tax Year. If Landlord furnishes a Tax Estimate for a Comparison Year subsequent to the commencement of such Comparison Year, then (i) until the 1st day of the month following the month in which the Tax Estimate is furnished to Tenant, Tenant shall pay to Landlord on the 1st day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this **Section 7.2(a)** for the last month of the preceding Comparison Year; (ii) promptly after the applicable Tax Estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of the Tax Estimate previously made for such Comparison Year were greater or less than the installments of the Tax Estimate to be made for such Comparison Year in accordance with the Tax Estimate, and (x) if there shall be a deficiency, Tenant shall pay the amount thereof within thirty (30) days after demand, or (y) if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rent next coming due hereunder; and (iii) on the 1st day of the month following the month in which the Tax Estimate is furnished to Tenant, and on the 1st day of each month thereafter throughout the remainder of such Comparison Year, Tenant shall pay to Landlord an amount equal to 1/12th of the Tax Estimate. Landlord may, during each Comparison Year, furnish to Tenant a revised Tax Estimate for such Comparison Year, and in such case, Tenant's Tax Payment for such Comparison Year shall be adjusted and any deficiencies paid or overpayments credited, as the case may be, substantially in the same manner as provided in the preceding sentence. Following the end of each Comparison Year, as to Taxes, Landlord shall furnish to Tenant a Statement of Taxes applicable to Tenant's Tax Payment payable for such Comparison Year and (A) if such Statement shall show that the sums so paid by Tenant were less than Tenant's Tax Payment due for such Comparison Year, Tenant shall pay to Landlord the amount of such deficiency within thirty (30) days after delivery of the Statement to Tenant, or (B) if such Statement shall show that the sums so paid by Tenant were more than such Tenant's Tax

Payment, Landlord shall credit such overpayment against subsequent payments of Rent next coming due hereunder. If there shall be any increase in the Taxes for any Comparison Year, whether during or after such Comparison Year, or if there shall be any decrease in the Taxes for any Tax Year, whether during or after such Tax Year, Tenant's Tax Payment for such Tax Year shall be appropriately adjusted and any deficiencies paid or overpayments credited, as the case may be, substantially in the same manner as provided in the preceding sentence. If there are any credits due Tenant at the end of the Term, Landlord shall promptly pay such amount to Tenant (and no later than thirty (30) days thereafter).

(b) Only Landlord may institute proceedings to reduce the Assessed Valuation of the Real Property, and the filings of any such proceeding by Tenant without Landlord's consent shall constitute an Event of Default. If the Base Taxes are reduced, the Additional Rent previously paid or payable on account of the Tenant's Tax Payment hereunder for all Comparison Years shall be recomputed on the basis of such reduction, and Tenant shall pay to Landlord, within thirty (30) days after demand therefor (including Landlord's furnishing reasonable supporting documentation to Tenant with respect thereto, including without limitation a copy of the applicable tax bill from the applicable taxing authority), any deficiency between the amount of such Additional Rent previously computed and paid by Tenant to Landlord, and the amount due as a result of such recomputation. If Landlord receives a refund of Taxes for any applicable Comparison Year, Landlord shall, at its election, either pay to Tenant, or credit against the next payments of Rent due hereunder, an amount equal to the applicable Tenant's Tax Share of the refund, net of any reasonable and actual out-of-pocket expenses incurred by Landlord in achieving such refund, which amount shall not exceed the Tenant's Tax Payment paid for such applicable Comparison Year. Landlord shall not be obligated to file any application or institute any proceeding seeking a reduction in Taxes or the Assessed Valuation. The benefit of any exemption or abatement relating to all or any part of the Real Property shall accrue solely to the benefit of Landlord, and Taxes shall be computed without taking into account any such exemption or abatement.

(c) Tenant shall be responsible for any applicable occupancy or rent tax now in effect or hereafter enacted and, if such tax is payable by Landlord, Tenant shall promptly pay such amounts to Landlord, within thirty (30) days of Landlord's demand.

(d) Tenant shall be obligated to make Tenant's Tax Payments regardless of whether Tenant may be exempt from the payment of any taxes as the result of any reduction, abatement or exemption from Taxes granted or agreed to by any Governmental Authority, or by reason of Tenant's diplomatic or other tax exempt status.

Section 7.3 Tenant's Expense Payment. (a) If the Operating Expenses payable for any Comparison Year exceed the Base Operating Expenses, Tenant shall pay to Landlord Tenant's Expense Share of such excess ("**Tenant's Expense Payment**"); provided that Tenant shall not be required to make any Tenant's Expenses Payment on account of any period prior to the date that is nineteen (19) months following the Commencement Date. For each applicable Comparison Year, Landlord shall furnish to Tenant a statement setting forth Landlord's reasonable estimate of the applicable Tenant's Expense Payment for such applicable Comparison Year (the "**Expense Estimate**"). Tenant shall pay to Landlord on the 1st day of each month during such Comparison

Year an amount equal to 1/12 of the applicable Expense Estimate. If Landlord furnishes an Expense Estimate for a Comparison Year subsequent to the commencement thereof, then (i) until the 1st day of the month following the month in which the applicable Expense Estimate is furnished to Tenant, Tenant shall pay to Landlord on the 1st day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this **Section 7.3** during the last month of the preceding Comparison Year; (ii) promptly after the Expense Estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of the applicable Tenant's Expense Payment previously made for such applicable Comparison Year were greater or less than the installments of Tenant's Expense Payment to be made for such Comparison Year in accordance with the applicable Expense Estimate, and (A) if there shall be a deficiency, Tenant shall pay the amount thereof within thirty (30) days after demand therefor, or (B) if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rent due hereunder (or at the end of the Term pay such amount to Tenant); and (iii) on the 1st day of the month following the month in which the applicable Expense Estimate is furnished to Tenant, and on the 1st day of each month thereafter throughout the remainder of such Comparison Year, Tenant shall pay to Landlord an amount equal to 1/12 of the applicable Expense Estimate.

(b) Landlord shall endeavor to furnish to Tenant on or before July 1 of each Comparison Year a Statement for the immediately preceding Comparison Year, as to Operating Expenses. If the Statement shows that the sums paid by Tenant under **Section 7.3(a)** exceeded the actual amount of Tenant's Expense Payment for such Comparison Year, Landlord shall credit the amount of such excess against subsequent payments of Rent due hereunder (or at the end of the Term pay such amount to Tenant). If the Statement shows that the sums so paid by Tenant were less than Tenant's Expense Payment for such Comparison Year, Tenant shall pay the amount of such deficiency within thirty (30) after delivery of the Statement to Tenant.

Section 7.4 Non-Waiver; Disputes. (a) Landlord's failure to render any Statement (whether for Taxes or Operating Expenses) by any particular date with respect to any applicable Comparison Year shall not prejudice Landlord's right to thereafter render a Statement (whether for Taxes or Operating Expenses) with respect to such Comparison Year or any subsequent Comparison Year, nor shall the rendering of a Statement prejudice Landlord's right to thereafter render a corrected Statement (whether for Taxes or Operating Expenses) for that Comparison Year, but only provided in each such case that Landlord shall render such Statement no later than one (1) year after the expiration of the later of (x) the applicable Tax Year or Expense Year for which the Statement or corrected Statement is rendered or (y) the date that Landlord acquires actual knowledge of the discrepancy underlying such corrected Statement.

(b) (i) Tenant, upon notice given within two hundred seventy (270) days after Tenant's receipt of a Statement regarding Tenant's Expense Payment (provided Tenant shall have the right to audit the Records regarding the Base Expense Year at any time within the two (2) years subsequent to the Base Expense Year), may elect to have Tenant's certified public accountant, qualified real estate services firm or audit firm, or qualified employee of Tenant (but not, in any case, anyone retained by Tenant on a contingency fee basis or any other fee basis by which such accountant's or other firm's or auditor's compensation is based upon the amount

refunded or credited by Landlord to Tenant as a result of such audit) examine such of Landlord's books and records regarding Operating Expenses (collectively, "**Records**") as are directly relevant to such Statement, and Landlord shall provide access to the Records in New York City for such purpose upon reasonable prior notice. As a condition to Tenant's right to review the Records, Tenant shall pay all sums required to be paid in accordance with the Statement in question. If Tenant does not give such notice within such one year period, then such Statement shall be presumptively binding upon Tenant. Prior to reviewing any Records, Tenant and its accountant shall execute and deliver to Landlord a confidentiality agreement, in form and substance reasonably acceptable to Landlord and Tenant, agreeing not to disclose any information in the Records to any third party.

(ii) Tenant, within ninety (90) days after the date on which the Records are made available to Tenant, may send a notice ("**Tenant's Dispute Notice**") to Landlord that Tenant disagrees with the applicable Statement, specifying in reasonable detail the basis for Tenant's disagreement and the amount of the Expense Payment Tenant claims it overpaid. If Tenant fails timely to deliver a Tenant's Dispute Notice, then such Statement shall be conclusive and binding on Tenant. Landlord and Tenant shall attempt to adjust such disagreement. If they are unable to do so, and provided that the amount of the Expense Payment Tenant claims it overpaid is at least 5% of the Expense Payment that Landlord claims is due, Tenant shall give Landlord notice thereof (the "**Arbiter Notice**") within ninety (90) days after the date on which the Records are made available to Tenant (in connection with the disagreement in question) that Tenant desires such disagreement to be determined by an Arbiter in accordance with this **Section 7.4**; and promptly thereafter, Landlord and Tenant shall jointly designate a certified public accountant (the "**Arbiter**") whose determination made in accordance with this **Section 7.4** will be binding upon the parties; *provided, however*, that if the amount of the Expense Payment Tenant claims it overpaid is not at least 3% of the Expense Payment Landlord claims is due, then Tenant shall have no right to dispute such amount and shall pay the amount that Landlord claims is due to the extent overpaid. If Tenant timely delivers a Tenant Dispute Notice, the disagreement referenced therein is not resolved by the parties and Tenant fails to notify Landlord of Tenant's desire to have such disagreement determined by an Arbiter within the 90-day period set forth in the preceding sentence, then the Statement to which such disagreement relates shall be conclusive and binding on Tenant.

(iii) The Arbiter shall be a member of an independent certified public accounting firm having at least 3 accounting professionals. If Landlord and Tenant are unable to agree on the designation of the Arbiter within fifteen (15) days after Landlord receives the Arbiter Notice, then either party shall have the right to request the American Arbitration Association or any organization which is the successor thereto (the "**AAA**") to designate as the Arbiter a certified public accountant meeting the requirements of this subsection (iii) whose determination made in accordance with this **Section 7.4(b)** shall be conclusive and binding upon the parties, and the cost of such certified public accountant shall be borne as provided below. Any determination made by an Arbiter shall not exceed the amount determined to be due in the first instance by

Landlord's Statement, nor shall such determination be less than the amount claimed to be due by Tenant in Tenant's Dispute Notice, and any determination which does not comply with the foregoing shall be null and void and not binding on the parties. In rendering such determination such Arbiter shall not add to, subtract from or otherwise modify the provisions of this Lease, including the immediately preceding sentence. If the Arbiter confirms the determination of Landlord within 5%, then Tenant shall pay the cost of the Arbiter. If the Arbiter confirms the determination of Tenant within 5%, then Landlord shall pay the cost of the Arbiter. In all other events, the cost of the Arbiter shall be borne equally by Landlord and Tenant. If the determination of the Arbiter confirms that Tenant overpaid by at least seven and one half (7.5%) percent or more, Landlord shall reimburse Tenant for all reasonable out-of-pocket costs and expenses incurred by Tenant in connection with such dispute.

(iv) Pending the resolution of any contest pursuant to this **Section 7.4(b)**, and as a condition to Tenant's right to prosecute such contest, Tenant shall pay all sums required to be paid in accordance with the Statement in question. If Tenant shall prevail in such contest, an appropriate refund shall be made by Landlord to Tenant.

Section 7.5 Additional Provisions Regarding Taxes and Operating Expenses. (a) In any case provided in this **Article 7** in which Tenant is entitled to a refund, Landlord may, in lieu of making such refund, credit against the next installment of Rent any amounts to which Tenant shall be entitled. Nothing in this **Article 7** shall be construed so as to result in a decrease in the Fixed Rent. If this Lease shall expire before any such credit shall have been fully applied, then (provided Tenant is not in monetary or material non-monetary default under this Lease beyond the expiration of any applicable grace, notice and/or cure periods) Landlord shall promptly refund to Tenant the unapplied balance of such credit (and no later than thirty (30) days thereafter).

(b) Landlord and Tenant confirm that the computations under this **Article 7** are intended to constitute a formula for agreed rental escalation and may or may not constitute an actual reimbursement to Landlord for Taxes and other costs and expenses incurred by Landlord with respect to the Real Property. If the Building shall be condominiumized, then Tenant's Expense Payments and Tenant's Tax Payments shall, if necessary, be equitably adjusted such that Tenant shall thereafter continue to pay the same share of the Taxes and Operating Expenses of the Building as Tenant would pay in the absence of such condominiumization.

(c) If the Commencement Date is a day other than January 1, or if the Expiration Date is a day other than December 31, or if there is any increase or decrease in the area of the Premises, then in each such event in applying the provisions of this **Article 7** with respect to the Comparison Year in which the event occurred, appropriate adjustments shall be made to reflect the result of such event on a basis consistent with the principles underlying the provisions of this **Article 7**, taking into consideration (i) the portion of such Comparison Year, as the case may be, which shall have elapsed prior to or after such event, (ii) the rentable area of the Premises affected thereby and the Base Tax Year applicable thereto, and (iii) the duration of such event.

Section 7.6 No Reduction in Rent. In no event shall any decrease in Operating Expenses or Taxes in any Comparison Year below the Base Operating Expenses or Base Taxes, as the case may be, result in a reduction in the Fixed Rent or any other component of Additional Rent payable hereunder.

ARTICLE 8

REQUIREMENTS OF LAW

Section 8.1 Compliance with Requirements.

(a) **Tenant's Compliance.** Without limitation of Landlord's obligation to deliver the Premises in the Delivery Condition, including in compliance with all Requirements, Tenant, at its expense, shall comply with all Requirements applicable to the Premises and/or Tenant's use or occupancy thereof; *provided, however*, that Tenant shall not be obligated to comply with any Requirements requiring any structural alterations unless the application of such Requirements arises from (i) the specific manner and nature of Tenant's use or occupancy of the Premises, as distinct from general office use, (ii) Alterations made by Tenant, or (iii) a breach by Tenant of any provisions of this Lease. Without limitation of Landlord's obligation to deliver the Premises in the Delivery Condition, including in compliance with all Requirements, any repairs or alterations required for compliance with applicable Requirements shall be made at Tenant's expense by Tenant in compliance with **Article 5** if such repairs or alterations are nonstructural, do not affect any Building System and to the extent such repairs or alterations do not affect areas outside the Premises; or by Landlord if such repairs or alterations are structural or affect any Building System or to the extent such repairs or alterations affect areas outside the Premises. If Tenant obtains knowledge of any failure to comply with any Requirements applicable to the Premises, Tenant shall give Landlord prompt notice thereof. Tenant, at its cost and expense, may contest the validity of Requirements applicable to the Premises and/or Tenant's use or occupancy thereof and postpone compliance therewith pending such contest, provided that Landlord shall not be subject to criminal penalty or to prosecution for a crime, nor shall the Premises or any part thereof or the Building or Real Property, or any part thereof be subject to being condemned or vacated or be subjected to any lien or encumbrance, nor shall the same involve imminent danger or significant safety hazards, and Tenant shall save and hold harmless Landlord and Landlord's Indemnitees from any claims, liability, damages, costs, expenses and fees (including reasonable attorneys' fees) which Landlord and/or Landlord's Indemnitees may incur as a result of Tenant's contesting the validity of such Requirement(s), and Tenant shall keep Landlord reasonably advised as to the status of such proceedings. In connection with Landlord's obligations as expressly set forth in this Lease, Landlord shall, at its sole cost and expense, comply with all Requirements applicable to the Building and the Premises to the extent that a failure to comply is reasonably likely to impair in a material respect Tenant's use and occupancy of the Premises.

(b) **Hazardous Materials.** Tenant shall not cause or permit (i) any Hazardous Materials to be brought into the Building, (ii) the storage or use of Hazardous Materials in or about the Building or the Premises (subject to the second sentence of this **Section 8.1(b)**), or (iii) the escape, disposal or release of any Hazardous Materials within or in the vicinity of the Building. Nothing herein shall be deemed to prevent Tenant's use of any Hazardous Materials customarily

used in the ordinary course of office work, provided such use is in accordance with all Requirements. Tenant shall be responsible, at its expense, for all matters directly or indirectly based on, or arising or resulting from, the presence of Hazardous Materials in the Building which is caused or permitted by a Tenant Party. Tenant shall provide to Landlord copies of all communications received by Tenant with respect to any Requirements relating to Hazardous Materials, and/or any claims made in connection therewith. Landlord or its agents may perform environmental inspections of the Premises at any time at Landlord's cost. Landlord represents that upon the Commencement Date, there will be no Hazardous Materials in the Premises in violation of any Requirements relating to Hazardous Materials. Landlord shall not cause or permit Hazardous Materials to be used, transported, stored, released, handled, produced or installed in, on or from, the Premises or the Common Areas in violation of Requirements relating to Hazardous Materials during the term of this Lease. The above notwithstanding, if any Hazardous Materials are discovered by Tenant during the performance of an Alteration, and such Hazardous Materials were existing in the Premises as of the Commencement Date in violation of Requirements relating to Hazardous Materials, or were brought onto the Premises by Landlord or its agents, employees, contractors or representatives during the term of the Lease in violation of Requirements relating to Hazardous Materials, and such Requirements require same to be abated, encapsulated, removed or otherwise remediated, then Landlord, at Landlord's cost and expense, shall use commercially reasonable efforts to promptly (and in a commercially reasonable manner so as to minimize the interference with Tenant) abate, encapsulate, remove or otherwise remediate such Hazardous Materials in compliance with all Requirements, and provided that Tenant is not then in monetary or material non-monetary default under this Lease beyond the expiration of any applicable notice, cure and grace periods, Tenant shall receive an abatement of Fixed Rent, Tenant's Tax Payment and Tenant's Expense Payment in proportion to the portion of the Premises in which (i) the performance of such Alteration is actually delayed and (ii) Tenant is not otherwise in occupancy for the conduct of its business, for the period of such actual delay and non-occupancy that occurs after the date that Tenant gives Landlord written notice thereof; provided if such delay occurs prior to the Rent Commencement Date, such abatement shall apply to the period immediately commencing on the Rent Commencement Date.

(c) **Landlord's Insurance.** Tenant shall not cause or permit any action or condition that would (i) invalidate or conflict with any requirements of Landlord's insurance policies (provided such requirements are standard for insurance policy(ies) customarily written for office buildings in Manhattan), (ii) violate applicable rules, regulations and guidelines of the Fire Department, Fire Insurance Rating Organization or any other authority having jurisdiction over the Building, (iii) cause an increase in the premiums of fire insurance for the Building over that payable with respect to Comparable Buildings, or (iv) result in Landlord's insurance companies' refusing to insure the Building or any property therein in amounts and against risks as reasonably determined by Landlord. If fire insurance premiums increase as a result of Tenant's failure to comply with the provisions of this **Section 8.1**, Tenant shall promptly cure such failure and shall reimburse Landlord for the increased fire insurance premiums paid by Landlord as a result of such failure by Tenant.

Section 8.2 Fire and Life Safety; Sprinkler. Without limitation of Landlord's obligation to deliver the Premises in the Delivery Condition, including in compliance with all Requirements,

Tenant shall maintain in good order and repair the sprinkler, fire-alarm and life-safety system in the Premises in accordance with this Lease, the Rules and Regulations and all Requirements. If the Fire Insurance Rating Organization or any Governmental Authority or any of Landlord's insurers requires or recommends any modifications and/or alterations be made or any additional equipment be supplied in connection with the sprinkler system or fire alarm and life-safety system serving the Building by reason of Tenant's business, any Alterations performed by Tenant or the location of the partitions, Tenant's Property, or other contents of the Premises, Landlord (to the extent outside of the Premises) or Tenant (to the extent within the Premises) shall make such modifications and/or Alterations, and supply such additional equipment, in either case at Tenant's expense.

Section 8.3 If any noted violation of any applicable Requirements, the compliance with which is not the responsibility of Tenant in accordance with this Lease (herein called a "**Landlord's Violation**") shall actually delay or prevent Tenant from obtaining any governmental permits, consents, approvals or other documentation required by Tenant for (A) the performance of any Alteration or (B) the lawful occupancy of any portion of the Premises upon completion of any Alterations therein, then, upon the giving of notice by Tenant to Landlord of such actual prevention or delay and of the applicable Landlord's Violations, Landlord shall promptly commence and thereafter diligently prosecute to completion the cure and removal of record of such Landlord's Violations. If Tenant is actually delayed in performance of its Initial Installations in, or prevented from using any portion of the Premises by a Landlord's Violation, provided that Tenant is not then in monetary or material non-monetary default under this Lease beyond the expiration of any applicable notice, cure and grace periods, payment of Fixed Rent, Tenant's Tax Payment and Tenant's Expense Payment shall abate for such portion of the Premises from and after the date on which Tenant sends Landlord written notice of such delay until such time as such delay no longer exists, provided if such delay occurs prior to the Rent Commencement Date, such abatement shall apply to the period immediately commencing on the Rent Commencement Date.

ARTICLE 9

SUBORDINATION

Section 9.1 Subordination and Attornment. (a) This Lease is subject and subordinate to all present and future Mortgages and Superior Leases. At the request of any Mortgagee or Superior Lessor, Tenant shall attorn to such Mortgagee or Superior Lessor, their successors in interest or any purchaser in a foreclosure sale.

(b) If a Superior Lessor or Mortgagee or any other Person shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action, termination of the Superior Lease, the delivery of a new lease or deed or otherwise (each, a "**Successor Landlord**"), then at the request of the Successor Landlord and upon such Successor Landlord's written agreement to accept Tenant's attornment and to recognize Tenant's interest under this Lease, Tenant shall be deemed to have attorned to and recognized such Successor Landlord as Landlord under this Lease. The provisions of this **Section 9.1** are self-operative and require no further instruments to give effect hereto; *provided, however*, that Tenant shall promptly execute and deliver any reasonable instrument that such Successor Landlord may

reasonably request (x) evidencing such attornment, (y) setting forth the terms and conditions of Tenant's tenancy, and (z) containing such other terms and conditions as may be required by such Successor Landlord, provided such terms and conditions do not increase the Rent, increase Tenant's other obligations or adversely affect Tenant's rights under this Lease except to a de minimis extent. Notwithstanding anything to the contrary herein, upon such attornment, this Lease shall continue in full force and effect as a direct lease between such Successor Landlord and Tenant upon all of the terms, conditions and covenants set forth in this Lease except that such Successor Landlord (unless such Successor Landlord is an affiliate of Landlord) shall not be

(i) liable for any act or omission of Landlord (except to the extent such act or omission continues beyond the date when such successor landlord succeeds to Landlord's interest);

(ii) subject to any defense, claim, counterclaim, set-off or offset which Tenant may have against Landlord;

(iii) bound by any prepayment of more than thirty (30) days' Rent to any prior landlord except to the extent received by Successor Landlord or specifically required by this Lease (such as the Advance Rent);

(iv) bound by any obligation to make any payment to Tenant which was required to be made prior to the time such Successor Landlord succeeded to Landlord's interest;

(v) bound by any obligation to perform any work or to make improvements to the Premises except for (x) repairs and maintenance required to be made by Landlord under this Lease, and (y) repairs to the Premises as a result of damage by fire or other casualty or a partial condemnation required to be made pursuant to the provisions of this Lease, but only to the extent that such repairs can reasonably be made from the net proceeds of any insurance or condemnation awards, respectively, actually made available to such Successor Landlord;

(vi) bound by any modification, amendment or renewal of this Lease made without Successor Landlord's consent (except the exercise of renewal options, expansion options, termination options, modifications upon condemnation and casualty and other modifications expressly provided for in the Lease);

(vii) liable for the repayment of any security deposit or surrender of any Letter of Credit, unless and until such Security Deposit actually is paid or such Letter of Credit is actually delivered to such Successor Landlord; or

(viii) liable for the payment of any unfunded tenant improvement allowance, refurbishment allowance or similar obligation.

(c) Without limiting any other provision of this Lease, Tenant shall from time to time within ten (10) Business Days of request from Landlord execute and deliver any reasonable

documents or instruments that may be reasonably required by any Mortgagee or Superior Lessor to confirm any attornment and/or subordination.

Section 9.2 Mortgage or Superior Lease Defaults. Any Mortgagee may elect that this Lease shall have priority over the Mortgage, and upon notification to Tenant by such Mortgagee, this Lease shall be deemed to have priority over such Mortgage, regardless of the date of this Lease. In connection with any financing of the Real Property, Tenant shall consent to any reasonable modifications of this Lease requested by any lending institution, provided such modifications do not increase the Rent, materially increase the other obligations of, or materially and adversely affect the rights of, Tenant under this Lease.

Section 9.3 Cure Rights of Mortgagee or Superior Lessor. As long as any Superior Lease or Mortgage exists, Tenant shall not seek to terminate this Lease by reason of any act or omission of Landlord until (i) Tenant shall have given notice of such act or omission to all Superior Lessors and/or Mortgagees whose name and address shall previously have been furnished to Tenant in writing, and (ii) a reasonable period of time (but not more than thirty (30) days after notice thereof) shall have elapsed following the giving of notice of such default and the expiration of any applicable notice or grace periods (unless such act or omission is not capable of being remedied within a reasonable period of time), during which period such Superior Lessors and/or Mortgagees shall have the right, but not the obligation, to remedy such act or omission and thereafter diligently proceed to so remedy such act or obligation (provided, that such Superior Lessors and/or Mortgagees shall, within ten (10) Business Days of its receipt of such notice from Tenant, give Tenant notice of intention to remedy such act or omission). If any Superior Lessor or Mortgagee elects to remedy such act or omission of Landlord, Tenant shall not seek to terminate this Lease so long as such Superior Lessor or Mortgagee is proceeding with reasonable diligence to effect such remedy.

Section 9.4 Provisions. The provisions of this **Article 9** shall (a) inure to the benefit of Landlord, any future owner of the Building or the Real Property, Mortgagee and Superior Lessor (and any sublessor thereof) and (b) apply notwithstanding that as a matter of law, this Lease may terminate upon the termination of any such Superior Lease or Mortgage.

Section 9.5 Future Condominium Declaration. This Lease and Tenant's rights hereunder are and will be subject and subordinate to any condominium declaration, by-laws and other instruments (collectively, the "**Declaration**") which may be recorded in order to subject the Building to a condominium form of ownership pursuant to Article 9-B of the New York Real Property Law or any Successor Requirement, provided that the Declaration does not increase the Rent, materially increase Tenant's non-Rent obligations or materially and adversely affect Tenant's rights under this Lease. At Landlord's request, and subject to the foregoing proviso, Tenant will execute and deliver to Landlord an amendment of this Lease confirming such subordination and modifying this Lease to conform to such condominium regime.

Section 9.6 Non-Disturbance Agreements. Landlord agrees to use commercially reasonable efforts to obtain for Tenant, at Tenant's cost, a subordination, non-disturbance and attornment agreement ("**SNDA**") from all existing and future Mortgagees and Superior Lessors, in the standard form customarily employed by such Mortgagee or Superior Lessor, *provided*,

however, that Landlord shall have no liability to Tenant, and the subordination of this Lease to any Mortgage or Superior Lease shall not be affected, in the event that Landlord is unable to obtain any such agreements.

ARTICLE 10

SERVICES

Section 10.1 Electricity. (a) (i) Landlord shall redistribute, or cause to be furnished, electricity to or for the use of Tenant in the Premises for the operation of Tenant's electrical systems and equipment in the Premises (exclusive of fire/life safety systems and Base Building A/C Unit and HVAC System (hereinafter defined), but inclusive of supplemental air conditioning units installed by Tenant in accordance with the terms of this Lease, if any), at a level sufficient to accommodate a demand load of 6 watts per usable square foot of office space in the Premises (the "**Maximum Electric Load**"). Consumption of such electricity shall be measured by an existing submeter (or a submeter to be installed by Landlord at its cost if there is not an existing submeter in the Premises) which shall be maintained by Landlord at Landlord's cost. For purposes of this **Section 10.1(a)(i)** only and not for any other purposes hereunder, the usable square footage of office space of Premises shall be deemed to be 9,980 square feet.

(ii) All electricity used during the performance of cleaning services, or the making of any Alterations or Restorative Work in the Premises, or the operation of any supplemental or special air-conditioning systems serving the Premises, shall be paid for by Tenant.

(iii) In addition to the Maximum Electric Load, Landlord shall redistribute, or cause to be furnished, electricity to or for the use of Tenant in the Premises for the operation of the Base Building A/C Unit at a level sufficient for the operation of such Base Building A/C Unit. Consumption of such electricity shall be measured by a submeter which shall be installed and maintained by Landlord at Landlord's cost.

(b) **Submetering.** Tenant shall pay to Landlord within thirty (30) Business Days of receipt of a bill therefor (which bill shall be rendered no more frequently than monthly), for its consumption of electricity at the Premises (including without limitation, for avoidance of doubt, consumption of electricity for operation of fire/life safety systems and the Base Building A/C Unit), a sum equal to 103% of the cost to Landlord of the electric current consumed by Tenant in such billing period charged by the utility company or third party provider providing electricity to the Building, which amount shall be determined by dividing the cost established by said utility company or provider (averaged separately for KWs and KWHs) during each respective billing period by the number of KWs and KWHs consumed by the Building appearing on the invoice for such period as applied to the submeter readings in the Premises. If any tax is imposed upon Landlord's receipts from the sale or resale of electricity to Tenant, Tenant shall pay such tax if and to the extent permitted by law as if Tenant were the ultimate consumer of such electricity. Where more than one meter measures the electricity to the Premises, the electricity measured by each meter shall be computed and billed separately in accordance with the provisions set forth above.

Subject to the foregoing provisions of this subsection (c), bills for such amounts shall be rendered to Tenant at such times as Landlord may elect.

(c) **Compliance.** Tenant shall at all times comply with the rules and regulations of the utility company supplying electricity to the Building. Tenant shall not use any electrical equipment that, in Landlord's reasonable judgment, would exceed the capacity of the electrical equipment serving the Premises from time to time. If Landlord reasonably determines that Tenant's electrical requirements necessitate installation of any additional risers, feeders or other electrical distribution equipment (collectively, "**Electrical Equipment**"), or if (subject to **Section 10.1(a)(ii)**), Tenant provides Landlord with evidence reasonably satisfactory to Landlord of Tenant's need for excess electricity and requests that additional Electrical Equipment be installed, Landlord shall, at Tenant's expense, install such additional Electrical Equipment, provided that Landlord, in its sole reasonable judgment, determines that (i) such installation is practicable and necessary, (ii) such additional Electrical Equipment is permissible under applicable Requirements, and (iii) the installation of such Electrical Equipment will not cause permanent damage to the Building or the Premises, cause or create a hazardous condition, entail excessive or unreasonable alterations, interfere with or limit electrical usage by other current or future tenants or occupants of the Building or exceed the limits of the switchgear or other facilities serving the Building, or require power in excess of that available from the utility serving the Building.

Section 10.2 Elevators. (a) Subject to Unavoidable Delay, Landlord shall provide (i) passenger elevator service, which elevators shall be secured via a card key system, to the Premises at all times during Business Hours, with at least one passenger elevator subject to call at all other times (24 hours a day, 365 days a year) and (ii) freight elevator service to the Premises on a first-come, first-served basis (i.e., no advance scheduling) on Business Days from 8 a.m. to 12 p.m. and from 1 p.m. to 6 p.m., which hours of operation are subject to change, and on a reserved basis at all other times, subject to the payment of Landlord's then established charges therefor. There shall be a minimum charge of 4 hours for any period of additional freight service that neither immediately precedes nor immediately follows the standard hours for freight elevators first set forth above in this **Section 10.2(a)**. Tenant shall have access to the Premises 24 hours per day, 7 days per week, subject to Unavoidable Delay. The Building lobby shall be attended at all times, subject to Unavoidable Delay. Subject to Unavoidable Delay, one passenger elevator shall always service the Roof Deck (either directly to the Roof Deck or to the floor immediately below the Roof Deck with stairway access being provided from such floor to the Roof Deck).

(b) Tenant shall be entitled to use the freight elevator after hours, on a reserved (but first-come, first-served) basis, for up to 60 hours, without charge, during its move in period; *provided, however*, that each period of such free usage shall be in a minimum increment of 4 hours, and Tenant shall give Landlord at least one (1) Business Day's notice of its requested time for such usage.

Section 10.3 Heating; Ventilation and Air Conditioning. (a) Landlord shall furnish heating to the Premises during Business Hours. Heating service shall be available to Tenant outside of Business Hours on an overtime basis at a cost of \$200.00 per hour (which amount is

subject to increase from time to time to cover Landlord's actual out-of-pocket costs as reasonably determined by Landlord), subject to Landlord's rules and regulations.

(b) Tenant acknowledges that the Fixed Rent does not include any charge to Tenant for the furnishing of air conditioning and that air conditioning shall be provided by the water-cooled air conditioning unit servicing the Premises that have heretofore been installed by Landlord (the "**Base Building A/C Unit**"), which unit shall be controlled by Tenant. All electricity consumed by operation of the Base Building A/C Unit (whether for operation during or after Business Hours, and whether or not on Business Days) shall be submetered and paid for by Tenant (as set forth above). Landlord shall be responsible for the repair and replacement of the major components of the Base Building A/C Unit at Landlord's cost and expense. Tenant shall pay to Landlord directly (within 30 days after receipt of an invoice therefor) the actual out-of-pocket costs of cleaning and otherwise repairing and maintaining the Base Building A/C Unit, at rates which are competitive with rates of other air conditioning maintenance contractors providing comparable services to Comparable Buildings, provided that such amount shall be capped at \$3,000 per calendar year. In addition, Tenant shall have the right to install in the Premises supplemental air conditioning units, subject to Landlord's reasonable approval and Tenant's compliance with Requirements and to the other provisions of this Lease including without limitation those provisions governing Alterations and electricity.

(c) Landlord shall have access to all air-cooling, fan, ventilating and machine rooms and electrical closets and all other mechanical installations of Landlord (collectively, "**Mechanical Installations**"), and Tenant shall not construct partitions or other obstructions which may interfere with Landlord's access thereto or the moving of Landlord's equipment to and from the Mechanical Installations (provided that Landlord shall use commercially reasonable efforts, in consultation with Tenant, to locate any and all such Mechanical Installations in areas that will minimize interference with Tenant's use of the Premises). No Tenant Party shall at any time enter the Mechanical Installations or tamper with, adjust, or otherwise affect such Mechanical Installations. Except to the extent caused by the negligence or willful misconduct of a Landlord Party, Landlord shall not be responsible if the HVAC System fails to provide cooled or heated air, as the case may be, to the Premises in accordance with the Design Standards by reason of (i) any equipment installed by, for or on behalf of Tenant, which has an electrical load in excess of the average electrical load and human occupancy factors for the HVAC System as designed, or (ii) any rearrangement of partitioning or other Alterations made or performed by, for or on behalf of Tenant. Landlord shall install prior to the Commencement Date, if missing, blinds or shades on all windows. Tenant shall keep all of the operable windows in the Premises closed, and lower the blinds when necessary because of the sun's position, whenever the HVAC System is in operation or as and when required by any Requirement. Tenant shall cooperate with Landlord and shall abide by the rules and regulations which Landlord may reasonably prescribe for the proper functioning and protection of the HVAC System.

Section 10.4 Cleaning. Landlord shall cause the Premises (excluding any portions thereof used for the storage, preparation, service or consumption of food or beverages (other than standard office pantries), as an exhibition area or classroom, for storage, as a shipping room, mail room or similar purposes, for private bathrooms, showers or exercise facilities, as a trading

floor, or primarily for operation of computer, data processing, reproduction, duplicating or similar equipment) to be cleaned, substantially in accordance with the standards set forth on **Exhibit C**. Any areas of the Premises that Landlord is not required to clean hereunder or that require additional cleaning shall be cleaned, at Tenant's expense, by Landlord's cleaning contractor, at rates which are competitive with rates of other cleaning contractors providing comparable services to Comparable Buildings. Landlord's cleaning contractor and its employees shall have access to the Premises between 5 p.m. and 1 a.m. on Business Days and shall have the right to use, without charge therefor, all electricity and water in the Premises reasonably required to clean the Premises.

Section 10.5 Water. Landlord shall provide hot and cold water to the lavatories and pantries of the Premises. If Tenant requires water for any additional purposes in excessive amounts, Tenant shall pay for the cost of bringing water to the Premises and Landlord may install a meter to measure the water. Tenant shall pay the cost of such installation, and for all maintenance, repairs and replacements thereto, and for the water consumed pursuant to the readings of any such meters and any other unusually high use of water.

Section 10.6 Refuse Removal. Landlord shall provide refuse removal services at the Building for ordinary office refuse and rubbish which shall be performed after Business Hours on each and every Business Day. Tenant shall pay to Landlord Landlord's reasonable charge for such removal to the extent that the refuse generated by Tenant is wet waste or exceeds the refuse customarily generated by general office tenants. Tenant shall not dispose of any refuse in the Common Areas, and if Tenant does so, Tenant shall be liable for Landlord's reasonable charge for such removal.

Section 10.7 Directory. Tenant acknowledges that there is no Building directory, provided if there is in the future any Building directory or other similar service provided to tenants of the Building, Tenant shall be entitled to its proportionate share thereof.

Section 10.8 Telecommunications. If Tenant requests that Landlord grant access to the Building to a telecommunications service provider designated by Tenant for purposes of providing telecommunications services to Tenant, Landlord shall use its good faith efforts to respond to such request within ten (10) Business Days. Tenant acknowledges that nothing set forth in this **Section 10.8** shall impose any affirmative obligation on Landlord to grant such request and that Landlord shall have the right to determine which telecommunications service providers shall have access to Building facilities provided such consent to access for such provider shall not be unreasonably withheld, conditioned or delayed.

Section 10.9 Mail. There is no mail room in the Building. Mail and packages are delivered by the US Postal Service and other carriers to the receptionist at the Premises and Landlord has no responsibility therefor.

Section 10.10 Service Interruptions. Landlord reserves the right to suspend any service when necessary, by reason of Unavoidable Delays, accidents or emergencies, or for Restorative Work that, in Landlord's judgment, is necessary or appropriate until such Unavoidable Delay or other cause of such suspension is resolved, or such Restorative Work is completed, and Landlord

shall not be liable for any interruption, curtailment or failure to supply services. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises as a result of any such interruption, curtailment or failure of or defect in such service, or change in the supply, character and/or quantity of electrical service, and to restore any such services, remedy such situation and minimize any interference with Tenant's business including without limitation, scheduling any such interruption or curtailment at times that minimizes, to the extent reasonably practicable, the effect of such interruption or curtailment on Tenant's ability to conduct its business in the Premises during Tenant's ordinary business hours, and if such interruption or curtailment (i) denies Tenant from having reasonable access to the Premises, (ii) threatens the health or safety of any occupant of the Premises, or (iii) materially interferes with Tenant's ability to conduct its business in the Premises during Tenant's ordinary business hours, then Landlord shall employ contractors or labor at overtime or premium pay rates to the extent reasonably necessary. The exercise of any such right or the occurrence of any such failure by Landlord shall not (i) constitute an actual or constructive eviction, in whole or in part; (ii) entitle Tenant to any compensation, abatement or diminution of Rent; (iii) relieve Tenant from any of its obligations under this Lease; or (iv) impose any liability upon Landlord or any Landlord Indemnitees by reason of inconvenience to Tenant, or interruption of Tenant's business, or otherwise; provided that notwithstanding the foregoing, if the Premises, or a material portion of the Premises, are rendered Untenantable as a result of a service interruption that is reasonably within the control of Landlord to prevent and/or correct, and through no fault of Tenant (and are not actually used by Tenant for the conduct of its business) (a "**Service Interruption**") for a period in excess of seven (7) consecutive Business Days after Tenant has given Landlord notice thereof, then Tenant, as its sole remedy for the Premises being Untenantable for such period shall be entitled to receive an abatement of Fixed Rent, Tenant's Tax Payment and Tenant's Expense Payment payable hereunder, proportionately based upon the portion of the Premises rendered Untenantable and not actually used during such period beginning on the eighth (8th) consecutive Business Day of the Service Interruption and ending on the earlier of (x) the day the Premises (or the applicable portion thereof) are no longer Untenantable by reason of such Service Interruption, and (y) the day Tenant actually begins to use the Premises (or the applicable portion thereof) for the conduct of its business.

ARTICLE 11

INSURANCE; PROPERTY LOSS OR DAMAGE

Section 11.1 Tenant's Insurance.

(a) Tenant, at its expense, shall obtain and keep in full force and effect during the Term the following insurance:

(i) a policy of commercial general liability insurance on an occurrence basis against claims for personal injury, bodily injury, death and/or property damage occurring in or about the Building, under which Tenant is named as the insured and Landlord, Landlord's Agent and any Superior Lessors and any Mortgagees whose names have been furnished to Tenant are named as additional insureds (the "**Insured**")

Parties”). Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of the Insured Parties, and Tenant shall obtain blanket broad-form contractual liability coverage to insure its indemnity obligations set forth in **Article 25**. The minimum limits of liability applying exclusively to the Premises shall be a combined single limit with respect to each occurrence in an amount of not less than \$5,000,000 which may be fulfilled through umbrella coverage; *provided, however*, that Landlord may require Tenant to increase such coverage from time to time by giving Tenant at least thirty (30) days prior notice (but not more than once during the Initial Term) to that amount of insurance which in Landlord’s reasonable judgment is then being customarily required by landlords for similar office space in Comparable Buildings. The self-insured retention for such policy shall not exceed \$10,000;

(ii) insurance against loss or damage by fire, and such other risks and hazards as are insurable under then available standard forms of “special form causes of loss” or “all risk” property insurance policies with extended coverage, insuring all personal property, fixtures, furnishings, equipment, improvements, betterments and installations located in the Premises, whether or not installed or paid for by Landlord (including without limitation Landlord’s Work and the Initial Installations) for the full insurable value thereof or replacement cost thereof, having a deductible amount, if any, not in excess of \$25,000;

(iii) during the performance of any Alteration, until completion, builder’s risk insurance on an “all risk” basis and on a completed value form including a “permission to complete and occupy” endorsement, for full replacement value covering the interest of Landlord and Tenant (and their respective contractors and subcontractors) in all work incorporated in the Building and all materials and equipment in or about the Premises, provided that for any given Alteration, separate builder’s risk insurance shall not be required provided that either Tenant’s contractors have such insurance or Tenant’s property insurance provides coverage with regard to such Alteration substantially similar the coverage that would be provided by such builder’s risk insurance;

(iv) workers’ compensation insurance, as required by Requirements;

(v) *intentionally omitted*;

(vi) business interruption insurance covering a minimum of one year of Rent; and

(vii) such other insurance in such amounts as Landlord may reasonably require from time to time provided same are comparable to requirements of other landlords of other similar buildings in Manhattan.

(b) All insurance required to be carried by Tenant (i) shall contain a provision that such insurance shall be noncancellable, and no material change in coverage shall be made thereto, unless the Insured Parties receive at least thirty (30) days’ prior notice of the same, by

certified mail, return receipt requested or by nationally recognized overnight courier. All insurance required to be carried by Tenant hereunder shall be effected under valid and enforceable policies issued by reputable insurers admitted to do business in the state of New York and rated by Best's Insurance Guide as having a Best's Rating of A- or better and a Financial Size Category of X or better (or if such ratings are not then in effect, the equivalent thereof or such other financial rating as Landlord may at any time consider appropriate).

(c) On or prior to the Commencement Date, Tenant shall deliver to Landlord appropriate policies of insurance, including evidence of the waivers of subrogation required to be carried pursuant to this **Article 11** and that the Insured Parties are named as additional insureds (the "**Policies**"). Evidence of each renewal or replacement of the Policies shall be delivered by Tenant to Landlord at least ten (10) days prior to the expiration of the Policies. In lieu of the Policies, Tenant may deliver to Landlord a certification from Tenant's insurance company (on the forms currently designated "Acord 27" (Evidence of Property Insurance) and "Acord 25-S" (Certificate of Liability Insurance), or the equivalent), provided that attached thereto is an endorsement to Tenant's commercial general liability policy naming the Insured Parties as additional insureds, which endorsement is at least as broad as ISO policy form "CG 2011 Additional Insured-Managers or Lessors of Premises" (pre-1999 edition) and which endorsement expressly provides coverage for the negligence of the additional insureds, which certification shall be binding on Tenant's insurance company, and which shall expressly provide that such certification (i) conveys to the Insured Parties all the rights and privileges afforded under the Policies as primary insurance, and (ii) contains an unconditional obligation of the insurance company to advise all Insured Parties in writing by certified mail, return receipt requested, or by nationally recognized overnight courier, at least thirty (30) days in advance of any termination of or change to the Policies that would affect the interest of any of the Insured Parties (the "**Insurance Certificates**").

(d) Landlord shall keep the Building insured against damage and destruction by fire, vandalism, and other perils under "all risk" property insurance written on a replacement cost basis in amounts required by a Mortgagee, or if there is no Mortgagee, in amounts sufficient to avoid the effects of co-insurance. Notwithstanding the foregoing, Landlord may elect to self-insure with respect to the insurance coverages required by the terms of this **Section 11.1(d)**.

Section 11.2 Mutual Release and Waiver of Subrogation. Landlord and Tenant shall each procure an appropriate clause in or endorsement to any property insurance it carries covering the Real Property or any personal property, fixtures and equipment located therein. The insurer under each such policy of property insurance shall waive subrogation or consent to a waiver of right of recovery against the other party. Each of Landlord and Tenant agrees not to make any claim against, or seek to recover from, the other for any loss or damage to its property or the property of others resulting from fire or other hazards covered by their respective policies. Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible for, (i) damage to any Alterations or improvements to the Premises (including Initial Installations); (ii) damage to Tenant's Property or the Landlord Purchased Furniture; or (iii) any loss suffered by Tenant due to interruption of Tenant's business.

Section 11.3 Restoration. (a) If the Premises are damaged by fire or other casualty, or if the Building is damaged such that Tenant is deprived of reasonable access to the Premises, Tenant shall give prompt notice thereof to Landlord, and the damage shall be repaired by Landlord to the condition of the Premises on the date possession thereof was delivered to Tenant in accordance with the terms of this Lease ("**Restoration Delivery Condition**"), subject to the provisions of any Mortgage or Superior Lease, but Landlord shall have no obligation to repair or restore any personal property, fixtures, furnishings, equipment, improvements, betterments or installations located in the Premises, whether or not installed or paid for by Landlord (excluding Landlord's Work). So long as no Event of Default exists and is continuing beyond the expiration of any applicable grace, notice and/or cure periods, then until the restoration of the Premises to Restoration Delivery Condition is Substantially Completed (or would have been Substantially Completed but for Tenant Delay or further Unavoidable Delay), Fixed Rent, Tenant's Tax Payments and Tenant's Expense Payment shall be reduced in the proportion by which the area of the floor of the Premises that is not tenantable or not accessible and is not used by Tenant bears to the total area of the floor of the Premises. This **Article 11** constitutes an express agreement governing any case of damage or destruction of the Premises or the Building by fire or other casualty, and Section 227 of the Real Property Law of the state of New York, which provides for such contingency in the absence of an express agreement, and any other law of like nature and purpose now or hereafter in force, shall have no application in any such case.

Section 11.4 Landlord's Termination Right. Notwithstanding anything to the contrary contained in **Section 11.3**, if (a) the Premises are totally damaged or are rendered wholly Untenable, (b) the Building shall be so damaged that, in Landlord's reasonable opinion, substantial alteration, demolition, or reconstruction of the Building shall be required (whether or not the Premises are so damaged or rendered Untenable), (c) any Mortgagee shall require that the insurance proceeds or any portion thereof be used to repay the Mortgage debt, or any Superior Lessor shall terminate the Superior Lease, as the case may be, or (d) the damage is not fully covered, except for deductible amounts, by Landlord's insurance policies, then, in any of such events, Landlord may, not later than sixty (60) days following the date of the damage, terminate this Lease by notice to Tenant, provided that if the Building, but not the Premises, is damaged, Landlord may not terminate this Lease unless Landlord similarly terminates the leases of other tenants in the Building aggregating (together with the Premises) at least 75% of the portion of the Building occupied for office purposes immediately prior to such damage. If this Lease is terminated under this **Section 11.4**, (v) the Term shall expire on the 30th day after such notice is given, (w) Tenant shall vacate the Premises and surrender the same to Landlord, (x) Tenant's liability for Rent shall cease as of the date of the damage, (y) any prepaid Rent for any period after the date of the damage shall be refunded by Landlord to Tenant and (z) Landlord shall be entitled to collect all insurance proceeds of policies held by Landlord or Tenant providing coverage for the Initial Installations and other improvements to the Premises. Landlord shall retain such proceeds from Tenant's insurance only to the extent that Landlord performed or paid for such Initial Installations or other Alterations and improvements, whether by contribution, offset or otherwise, and the balance of such proceeds, if any, shall be paid to Tenant.

Section 11.5 Tenant's Termination Right. If the Premises are totally damaged and are thereby rendered not in Restoration Delivery Condition, or if the Building shall be so damaged

that Tenant is deprived of reasonable access to the Premises, and if Landlord elects to restore the Premises, Landlord shall, within sixty (60) days following the date of the damage, cause a contractor or architect selected by Landlord to give notice (the “**Restoration Notice**”) to Tenant of the date by which such contractor or architect estimates the restoration of the Premises to Restoration Delivery Condition shall be Substantially Complete. If such date, as set forth in the Restoration Notice, is more than twelve (12) months from the date of such damage, then Tenant shall have the right to terminate this Lease by giving notice (the “**Casualty Termination Notice**”) to Landlord not later than thirty (30) days following delivery of the Restoration Notice to Tenant. If Tenant delivers a Casualty Termination Notice, this Lease shall be deemed to have terminated as of the date of the giving of the Casualty Termination Notice, in the manner set forth in the last sentence of **Section 11.4**. In addition, if the Restoration Notice is required to be given under this **Section 11.5**, and if the period set forth in the Restoration Notice is twelve (12) months or less, but the restoration of the Premises to Restoration Delivery Condition is not Substantially Completed within twelve (12) months, then within thirty (30) days after the expiration of such 12-month period, Tenant may give Landlord notice that it desires to terminate the Lease on the thirtieth (30th) day after the giving of such notice; and if the restoration of the Premises to Restoration Delivery Condition is not Substantially Completed within thirty (30) days after the giving of such notice, then on such thirtieth (30th) day, this Lease shall be deemed to have terminated as of such date, in the manner set forth in the last sentence of **Section 11.4**.

Section 11.6 Final 18 Months. Notwithstanding anything to the contrary in this **Article 11**, if any damage during the final eighteen (18) months of the Term renders the Premises wholly Untenantable, either Landlord or Tenant may terminate this Lease by notice to the other party within thirty (30) days after the occurrence of such damage, and this Lease shall expire on the 30th day after the date of such notice. For purposes of this **Section 11.6**, the Premises shall be deemed wholly Untenantable if Tenant shall be precluded from using more than 50% of the Premises for the conduct of its business and Tenant’s inability to so use the Premises is reasonably expected to continue for more than ninety (90) days.

Section 11.7 Landlord’s Liability. Any Building employee to whom any property shall be entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant’s agent with respect to such property, and neither Landlord nor its agents shall be liable for any damage to such property, or for the loss of or damage to any property of Tenant by theft or otherwise. None of the Insured Parties shall be liable for any injury or damage to persons or property or interruption of Tenant’s business resulting from fire, explosion, falling ceilings, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of said Building or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause or whatsoever nature, including but not limited to the making or repairs and improvements unless caused by or due to the negligence or willful misconduct of Landlord, its agents, servants or employees; none of the Insured Parties shall be liable for any such damage caused by other tenants or persons in said Building or caused by operations in construction of any private, public or quasi public work; nor shall Landlord be liable for any latent defect in the Premises or in the Building (except that Landlord shall be required to repair the same to the extent provided in **Section 4.2** or **Article 6**). No penalty shall accrue for delays that may arise by reason of adjustment of fire insurance on the part of Landlord or Tenant, or for any Unavoidable Delays

arising from any repair or restoration of any portion of the Building, provided that Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of any such repair or restoration.

ARTICLE 12

EMINENT DOMAIN

Section 12.1 Taking.

(a) **Total Taking.** If all or substantially all of the Real Property, the Building or the Premises shall be acquired or condemned for any public or quasi-public purpose (a "**Taking**"), this Lease shall terminate and the Term shall end as of the date of the vesting of title, and Rent shall be prorated and adjusted as of such date.

(b) **Partial Taking.** Upon a Taking of only a part of the Real Property, the Building or the Premises, and except as otherwise provided in this **Article 12**, this Lease shall continue in full force and effect, and from and after the date of the vesting of title, the Fixed Rent, Tenant's Tax Share and Tenant's Expense Share shall be modified to reflect the reduction of the Premises and/or the Building as a result of such Taking. Notwithstanding the foregoing, Tenant in all events shall be entitled to such part of the award attributable to any required restoration of any Tenant's Alterations, Initial Installations and Tenant's Property in all other cases.

(c) **Landlord's Termination Right.** Regardless of whether the Premises are affected, Landlord may, by notice to Tenant, within sixty (60) days following the date upon which Landlord receives notice of a Taking of all or a portion of the Real Property, the Building or the Premises, terminate this Lease, provided that Landlord elects to terminate leases (including this Lease) affecting at least 50% of the rentable area of the Building.

(d) **Tenant's Termination Right.** If the part of the Real Property so taken pursuant to a Taking affects more than 20% of the total area of the Premises occupied by Tenant immediately prior to such Taking, or if by reason of such Taking, Tenant no longer has reasonable means of access to the Premises, Tenant may terminate this Lease by notice to Landlord given within thirty (30) days following the date upon which Tenant is given notice of such Taking. If Tenant so notifies Landlord, this Lease shall end and expire upon the thirtieth (30th) day following the giving of such notice. If a part of the Premises is Taken, and this Lease is not terminated in accordance with this **Section 12.1**, Landlord shall (subject to the provisions of any Mortgage or Superior Lease), restore that part of the Premises not so Taken to a self-contained rental unit substantially equivalent with respect to character, quality, appearance and services to that which existed immediately prior to such Taking, excluding Tenant's Property and Alterations, including Initial Installations (but in no event shall Landlord be required to spend amounts in excess of the amount of the award paid to Landlord), and Tenant shall be entitled to a proportionate abatement of Rent on the same terms as set forth in **Section 11.3** above.

(e) **Apportionment of Rent.** Upon any termination of this Lease pursuant to the provisions of this **Article 12**, Rent shall be apportioned as of, and shall be paid or refunded up to and including, the date of such termination.

Section 12.2 Awards. Upon any Taking, Landlord shall receive the entire award for any such Taking. Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired portion of the Term or Tenant's Alterations (except with respect to the portion thereof paid for by Tenant), and Tenant hereby assigns to Landlord all of its right in and to such award. Nothing contained in this **Article 12** shall be deemed to prevent Tenant from making a separate claim in any condemnation proceedings for the then value of any Tenant's Property or Alterations paid for by Tenant included in such Taking and for any moving expenses, provided any such award is in addition to, and does not result in a reduction of, the award made to Landlord.

Section 12.3 Temporary Taking. If there is a temporary taking of all or any part of the Premises during the Term for any public or quasi-public use or purpose, Tenant shall give prompt notice to Landlord. In such event, the Term shall not be reduced or affected in any way, and Tenant shall continue to pay all Rent payable by Tenant without reduction or abatement and to perform all of its other obligations under this Lease, except to the extent prevented from doing so by the condemning authority, and Tenant shall be entitled to receive any award or payment from the condemning authority for such use, which shall be received, held and applied by Tenant as a trust fund for payment of the Rent. Notwithstanding the foregoing, Tenant in such event shall be entitled to such part of the award attributable to any required restoration of any Tenant's Alterations, Initial Installations and Tenant's Property. If any such temporary taking would permit Tenant to terminate this Lease pursuant to Section 12.1(d) above but for it being a temporary taking and such taking will last for more than twelve (12) months, Tenant shall have the right to terminate this Lease in accordance with the provisions Section 12.1(d) above.

ARTICLE 13

ASSIGNMENT AND SUBLETTING

Section 13.1 Assignment; Etc. (a) Except as otherwise expressly set forth herein, neither this Lease nor the term and estate hereby granted, nor any part hereof or thereof, shall be assigned, mortgaged, pledged, encumbered or otherwise transferred voluntarily, involuntarily, by operation of law or otherwise, and neither the Premises, nor any part thereof, shall be subleased, licensed, used or occupied by any Person other than Tenant, or be encumbered in any manner by reason of any act or omission on the part of Tenant, and no rents or other sums receivable by Tenant under any sublease of all or any part of the Premises shall be assigned or otherwise encumbered in each case, without Landlord's prior consent (which consent shall not be unreasonably withheld, conditioned or delayed). The dissolution or direct or indirect transfer of Control of Tenant (however accomplished, including, by way of example, the addition of new partners or members or withdrawal of existing partners or members; transfers of interests in distributions of profits or losses of Tenant; issuance of additional stock, redemption of stock, or stock voting agreements; or change in classes of stock) shall be deemed an assignment of this Lease, regardless of whether the transfer is made by means of one or more transactions, or

whether one or more Persons hold the Controlling interest prior to the transfer or afterwards. In addition, an agreement under which another Person becomes responsible for all or a portion of Tenant's obligations under this Lease shall be deemed an assignment of this Lease. No assignment or other transfer of this Lease and the term and estate hereby granted, and no subletting of all or any portion of the Premises, shall relieve Tenant of its liability under this Lease or of the obligation to obtain Landlord's prior consent to any further assignment, other transfer or subletting to the extent required hereunder (regardless of whether the initial assignment, subletting or transfer required Landlord's consent). Any attempt to assign this Lease or sublet all or any portion of the Premises in violation of this **Article 13** shall be null and void.

(b) Notwithstanding anything to the contrary in this Lease, without the consent of Landlord (and without Landlord having any rights to recapture the Premises or terminate the Lease or any rights to any profits), this Lease may be assigned (x) to an entity created by merger, reorganization or recapitalization of or with Tenant or a purchaser of all or substantially all of Tenant's assets and/or equity or (y) in connection with a Change of Control Event (as defined below) (collectively, (the resulting entity from any such transaction being referred to herein as a **"Successor Entity"**); *provided, however*, in each of the foregoing cases, (i) at least ten (10) Business Days prior to such assignment, Landlord receives notice of such assignment from Tenant, including the name of the assignee and evidence (reasonably satisfactory to Landlord) of its net worth, provided, however, if Tenant is restricted by law from providing such information prior to the effective date of such transaction it shall provide an officer's certificate of Tenant's net worth with such notice, and separately such evidence promptly after the effective date thereof, and the assignee assumes by written instrument satisfactory to Landlord all of Tenant's obligations under this Lease; (ii) such assignment is for a valid business purpose and not to avoid any obligations under this Lease; and (iii) the assignee is a reputable entity of good character and has, immediately after giving effect to such assignment, adequate net worth and liquidity for paying its obligations, including its obligations under this Lease, as determined by Landlord in its reasonable discretion (and taking into account the amount of the security deposit held by Landlord hereunder). For purposes hereof, the term **"Change of Control Event"** shall mean a transfer (however accomplished, whether in a single transaction or in a series of related or unrelated transactions) of equity interests (or any other mechanism such as, by way of example, the issuance of additional stock, a stock voting agreement or change in class(es) of stock) which results in a change of Control of Tenant (including, without limitation, if Tenant goes public and its shares are sold on the open market).

(c) Notwithstanding anything to the contrary in this Lease, without the consent of Landlord (and without Landlord having any rights to recapture the Premises or terminate the Lease or rights to any profits), Tenant may assign this Lease or sublet all or any part of the Premises (provided that there shall not be more than one sublease of the Premises at any time) to, or allow occupancy by, an Affiliate of Tenant (so long as such entity is an Affiliate of Tenant both prior to and after such assignment or subletting); *provided, however*, that (i) at least ten (10) Business Days prior to the effective date of such assignment or subletting, Landlord receives notice of such assignment or subletting from Tenant, including the name of the assignee or subtenant; (ii) in the case of an assignment, the assignee assumes by written instrument satisfactory to Landlord all of Tenant's obligations under this Lease; (iii) in the case of a subletting,

Tenant and the subtenant enter into a sublease complying with the terms of this Lease and otherwise reasonably satisfactory to Landlord; (iv) such assignment or subletting is for a valid business purpose and not to avoid any obligations under this Lease; and (v) the assignee or subtenant is a reputable entity of good character.

(d) Notwithstanding the foregoing, Tenant shall have no right to assign this Lease or sublease all or any portion of the Premises without Landlord's consent pursuant to **Sections 13.1(b) or (c)** if (x) Tenant is not the Named Tenant or a Person who acquired Tenant's interest in this Lease in a transaction approved by Landlord or (y) an Event of Default exists under this Lease.

Section 13.2 Landlord's Right of First Offer. (a) If Tenant desires to assign this Lease or sublet all or part of the Premises (other than in accordance with **Sections 13.1 (b) or (c)**), Tenant shall give Landlord notice ("**Tenant's Offer Notice**") thereof, specifying (i) in the case of a proposed subletting, the location of the space to be sublet, the term of the subletting of such space, Tenant's good faith offer of the fixed annual rent which Tenant desires to receive for such proposed subletting (assuming that a subtenant will pay for Taxes, Operating Expenses and electricity in the same manner, and utilizing the same base years or base amounts, as Tenant pays for such amounts under this Lease), any other economic terms (including amounts of free rent or other tenant inducements) and the proposed sublease commencement date; and (ii) in the case of a proposed assignment, Tenant's good faith offer of the consideration Tenant desires to receive or pay for such assignment and the proposed assignment date.

(b) Tenant's Offer Notice shall be deemed an irrevocable offer from Tenant to Landlord pursuant to which Landlord (or Landlord's designee) may, at Landlord's option, (i) terminate this Lease (if the proposed transaction is (x) an assignment; (y) a sublease of all or substantially all of the Premises for all or substantially all of the remaining Term; or (z) a sublease of a portion of the Premises which, when aggregated with other subleases then in effect, covers all or substantially all of the Premises for all or substantially all of the remaining Term) or (ii) terminate this Lease with respect to the portion of the Premises covered by the proposed sublease if such sublease is for all or substantially all of the remaining Term. Said option may be exercised by Landlord's giving notice to Tenant within thirty (30) days after receipt of Tenant's Offer Notice, together with all information required to be delivered pursuant to **Section 13.2(a)**, has been given by Tenant to Landlord.

(c) If Landlord exercises its option under **Section 13.2(b)(i)** to terminate this Lease, then this Lease shall terminate on the proposed assignment date or sublease commencement date specified in the applicable Tenant's Offer Notice, and all Rent shall be paid and apportioned to such date.

(d) Intentionally omitted

(e) If Landlord exercises its option under **Section 13.2(b)(ii)** to terminate this Lease with respect to the space covered by a proposed sublease, then (i) this Lease shall terminate with respect to such part of the Premises on the effective date of the proposed sublease; (ii) from and after such date the Rent shall be adjusted, based upon the proportion that the rentable area

of the Premises remaining bears to the total rentable area of the Premises (and the applicable rent for such portion) and (iii) Tenant shall pay to Landlord, upon demand, the costs incurred by Landlord in separately demising such part of the Premises and in complying with any Requirements relating to such demise.

(f) In the case of a proposed sublease, Tenant shall not sublet any space to a third party at a rental which is substantially different from (on a per rentable square foot basis) the rental (on a per rentable square foot basis) specified in Tenant's Offer Notice with respect to such space unless Tenant once again complies with all of the provisions of this **Section 13.2** and re-offers such space to Landlord at such lower rental. In the case of a proposed assignment, Tenant shall not assign this Lease to a third party to which Tenant pays greater consideration, or grants a greater concession, for such assignment than the consideration offered to be paid, or concession offered to be granted, to Landlord in Tenant's Offer Notice, or receives less consideration from such third party for such assignment than the consideration offered to be paid by Landlord in Tenant's Offer Notice, in each case without complying once again with all of the provisions of this **Section 13.2** and reoffering to assign this Lease to Landlord and to pay such consideration or grant such concession to Landlord provided such transaction is substantially different from the transaction in Tenant's Offer Notice. The terms of a proposed sublet or proposed assignment shall be deemed "substantially different from" the terms set forth in the Tenant's Offer Notice delivered to Landlord pursuant to Section 13.2 hereof if the economic terms of such proposed sublet or assignment on an aggregate basis differ by more than seven and five tenths percent (7.5%) from the terms contained in the terms set forth in the notice delivered to Landlord pursuant to Section 13.2 hereof.

Section 13.3 Assignment and Subletting Procedures. (a) If Tenant delivers to Landlord a Tenant's Offer Notice with respect to any proposed assignment of this Lease or subletting of all or part of the Premises and Landlord does not timely exercise any of its options under **Section 13.2** within thirty (30) days receipt of such Tenant's Offer Notice, and Tenant thereafter (or simultaneously with Tenant's Offer Notice) desires to assign this Lease or sublet the space specified in Tenant's Offer Notice, Tenant shall give Landlord notice (a "**Transfer Notice**") of such desire, which Transfer Notice shall be accompanied by (i) a copy of the executed proposed assignment or sublease and all related agreements, the effective date of which assignment or sublease shall be at least thirty (30) days after the giving of the Transfer Notice; (ii) a statement setting forth in reasonable detail the identity of the proposed assignee or subtenant, the nature of its business and its proposed use of the Premises; (iii) current financial information with respect to the proposed assignee or subtenant, including its most recent financial statements; and (iv) such other information as Landlord may reasonably request. Landlord acknowledges and agrees that Tenant may simultaneously send the Tenant's Offer Notice and Transfer Notice. Landlord's consent to the proposed assignment or sublease shall not be unreasonably withheld, conditioned or delayed, and shall be granted within thirty (30) days after receipt of said Transfer Notice, provided that:

(A) Such Transfer Notice shall be delivered to Landlord within 6 months after the delivery to Landlord of the applicable Tenant's Offer Notice, provided Tenant shall be permitted to deliver to Landlord Tenant's Offer

Notice and Transfer Notice simultaneously, in which event Landlord shall have the rights provided in Section 13.2 with respect to the transaction detailed in the Transfer Notice.

(B) Tenant shall not be in monetary or material non-monetary default under this Lease beyond the expiration of any applicable notice, cure and grace periods.

(C) In Landlord's reasonable judgment, the proposed assignee or subtenant will use the Premises in a manner that is in keeping with the then standards of the Building; is limited to the use expressly permitted under this Lease; and will not violate any restrictions set forth in this Lease, any Mortgage or Superior Lease or any negative covenant as to use of the Premises contained in any other lease of space in the Building.

(D) The proposed assignee or subtenant is, in Landlord's judgment, a reputable Person of good character and with sufficient financial worth considering the responsibility involved.

(E) Neither the proposed assignee or sublessee, nor any affiliate of such assignee or sublessee, is then an occupant of any part of the Building (provided there is then available (or coming available within the next six (6) months) comparable space in the Building).

(F) The proposed assignee or sublessee is not a Person with whom Landlord (or any affiliate of Landlord) is then negotiating, or has within the prior 3 months negotiated, to lease space provided there is then available (or coming available within the next six (6) months) comparable space in the Building.

(G) The form of the proposed sublease is reasonably satisfactory to Landlord and complies with the applicable provisions of this **Article 13**.

(H) [intentionally omitted]

(I) Tenant shall reimburse Landlord within thirty (30) days of demand for any actual out-of-pocket costs incurred by Landlord in connection with said assignment or sublease, including the costs of making investigations as to the acceptability of the proposed assignee or subtenant, and reasonable legal costs incurred in connection with the granting of any requested consent, provided such costs shall be capped at \$5,000 per transaction.

(J) Neither Tenant nor its brokers or agents shall list the Premises to be sublet or assigned at a rental rate less than Landlord is then offering to lease other space in the Building (the "**Market Rate Rent**") provided the foregoing does not restrict Tenant from listing with a broker at a rental rate

to be provided upon request, or entering into a transaction at a rental rate, in either case less than the Market Rate Rent.

(K) The subtenant or assignee shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity, regardless of whether the subtenant or assignee agrees to waive such diplomatic or sovereign immunity, and shall be subject to the service of process in, and the jurisdiction of the courts of, the city and state of New York.

Section 13.4 General Provisions. (a) If this Lease is assigned, whether or not in violation of this Lease, Landlord may collect rent from the assignee. If the Premises or any part thereof are sublet or occupied by anybody other than Tenant, whether or not in violation of this Lease, Landlord may, after default by Tenant beyond the expiration of any applicable grace, notice and/or cure periods, collect rent from the subtenant or occupant. In either event, Landlord may apply the net amount collected against Rent, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of **Section 13.1(a)**, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance of Tenant's obligations under this Lease.

(b) No assignment or transfer shall be effective until the assignee delivers to Landlord (i) evidence that the assignee, as Tenant hereunder, has complied with the requirements of **Article 11**, and (ii) an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee assumes Tenant's obligations under this Lease and agrees that, notwithstanding such assignment or transfer, the provisions of **Section 13.1** hereof shall be binding upon it in respect of all future assignments and transfers.

(c) Notwithstanding any assignment or transfer, whether or not in violation of this Lease, and notwithstanding the acceptance of any Rent by Landlord from an assignee, transferee, or any other party, the Original Named Tenant and each successor Tenant shall remain fully liable for the payment of the Rent and the performance of all of Tenant's other obligations under this Lease. The joint and several liability of Original Named Tenant and all immediate or remote successors in interest of Tenant shall not be discharged, released or impaired in any respect by any agreement made by Landlord extending the time to perform, or otherwise modifying, any of the obligations of Tenant under this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of Tenant under this Lease.

(d) Each subletting and/or assignment consented to by Landlord under the provisions of this Lease (or permitted without consent) is subject to the following:

(i) No subletting shall be for a term (including any renewal or extension options contained in the sublease) ending later than one day prior to the Expiration Date.

(ii) If an Event of Default occurs prior to the effective date of such assignment or subletting, then Landlord's consent thereto, if previously granted, shall be immediately deemed revoked without further notice to Tenant, and if such assignment

or subletting would have been permitted without Landlord's consent pursuant to **Section 13.1(b) or (c)**, such permission shall be void and without force and effect, and in either such case, any such assignment or subletting shall constitute a further Event of Default hereunder.

(iii) No sublease shall be valid, and no subtenant shall take possession of the Premises or any part thereof, until there has been delivered to Landlord, both (A) an executed counterpart of such sublease which shall be in form and substance acceptable to Landlord, and (B) certificates of insurance evidencing that subtenant has complied with the insurance obligations applicable to Tenant under **Article 11**.

(iv) Each sublease shall provide that it is subject and subordinate to this Lease, and to the matters to which this Lease is or shall be subordinate; and Tenant and each subtenant shall be deemed to have agreed that upon the occurrence and during the continuation of an Event of Default hereunder, Tenant has hereby assigned to Landlord and Landlord may, at its option, accept such assignment of, all of the right, title and interest of Tenant, as sublandlord, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be (A) liable for any previous act or omission of Tenant under such sublease, (B) subject to any counterclaim, offset or defense not expressly provided in such sublease, which theretofore accrued to such sublessee against Tenant, (C) bound by any previous modification of such sublease not consented to by Landlord or by any prepayment of more than one month's rent, (D) bound to return such sublessee's security deposit, if any, except to the extent Landlord shall receive actual possession of such deposit and such sublessee shall be entitled to the return of all or any portion of such deposit under the terms of its sublease, or (E) obligated to make any payment to or on behalf of such sublessee, or to perform any work in the subleased space or the Building, or in any way to prepare the subleased space for occupancy, beyond Landlord's obligations under this Lease. The provisions of this subsection (iv) shall be self-operative, and no further instrument shall be required to give effect to this provision, but the subtenant shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such subordination and attornment.

(e) Each sublease shall provide that the subtenant may not assign its rights thereunder or further sublet the space demised under the sublease, in whole or in part, without Landlord's consent (which consent shall be granted or withheld pursuant to the terms of this Article 13) and without complying with all of the terms and conditions of this **Article 13**, including, without limitation, **Section 13.4**, which for purposes of this **Section 13.4(e)** shall be deemed to be appropriately modified to take into account that the transaction in question is an assignment of the sublease or a further subletting of the space demised under the sublease, as the case may be.

(f) Tenant shall not publicly advertise the availability of the Premises or any portion thereof as sublet space or by way of an assignment of this Lease, without first obtaining Landlord's consent, which consent shall not be unreasonably withheld or delayed provided that Tenant does not advertise the rental rate or any description thereof; provided that Tenant, without obtaining Landlord's consent, may list the Premises on CoStar, and any other similar

listing service, provided that Tenant does not list the rental rate or any description thereof or provide any flyer or other offering materials in connection therewith.

(g) If Tenant shall sublet a portion of the Premises, Tenant acknowledges that, in addition to its obligations under **Article 5** above, Landlord shall have the right to require Tenant, at Landlord's option and at Tenant's sole cost and expense, to remove any demising walls installed in connection with such subletting and restore the Premises to at least as good condition as exists immediately prior to the installation of such demising walls.

Section 13.5 Indemnification of Landlord. Except in connection with Landlord's bad faith, Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any and all Losses resulting from any claims that may be made against Landlord by any proposed or actual subtenant or assignee, or anyone claiming under or through any proposed or actual subtenant or assignee, or by any brokers or other persons or entities claiming a commission or similar compensation in connection with any proposed or actual assignment or sublease, irrespective of whether Landlord shall give or decline to give its consent to any proposed or actual assignment or sublease, or if Landlord shall exercise any of its options under this **Article 13**.

Section 13.6 Tenant's Failure to Complete. If Landlord consents to a proposed assignment or sublease and such assignment or sublease fails to become effective within one hundred fifty (150) days after the giving of such consent, then Tenant shall again comply with all of the provisions and conditions of **Sections 13.2, 13.3 and 13.4** before assigning this Lease or subletting all or part of the Premises.

Section 13.7 Profits. (a) If Tenant enters into any assignment or sublease permitted hereunder or consented to by Landlord, and except as otherwise provided herein, Tenant shall, within sixty (60) days of the effective date of such assignment or sublease, deliver to Landlord a list of Tenant's reasonable out-of-pocket expenses of such transaction including, without limitation, brokerage fees, legal fees, architectural fees paid or to be paid in connection with such transaction, free rent, work performed or to be performed or work allowances provided to any such subtenant or assignee or any other reasonable and actual cost or expense of such transaction including in the case of any sublease, any actual costs incurred by Tenant in separately demising the sublet space (collectively, "**Transaction Costs**"), together with a list of all of Tenant's Property (if any) to be transferred to such assignee or subtenant. The Transaction Costs shall be amortized, on a straight line basis, over the term of any sublease. Tenant shall endeavor to deliver to Landlord evidence of the payment of any Transaction Costs within thirty (30) days after the same are paid. In consideration of such assignment or subletting, Tenant shall pay to Landlord:

(i) In the case of an assignment, within ten (10) days receipt by Tenant, 50% of all sums and other consideration paid to Tenant by the assignee for or by reason of such assignment (including key money, bonus money and any sums paid for services rendered by Tenant to the assignee in excess of the reasonable fair market value for such services and sums paid for the sale or rental of Tenant's Property, minus the then reasonable fair market or rental value thereof) after first deducting the Transaction Costs; or

(ii) In the case of a sublease, 50% of any consideration paid under the sublease to Tenant by the subtenant that exceeds on a per square foot basis the Fixed Rent and Additional Rent accruing hereunder during the term of the sublease in respect of the sublet space (together with any sums paid for services rendered by Tenant to the subtenant in excess of the reasonable fair market value for such services and sums paid for the sale or rental of Tenant's Property, less the then reasonable fair market or rental value thereof) after first deducting the monthly amortized amount of Transaction Costs. The sums payable under this clause shall be paid by Tenant to Landlord monthly within ten (10) days of when paid by the subtenant to Tenant.

(b) The amount payable under this **Section 13.7** with respect to any particular subletting or assignment is sometimes referred to herein as the "**Transfer Premium.**" Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any subletting or assignment, and shall have the right to make copies thereof provided same does not violate any Requirements and such parties enter into a reasonable confidentiality and non-disclosure agreement in the form reasonably required by Tenant prior to any such audit. If the Transfer Premium respecting any subletting or assignment shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency, and if understated by more than 2%, Landlord's costs of such audit. Notwithstanding anything in this Lease to contrary contained herein, in no event shall any Transfer Premium be due to Landlord in connection with any transactions pursuant to **Sections 13.1(b) or (c) or 13.10.**

Section 13.8 Listings in Building Directory. The listing of any name other than that of Tenant on the doors of the Premises, the Building directory (if any) or elsewhere shall not vest any right or interest in this Lease or in the Premises, nor be deemed to constitute Landlord's consent to any assignment or transfer of this Lease or to any sublease of the Premises or to the use or occupancy thereof by others. Any such listing shall constitute a privilege revocable in Landlord's discretion by notice to Tenant.

Section 13.9 Lease Disaffirmance or Rejection. If at any time after an assignment by the Named Tenant, this Lease is not affirmed or is rejected in any bankruptcy proceeding or any similar proceeding or upon a termination of this Lease due to any such proceeding, the Named Tenant, upon request of Landlord given after such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord), shall (a) pay to Landlord all Rent and other charges due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant," enter into a new lease of the Premises with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the Expiration Date, at the same Rent and upon the then executory terms, covenants and conditions contained in this Lease, except that (i) the rights of the Named Tenant under the new lease shall be subject to the possessory rights of the assignee under this Lease and the possessory rights of any Persons claiming through or under such assignee or by virtue of any statute or of any order of any court, (ii) such new lease shall require all defaults existing under this Lease to be cured by the Named Tenant with due diligence, and (iii) such new

lease shall require the Named Tenant to pay all Rent which, had this Lease not been so disaffirmed, rejected or terminated, would have become due under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If the Named Tenant defaults in its obligations to enter into such new lease for a period of ten (10) days after Landlord's request, then, in addition to all other rights and remedies by reason of default, either at law or in equity, Landlord shall have the same rights and remedies against the Named Tenant as if it had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 13.10 Permitted Occupants. Notwithstanding any other provision contained in the Lease, Tenant shall have the right, without Landlord's consent, but subject to compliance with the terms of this Section 13.10, to permit up to twenty-five (25%) percent of the Premises to be occupied on a temporary basis, at any time and from time to time, by clients, independent contractors or other persons with a significant, ongoing business relationship with Tenant (such persons or entities who shall be permitted to occupy portions of the Premises pursuant to this Section being hereinafter referred to as "**Permitted Occupant**", or collectively as the "**Permitted Occupants**"), provided that (i) there shall be no separate identification of any Permitted Occupants in the lobby of the Building, (ii) the Permitted Occupants shall use the Premises in conformity with all of the applicable provisions of the Lease, (iii) no demising walls shall be erected in the Premises separating the space used by a Permitted Occupant from the remainder of the Premises, (vi) in no event shall the use of any portion of the Premises by any Permitted Occupant create or be deemed to create any right, title or interest of the Permitted Occupant in or to the Premises, (vii) such arrangement will terminate automatically upon the termination of this Lease, (viii) the license or occupancy agreement is subject and subordinate to this Lease and all matters to which this Lease is subject and subordinate and (ix) such arrangement is for a valid business purpose and not to avoid any obligations under this Lease. The provisions of **Sections 13.1(a), 13.2, 13.3 and 13.7** above shall not apply to transactions pursuant to this **Section 13.11**.

ARTICLE 14

ACCESS TO PREMISES

Section 14.1 Landlord's Access.

(a) Landlord, Landlord's agents and utility service providers servicing the Building may erect, use and maintain concealed ducts, pipes and conduits in and through the Premises provided same are concealed behind walls and ceilings of the Premises and are installed by such methods and at such locations as will not materially interfere with or impair Tenant's layout or use of the Premises or reduce the useable area thereof beyond a de minimis amount. Landlord shall promptly repair any damage to the Premises caused by any work performed pursuant to this **Article 14**.

(b) Landlord, any Superior Lessor or Mortgagee, and any other party designated by Landlord and their respective agents shall have the right to enter the Premises at all reasonable times during Business Hours on Business Days, upon reasonable notice (which

notice may be oral or by e-mail) except in the case of emergency (when no notice shall be required), to examine the Premises, accompanied by a designated representative of Tenant if Tenant shall have made such representative available to Landlord, to show the Premises to prospective purchasers, Mortgagees, Superior Lessors or tenants (provided Landlord shall only be permitted to enter to show to prospective tenants during the final twelve (12) months of the Term) and their respective agents and representatives or others and to perform Restorative Work to the Premises or the Building.

(c) All parts (except surfaces facing the interior of the Premises) of all walls, windows and doors bounding the Premises, all balconies, terraces and roofs adjacent to the Premises, all space in or adjacent to the Premises used for shafts, stacks, stairways (other than internal stairways consented to by Landlord), mail chutes, conduits and other mechanical facilities, Building Systems, Building facilities and Common Areas are not part of the Premises, and Landlord shall have the use thereof and access thereto through the Premises for the purposes of Building operation, maintenance, alteration and repair.

Section 14.2 Building Name. Landlord has the right at any time to change the name, number or designation by which the Building is commonly known.

Section 14.3 Light and Air. If at any time any windows of the Premises are temporarily darkened or covered over by reason of any Restorative Work, any of such windows are permanently darkened or covered over due to any Requirement or there is otherwise a diminution of light, air or view by another structure which may hereafter be erected (whether or not by Landlord), Landlord shall not be liable for any damages and Tenant shall not be entitled to any compensation or abatement of any Rent, nor shall the same release Tenant from its obligations hereunder or constitute an actual or constructive eviction.

ARTICLE 15

DEFAULT

Section 15.1 Tenant's Defaults. "Event of Default" means any one of the following:

(a) Tenant fails to pay when due any installment of Rent and such default shall continue for ten (10) days after notice of such default is given to Tenant; or

(b) Tenant fails to observe or perform any other term, covenant or condition of this Lease and such failure continues for more than thirty (30) days (ten (10) days with respect to a default under **Article 3**) after notice by Landlord to Tenant of such default, or if such default (other than a default under **Article 3**) is of a nature that it cannot be completely remedied within thirty (30) days, failure by Tenant to commence to remedy such failure within said thirty (30) days, and thereafter diligently prosecute to completion all steps necessary to remedy such default; or

(c) if Landlord applies or retains any part of the security held by it hereunder, and Tenant fails to deposit with Landlord the amount so applied or retained by Landlord, or to

provide Landlord with a replacement Letter of Credit (as hereinafter defined), if applicable, within 10 days after notice by Landlord to Tenant stating the amount applied or retained; or

(d) Tenant defaults in the observance or performance of any term, covenant or condition on Tenant's part to be observed or performed under any other lease with Landlord or Landlord's predecessor-in-interest for space in the Building and such default shall continue beyond any grace period set forth in such other lease for the remedying of such default; or

(e) Tenant or any guarantor of this Lease files a voluntary petition in bankruptcy or insolvency, or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any present or future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or makes an assignment for the benefit of creditors or seeks or consents to or acquiesces in the appointment of any trustee, receiver, liquidator or other similar official for Tenant or such guarantor, as the case may be, or for all or any part of Tenant's property or such guarantor's property, as the case may be; or

(f) a court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a trustee, receiver or liquidator of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof.

Upon the occurrence of any one or more of such Events of Default, Landlord may, at its sole option, give to Tenant five (5) Business Days' notice of cancellation of this Lease (or of Tenant's possession of the Premises), in which event this Lease and the Term (or Tenant's possession of the Premises) shall terminate (whether or not the Term shall have commenced) with the same force and effect as if the date set forth in the notice were the Expiration Date stated herein; and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable for damages as provided in this **Article 15**.

Section 15.2 Landlord's Remedies.

(a) **Possession/Reletting.** If any Event of Default occurs and this Lease and the Term, or Tenant's right to possession of the Premises, terminate as provided in **Section 15.1**:

(i) **Surrender of Possession.** Tenant shall quit and surrender the Premises to Landlord, and Landlord and its agents may immediately, or at any time after such termination, re-enter the Premises or any part thereof, without notice, either by summary proceedings, or by any other applicable action or proceeding, or by force (to the extent permitted by law) or otherwise in accordance with applicable legal proceedings (without being liable to indictment, prosecution or damages therefor), and may repossess the Premises and dispossess Tenant and any other Persons from the Premises and remove any and all of their property and effects from the Premises.

(ii) **Landlord's Reletting.** Landlord, at Landlord's option, may relet all or any part of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for any term ending before, on or after the Expiration Date, at such rental and upon such other conditions (which may include concessions and free rent periods) as Landlord, in its sole discretion, may determine. Landlord shall have no obligation to accept any tenant offered by Tenant and shall not be liable for failure to relet, in the event of any such reletting, for failure to collect any rent due upon any such reletting; and no such failure shall relieve Tenant of, or otherwise affect, any liability under this Lease. Landlord, at Landlord's option, may make such alterations, decorations and other physical changes in and to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

(b) **Tenant's Waiver.** Tenant, on its own behalf and on behalf of all Persons claiming through or under Tenant, including all creditors, hereby waives all rights which Tenant and all such Persons might otherwise have under any Requirement (i) to the service of any notice of intention to re-enter or to institute legal proceedings, (ii) to redeem, or to re-enter or repossess the Premises, or (iii) to restore the operation of this Lease, after (A) Tenant shall have been dispossessed by judgment or by warrant of any court or judge, (B) any re-entry by Landlord, or (C) any expiration or early termination of the term of this Lease, whether such dispossession, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings.

(c) **Tenant's Breach.** Upon the breach by Tenant, or any Persons claiming through or under Tenant, of any term, covenant or condition of this Lease, Landlord shall have the right to enjoin such breach and to invoke any other remedy allowed by law or in equity as if re-entry, summary proceedings and other special remedies were not provided in this Lease for such breach. The rights to invoke the remedies set forth above are cumulative and shall not preclude Landlord from invoking any other remedy allowed at law or in equity.

Section 15.3 Landlord's Damages.

(a) **Amount of Damages.** If this Lease and the Term, or Tenant's right to possession of the Premises, terminate as provided in **Section 15.1**, then

(i) Tenant shall pay to Landlord all items of Rent payable under this Lease by Tenant to Landlord prior to the date of termination.

(ii) Landlord may retain all monies, if any, paid by Tenant to Landlord (and, in the case of any Letter of Credit, draw on such Letter of Credit), whether as prepaid Rent, a security deposit (or proceeds thereof) or otherwise, which monies, to the extent not otherwise applied to amounts due and owing to Landlord, shall be credited by Landlord against any damages payable by Tenant to Landlord and/or against any Rent due hereunder.

(iii) Tenant shall pay to Landlord, in monthly installments, on the days specified in this Lease for payment of installments of Fixed Rent, any Deficiency; it being understood that Landlord shall be entitled to recover the Deficiency from Tenant each month as the same shall arise, and no suit to collect the amount of the Deficiency for any month, shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding.

(iv) Whether or not Landlord shall have collected any monthly Deficiency, Tenant shall pay to Landlord, on demand, in lieu of any further Deficiency and as liquidated and agreed final damages, a sum equal to the amount by which the Rent for the period which otherwise would have constituted the unexpired portion of the Term (assuming the Additional Rent, or expenses on which the amount of any item of Additional Rent is based, as applicable, during such period to be the same as was payable for the year immediately preceding such termination or re-entry, increased in each succeeding year by 4% (on a compounded basis)) exceeds the then fair and reasonable rental value of the Premises, for the same period (with both amounts being discounted to present value at a rate of interest equal to 2% below the then Base Rate minus the aggregate amount of the Deficiency theretofore collected by Landlord pursuant to the provisions of **Section 15.3(a)(iii)** for the same period. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Premises, or any part thereof, shall have been relet by Landlord for the period that otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed prima facie to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(b) **Reletting.** If the Premises, or any part thereof, are relet together with other space in the Building, the rents collected or reserved under any such reletting and the actual out-of-pocket expenses of any such reletting shall be equitably apportioned for the purposes of this **Section 15.3**. Tenant shall not be entitled to any rents collected or payable under any reletting, whether or not such rents exceed the Fixed Rent reserved in this Lease. Nothing contained in this **Article 15** shall be deemed to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages by any Requirement, or of any sums or damages to which Landlord may be entitled in addition to the damages set forth in this **Section 15.3**.

Section 15.4 Interest and Late Charge. If any payment of Rent is not paid when due, interest shall accrue on such payment at the Interest Rate from the date such payment became due until paid. Tenant acknowledges that late payment by Tenant of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include processing and accounting charges and late charges that may be imposed on Landlord by the terms of any note secured by a Mortgage covering the Premises. Therefore, in addition to assessing interest, if any Rent is not paid when due, Landlord shall assess a late charge equal to 5% of such Rent; *provided, however*, that on two (2) occasions during any calendar year of the Term, Landlord shall give Tenant notice of such late

payment and Tenant shall have a period of five (5) Business Days thereafter in which to make such payment before any late charge or interest is assessed. Such interest and late charges are separate and cumulative, and are in addition to, and do not diminish or represent a substitute for, any of Landlord's rights or remedies under any other provision of this Lease.

Section 15.5 Other Rights of Landlord. For avoidance of doubt, if Tenant fails to pay any Additional Rent when due, Landlord, in addition to any other right or remedy, shall have the same rights and remedies as in the case of a default by Tenant in the payment of Fixed Rent. Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any items of Rent due under the Lease Landlord sees fit, regardless of any request by Tenant.

ARTICLE 16

LANDLORD'S RIGHT TO CURE; FEES AND EXPENSES

Section 16.1 If Tenant defaults in the performance of its obligations under this Lease, Landlord, without waiving such default, may perform such obligations at Tenant's expense (a) immediately, and without notice, in the case of emergency (which could cause injury to a person or damage to property), in the case that Tenant fails to maintain insurance as required under this Lease, or in the case that the default materially and adversely interferes with the use by any other tenant of the Building, materially and adversely interferes with the efficient operation of the Building, results in a violation of any Requirement, and/or results or may result in a cancellation of any insurance policy maintained by Landlord; and (b) in any other case, if such default continues for more than ten (10) days after the date Landlord gives notice of Landlord's intention to perform the defaulted obligation. All reasonable and actual out-of-pocket costs and expenses incurred by Landlord as a result of any default by Tenant under this Lease or in connection with any such performance by Landlord in accordance with the previous sentence, and all reasonable actual out-of-pocket costs and expenses, including reasonable attorney's fees and disbursements, incurred by Landlord in any action or proceeding (including any unlawful detainer proceeding) brought by Landlord or in which Landlord is a party to enforce any obligation of Tenant under this Lease and/or any right of Landlord in or to the Premises, shall be paid by Tenant to Landlord within thirty (30) days of demand, with interest thereon at the Interest Rate from the date incurred by Landlord. Except as expressly provided to the contrary in this Lease, all costs and expenses that are incurred by Landlord and payable by Tenant to Landlord under this Lease, and all charges, amounts and sums payable to Landlord by Tenant for any property, material, labor, utility or other services that pursuant to this Lease or at the request and for the account of Tenant, are provided, furnished or rendered by Landlord, shall become due and payable by Tenant to Landlord within thirty (30) days after receipt of Landlord's invoice for such amount.

Section 16.2 Notwithstanding anything to the contrary herein contained, there shall be no personal liability imposed on any shareholder, member or other holder of any equity interest in Tenant or any officer, director or employee thereof pursuant to this Lease, except to the extent that such person or entity becomes Tenant hereunder or a guarantor of Tenant's obligations hereunder.

Section 16.3 Landlord and Tenant agree that in the event of any action or proceeding between Landlord and Tenant with respect to this Lease the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees with respect to such action or proceeding.

ARTICLE 17

NO REPRESENTATIONS BY LANDLORD; LANDLORD'S APPROVAL

Section 17.1 No Representations. Except as expressly set forth herein, (a) Landlord and Landlord's agents have made no warranties, representations, statements or promises with respect to the Building, the Real Property or the Premises and (b) no rights, easements or licenses are acquired by Tenant by implication or otherwise. Tenant is entering into this Lease after full investigation and is not relying upon any statement or representation made by Landlord not embodied in this Lease.

Section 17.2 No Money Damages. Wherever in this Lease, Landlord's consent or approval is required, if Landlord refuses to grant such consent or approval, whether or not Landlord expressly agreed that such consent or approval would not be unreasonably withheld, Tenant shall not make or exercise, and Tenant hereby waives, any claim for money damages (including any claim by way of setoff, counterclaim or defense) and/or any right to terminate this Lease based on Tenant's claim or assertion that Landlord unreasonably withheld or delayed its consent or approval (except in the case of Landlord's bad faith). Tenant's sole remedy in such event shall be an action or proceeding to enforce such provision, by specific performance, injunction or declaratory judgment without being required to post a bond or post any other security. In no event shall Landlord be liable for, and Tenant, on behalf of itself and all other Tenant Parties, hereby waives any claim for, any indirect, consequential or punitive damages, including loss of profits or business opportunity, arising under or in connection with this Lease (except any actions taken by Landlord in bad faith). In no event shall Tenant be liable for, and Landlord, on behalf of itself and all other Landlord Parties, hereby waives any claim for, any indirect, consequential or punitive damages, including loss of profits or business opportunity, arising under or in connection with this Lease (except pursuant to Section 18.2 hereof).

ARTICLE 18

END OF TERM

Section 18.1 Expiration. Upon the expiration or other termination of this Lease, Tenant shall quit and surrender the Premises to Landlord vacant, broom clean and in good order and condition, ordinary wear and tear and damage for which Tenant is not responsible under the terms of this Lease excepted, and Tenant shall remove all of Tenant's Property and Tenant's Specialty Alterations as may be required pursuant to **Article 5**.

Section 18.2 Holdover Rent. Landlord and Tenant recognize that Landlord's damages resulting from Tenant's failure to timely surrender possession of the Premises may be substantial, may exceed the amount of the Rent payable hereunder, and will be impossible to accurately

measure. Accordingly, if possession of the Premises is not surrendered to Landlord on the Expiration Date or sooner termination of this Lease, in addition to any other rights or remedies Landlord may have hereunder, at law or equity or under Requirements, Tenant shall (a) pay to Landlord for each month (or any portion thereof) during which Tenant holds over in the Premises after the Expiration Date or sooner termination of this Lease, a sum equal to the following: (x) for the initial sixty (60) days following the Expiration Date, 1.5 times the Rent payable under this Lease for the last full calendar month of the Term, and (y) for any such holdover period beyond the initial sixty (60) days following the Expiration Date, the greater of (i) 2.0 times the Rent payable under this Lease for the last full calendar month of the Term, and (ii) 2.0 times the rent per month Landlord is then asking for comparable space in the Building (or if no comparable space is then available in the Building, the fair market rental value of the Premises for such month, as reasonably determined by Landlord); (b) be liable to Landlord, provided Tenant shall not so surrender the Premises within sixty (60) days following the Expiration Date, for (i) any payment or rent concession which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Premises (a "**New Tenant**") in order to induce such New Tenant not to terminate its lease by reason of the holding-over by Tenant (provided Landlord shall provide evidence that same was so required by the New Tenant because of such holdover), and (ii) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding-over by Tenant; and (c) provided Tenant shall not so surrender the Premises within sixty (60) days following the Expiration Date, indemnify Landlord against all claims for damages by any New Tenant. No holding-over by Tenant, nor the payment to Landlord of the amounts specified above, shall operate to extend the Term hereof. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Premises after the Expiration Date or sooner termination of this Lease, and no acceptance by Landlord of payments from Tenant after the Expiration Date or sooner termination of this Lease shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this **Section 18.2**.

Section 18.3 Waiver of Stay. Tenant expressly waives, for itself and for any Person claiming through or under Tenant, any rights which Tenant or any such Person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor Requirement of like import then in force, in connection with any holdover summary proceedings which Landlord may institute to enforce the foregoing provisions of this **Article 18**.

ARTICLE 19

QUIET ENJOYMENT

Provided this Lease is in full force and effect and no Event of Default then exists, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any Person lawfully claiming through or under Landlord, subject to the terms and conditions of this Lease and to all Superior Leases, Mortgages and encumbrances.

ARTICLE 20

NO SURRENDER; NO WAIVER

Section 20.1 No Surrender or Release. No act or thing done by Landlord or Landlord's agents or employees during the Term shall be deemed an acceptance of a surrender of the Premises, and no provision of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing and is signed by Landlord. No provision of this Lease shall be deemed to have been waived by Tenant, unless such waiver is in writing and is signed by Tenant.

Section 20.2 No Waiver. The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules and Regulations, shall not be construed as a waiver or relinquishment for the future performance of such obligations of this Lease or the Rules and Regulations, or of the right to exercise such election; but such covenant, condition, rule, regulation and/or right shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of any Rent payable pursuant to this Lease or any other sums with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly (or other) Rent herein stipulated shall be deemed to be other than a payment on account of the earliest stipulated Rent, or as Landlord may elect to apply such payment. No endorsement or statement on any check or any letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

ARTICLE 21

WAIVER OF TRIAL BY JURY; COUNTERCLAIM

Section 21.1 Jury Trial Waiver. LANDLORD AND TENANT EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, THE USE OR OCCUPANCY OF THE PREMISES BY TENANT OR ANYONE CLAIMING THROUGH OR UNDER TENANT, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE, EMERGENCY OR OTHERWISE. THE PROVISIONS OF THIS **SECTION 21.1** SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THE TERM.

Section 21.2 Waiver of Counterclaim. If Landlord commences any summary proceeding against Tenant, or any proceeding of like import, Tenant will not interpose any counterclaim of any nature or description in any such proceeding (unless failure to interpose such counterclaim would preclude Tenant from asserting in a separate action the claim which is the subject of such counterclaim), and will not seek to consolidate such proceeding with any other action which may have been or will be brought in any other court by Tenant.

ARTICLE 22

NOTICES

Except as otherwise expressly provided in this Lease, all consents, notices, notifications, demands, requests, approvals or other communications required or permitted to be given under this Lease ("**Notices**") shall be in writing and shall be deemed sufficiently given or rendered (i) if delivered by hand (provided a signed receipt is obtained); (ii) if sent by registered or certified mail (return receipt requested); or (iii) if sent by a nationally recognized overnight delivery service for next-business-day delivery, in each case addressed to Landlord and Tenant (and with copies) as set forth in **Article 1**, and (if sent to Landlord) also to any Mortgagee or Superior Lessor who requires copies of notices and whose address is provided to Tenant at the address so provided, or to such other addresses as Landlord, Tenant or any Mortgagee or Superior Lessor may designate as its new addresses for such purpose by notice given in accordance with the provisions of this **Article 22**. Any Notice shall be deemed to have been given on the date of receipted delivery, refusal to accept delivery or when delivery is first attempted but cannot be made due to a change of address for which no notice is given, whichever is earliest. Notices given by a Person's attorney shall have the same effect as if given by such Person.

ARTICLE 23

RULES AND REGULATIONS

All Tenant Parties shall observe and comply with the Rules and Regulations, as supplemented or amended from time to time. Landlord reserves the right, from time to time, to adopt additional Rules and Regulations and to amend the Rules and Regulations then in effect; provided, however, that in case of any conflict or inconsistency between the provisions of this Lease and of any of the Rules and Regulations as originally or as hereafter adopted, the provisions of this Lease shall control. Reasonable notice of any additional rules and regulations shall be given to Tenant. Nothing contained in this Lease shall impose upon Landlord any obligation to enforce the Rules and Regulations or the terms, covenants or conditions in any other lease against any other Building tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, visitors or licensees. Landlord shall not enforce any of the Rules and Regulations against Tenant in a discriminatory fashion. In no event shall any Rules and Regulations hereafter adopted conflict with the terms of this Lease or materially adversely affect Tenant's use and enjoyment of the Premises or Tenant's leasehold estate with respect thereto.

ARTICLE 24

BROKER

Each of Landlord and Tenant represents and warrants to the other that neither it nor its agents have dealt with any broker in connection with this Lease other than Landlord's Broker and Tenant's Broker. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all Losses which Landlord may incur by reason of any claim of or liability to any broker, finder or like agent (other than Landlord's Broker and Tenant's Broker) arising out of any

dealings claimed to have occurred between Tenant and the claimant in connection with this Lease, and/or the above representation by Tenant made in this **Article 24** being false. Landlord shall indemnify, defend, protect and hold Tenant harmless from and against any and all Losses which Tenant may incur by reason of any claim of or liability to any broker, finder or like agent (including Landlord's Broker and Tenant's Broker) arising out of any dealings claimed to have occurred between Landlord and the claimant in connection with this Lease, and/or the representation by Landlord made in this **Article 24** being false. Landlord agrees to pay a commission to Tenant's Broker and Landlord's Broker pursuant to a separate agreement. The provisions of this Article 24 shall survive the expiration or sooner termination of the Term.

ARTICLE 25

INDEMNITY

Section 25.1 Tenant's Indemnity. Tenant shall not do or permit to be done any act or thing in, on or about the Premises or Real Property that may subject Landlord to any liability or responsibility for injury to persons or damage to property or to any liability by reason of any violation of any Requirement, and Tenant shall exercise such control over the Premises as to fully protect Landlord against any such liability. Except to the extent caused by the negligence or willful misconduct of Landlord or any Landlord Party, Tenant shall indemnify, defend, protect and hold harmless each of the Landlord Indemnitees from and against any and all Losses resulting from any claims (i) against the Landlord Indemnitees to the extent attributable from any act, omission (where there is a duty to act) or negligence of any Tenant Party, (ii) against the Landlord Indemnitees to the extent arising from any accident, injury or damage whatsoever caused to any person or to the property of any person and occurring in or about the Premises, and/or (iii) against the Landlord Indemnitees to the extent resulting from any breach, violation or nonperformance of any covenant, condition or agreement of this Lease on the part of Tenant to be fulfilled, kept, observed or performed. Notwithstanding any provision in this Lease to the contrary, in no event shall Tenant have any liability for punitive or special damages of any kind, except to the extent same are payable to a third party and such damages are covered by Tenant's indemnification obligations hereunder.

Section 25.2 Landlord's Indemnity. Landlord shall indemnify, defend and hold harmless Tenant and any Tenant Party from and against all Losses incurred by Tenant arising from any claims against Tenant or any Tenant Party resulting from, or in connection with (i) any accident, injury or damage caused to any person or the property of any person in or about the Building, the Common Areas or the Premises to the extent attributable to the negligence or willful misconduct of Landlord or its employees or agents or a Landlord Party, and/or (iii) any breach, violation or nonperformance of any covenant, condition or agreement of this Lease on the part of Landlord to be fulfilled, kept, observed or performed.

Section 25.3 Defense and Settlement. (a) If any claim, action or proceeding for which Tenant indemnifies Landlord or any other Landlord Indemnitee hereunder is made or brought against any Landlord Indemnitee, then upon demand by a Landlord Indemnitee, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the Landlord Indemnitee's name (if necessary) by attorneys approved by the Landlord Indemnitee, which

approval shall not be unreasonably withheld. Attorneys for Tenant's insurer shall be deemed approved for purposes of this **Section 25.3(a)**. Notwithstanding the foregoing, a Landlord Indemnitee may retain its own attorneys to participate or assist in defending any claim, action or proceeding involving potential liability in excess of the amount covered under Tenant's liability insurance for such claim, provided that Landlord shall pay the reasonable fees and disbursements of such attorneys. In addition, if Tenant fails to diligently defend any claim, action or proceeding, or if there is a legal conflict or other conflict of interest, then a Landlord Indemnitee may retain separate counsel at Tenant's expense. Notwithstanding anything herein contained to the contrary, Tenant may direct the Landlord Indemnitee to settle any claim, suit or other proceeding if (i) such settlement does not obligate the Landlord Indemnitee for anything other than the payment of money; (ii) any payments to be made pursuant to such settlement shall be paid in full by Tenant at the time such settlement is reached; (iii) such settlement does not require the Landlord Indemnitee to admit any liability; and (iv) the Landlord Indemnitee shall have received an unconditional release from the other parties to such claim, suit or other proceeding.

(b) If any claim, action or proceeding for which Landlord indemnifies Tenant or any Tenant Party hereunder is made or brought against Tenant or any such Tenant Party, then upon demand by Tenant or such Tenant Party, Landlord, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Tenant's (or Tenant Party's) name (if necessary) by attorneys approved by Tenant, which approval shall not be unreasonably withheld. Attorneys for Landlord's insurer shall be deemed approved for purposes of this **Section 25.3(b)**. Notwithstanding the foregoing, Tenant may retain its own attorneys to participate or assist in defending any claim, action or proceeding involving potential liability in excess of the amount covered under Landlord's liability insurance for such claim, provided that Tenant shall pay the reasonable fees and disbursements of such attorneys. In addition, if Landlord fails to diligently defend any claim, action or proceeding, or if there is a legal conflict or other conflict of interest, then Tenant may retain separate counsel at Landlord's expense. Notwithstanding anything herein contained to the contrary, Landlord may direct Tenant to settle any claim, suit or other proceeding if (i) such settlement does not obligate Tenant for anything other than the payment of money; (ii) any payments to be made pursuant to such settlement shall be paid in full by Landlord at the time such settlement is reached; (iii) such settlement does not require Tenant to admit any liability; and (iv) Tenant shall have received an unconditional release from the other parties to such claim, suit or other proceeding.

ARTICLE 26

MISCELLANEOUS

Section 26.1 Delivery. This Lease shall not be binding upon Landlord or Tenant unless and until Landlord has executed and delivered a fully executed copy of this Lease to Tenant.

Section 26.2 Transfer of Real Property. Landlord's obligations under this Lease shall not be binding upon the Landlord named herein after the sale, conveyance, assignment or transfer (collectively, a "**Transfer**") by such landlord (or upon any subsequent landlord after the Transfer by such subsequent landlord) of its interest in the Building or the Real Property, as the case may be provided same is assumed by the transferee. In the event of any such Transfer, the

Landlord named herein (and any such subsequent Landlord) shall be entirely freed and relieved of all covenants and obligations of Landlord hereunder arising from and after the date of Transfer, and the transferee of Landlord's interest (or that of such subsequent Landlord) in the Building or the Real Property, as the case may be, shall have assumed (in writing) all obligations under this Lease arising from and after the date of Transfer, including without limitation for the return of the Security Deposit provided the transferring landlord transferred the unapplied portion of the Security Deposit to any such transferee.

Section 26.3 Limitation on Liability. The liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest in the Real Property and the Building and the rents, proceeds and income thereof; and Tenant shall not look to any other property or assets of Landlord or the property or assets of any other Person (including any Landlord Indemnitee) in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations; and no Person other than Landlord (subject to the foregoing provisions of this paragraph) shall be personally liable for the performance of Landlord's obligations under this Lease. Landlord shall not look to any other property or assets of any other Person (including any Tenant Party, but excluding any guarantor of this Lease) in seeking either to enforce Tenant's obligations under this Lease or to satisfy a judgment for Tenant's failure to perform such obligations; and no Person other than Tenant (and any guarantor of this Lease) shall be personally liable for the performance of Landlord's obligations under this Lease.

Section 26.4 Rent. All amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated Fixed Rent, Tenant's Tax Payment, Tenant's Expense Payment, Additional Rent or Rent, shall constitute "rent" for the purposes of Section 502(b)(6) of the United States Bankruptcy Code.

Section 26.5 Entire Document. This Lease (including any schedules and exhibits attached in this Lease and all supplementary agreements provided for herein) contains the entire agreement between the parties, and all prior negotiations and agreements are merged into this Lease. All of the schedules and exhibits attached to this Lease are incorporated in and made a part of this Lease, *provided, however*, that in the event of any inconsistency between the terms and provisions of the schedules and exhibits, on the one hand, and the body of this Lease, on the other, the terms and provisions of the provisions in the body of this Lease shall govern.

Section 26.6 Governing Law. This Lease shall be governed in all respects by the laws of the state of New York.

Section 26.7 Unenforceability. If any provision of this Lease, or its application to any Person or circumstance, is held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such provision to any other Person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

Section 26.8 Lease Disputes.

(a) Landlord and Tenant each agrees that all disputes arising out of or relating to this Lease (whether directly or indirectly), and all actions to enforce this Lease, shall be dealt with and adjudicated in the state courts of the State of New York sitting in New York County or the federal courts for the Southern District of New York; and for that purpose, Landlord and Tenant each hereby expressly and irrevocably submits itself to the jurisdiction of such courts. Landlord and Tenant each agrees that to the extent permitted under applicable law, this consent to personal jurisdiction shall be self-operative, and no further instrument or action, other than service of process in one of the manners specified in this Lease, or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon it in any such court.

(b) To the extent that Tenant has or hereafter acquires any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Tenant irrevocably waives such immunity in respect of its obligations under this Lease.

Section 26.9 Landlord's Agent. Unless Landlord delivers notice to Tenant to the contrary, Landlord's Agent is authorized to act as Landlord's agent in connection with this Lease, and Tenant shall be entitled to rely upon correspondence received from Landlord's Agent. Tenant acknowledges that Landlord's Agent is acting solely as agent for Landlord in connection with the foregoing; and neither Landlord's Agent nor any of its direct or indirect partners, members, managers, officers, shareholders, directors, employees, principals, agents or representatives shall have any liability to Tenant in connection with the performance of this Lease, and Tenant waives any and all claims against any and all of such parties arising out of, or in any way connected with, this Lease, the Building or the Real Property.

Section 26.10 Estoppel. Within ten (10) Business Days after request from Landlord, any Mortgagee or any Superior Lessor, Tenant shall deliver to Landlord a statement executed and acknowledged by Tenant, in form reasonably satisfactory to Landlord (or such Mortgagee or Superior Lessor), (a) stating the Commencement Date, the Rent Commencement Date and the Expiration Date; (b) stating that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (c) setting forth the date to which the Fixed Rent and any Additional Rent have been paid, together with the amount of monthly Fixed Rent and Additional Rent then payable, (d) stating whether or not, to the best of Tenant's knowledge, Landlord is in default under this Lease and, if Landlord is in default, setting forth the specific nature of all such defaults, (e) stating the amount of the Security Deposit held by Landlord under this Lease, (f) stating whether there are any subleases or assignments affecting the Premises and if so, to whom and (in the case of a sublease) for what term; (g) stating the address of Tenant to which all notices and communications under the Lease must be sent; and (h) responding to any other factual matters reasonably requested by Landlord, such Mortgagee or such Superior Lessor. Tenant acknowledges that any statement delivered pursuant to this **Section 26.10** may be relied upon by any purchaser or owner of all of any portion of the Real Property, the Building or Landlord's interest in the Real Property or the Building, or any Superior Lease; or by any Mortgagee, or assignee thereof; or by any Superior Lessor, or assignee thereof. In no event shall Tenant be deemed to have waived any rights against the then current Landlord

(but not any holder of a Superior Lease or Mortgage, or any of their or Landlord's respective successors or assigns, which holders and successors and assigns shall have the right to rely on such statement in all respects) by reason of the execution of any instrument pursuant to this Section 26.10, nor shall Tenant be obligated to execute more than two (2) certificates in any twelve (12) month period.

Section 26.11 Parties Bound. The terms, covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided in this Lease, to their respective legal representatives, successors, and assigns.

Section 26.12 Memorandum of Lease. Tenant shall not record either this Lease or a memorandum hereof; *provided, however*, at Landlord's request, Tenant shall promptly execute, acknowledge and deliver to Landlord a memorandum with respect to this Lease sufficient for recording, and Landlord may record the memorandum. Within ten (10) days after the end of the Term, Tenant shall enter into such documentation as is reasonably required by Landlord to remove any memorandum of record.

Section 26.13 Counterparts. This Lease may be executed in 2 or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument. The exchange of executed copies of this Lease by so-called "portable document format" or similar electronic format (including, without limitation, executed through use of a reputable electronic signature service such as Sertifi or DocuSign) (collectively, "PDF") transmission shall constitute effective execution and delivery of this Lease as to the parties for all purposes, and signatures of the parties transmitted by PDF shall be deemed to be their original signatures for all purposes.

Section 26.14 Survival. All obligations and liabilities of Landlord or Tenant to the other which accrued before the expiration or other termination of this Lease, and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease. Without limiting the generality of the foregoing, the rights and obligations of the parties with respect to any indemnity under this Lease, and with respect to any Rent or any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease.

Section 26.15 Inability to Perform. This Lease and the obligations of Tenant to pay Rent hereunder shall not be affected, impaired or excused by any delays caused by force majeure or unavoidable delay.

Section 26.16 Vault Space. Notwithstanding anything contained in this Lease or indicated on any sketch, blueprint or plan, no vaults, vault space or other space outside the boundaries of the Real Property is included in the Premises. Landlord makes no representation as to the location of the boundaries of the Real Property. All vaults and vault space and all other space outside the boundaries of the Real Property which Tenant is permitted to use or occupy (if any) is to be used or occupied under a revocable license. If any such license shall be revoked, or if the amount of such space shall be diminished as required by any Governmental Authority or by

any public utility company, such revocation, diminution or requisition shall not (a) constitute an actual or constructive eviction, in whole or in part, (b) entitle Tenant to any abatement or diminution of Rent, (c) relieve Tenant from any of its obligations under this Lease, or (d) impose any liability upon Landlord. Any fee, tax or charge imposed by any Governmental Authority for any such vaults, vault space or other space occupied by Tenant shall be paid by Tenant.

Section 26.17 Adjacent Excavation; Shoring. If an excavation is made, or is authorized to be made, upon land adjacent to the Real Property, Tenant shall, upon notice, afford to the Person causing or authorized to cause such excavation license to enter upon the Premises for the purpose of doing such work as such Person shall deem necessary to preserve the Building from injury or damage and to support the same by proper foundations. In connection with such license, Tenant shall have no right to claim any damages or indemnity against Landlord, nor diminution or abatement of Rent, provided that Tenant shall continue to have access to the Premises.

Section 26.18 No Development Rights. Tenant acknowledges that it has no rights to any development rights, air rights or comparable rights appurtenant to the Real Property and Tenant consents, without further consideration, to any utilization of such rights by Landlord. Tenant shall promptly execute and deliver any instruments which may be requested by Landlord, including instruments merging zoning lots, evidencing such acknowledgment and consent. The provisions of this **Section 26.18** shall be construed as an express waiver by Tenant of any interest Tenant may have as a "party in interest" (as such term is defined in the definition of "zoning lot" in Section 12-10 of the Zoning Resolution of the City of New York) in the Real Property.

Section 26.19 Intentionally Omitted

Section 26.20 Intentionally Omitted.

Section 26.21 Real Estate Investment Trusts. Tenant recognizes and acknowledges that Landlord and/or certain beneficial owners of Landlord may from time to time qualify as real estate investment trusts ("REITs") pursuant to Sections 856 et seq. of the Code, and that avoiding (a) the loss of such status, (b) the receipt of any income derived under any provision of this Lease that does not constitute "rents from real property" (in the case of real estate investment trusts), and (c) the imposition of income, penalty or similar taxes (each of (a), (b) and (c), an "**Adverse Event**") would be of material concern to Landlord and such beneficial owners, if any of them were a REIT. In the event that this Lease or any document contemplated hereby could, in the opinion of counsel to Landlord, result in or cause an Adverse Event, Tenant agrees to cooperate with Landlord in negotiating an amendment or modification thereof and shall at the request of Landlord execute and deliver such documents reasonably required to effect such amendment or modification (at no cost or expense to Tenant). Any amendment or modification pursuant to this **Section 26.21** shall be structured so that the economic results to Landlord and Tenant shall be substantially similar to those set forth in this Lease without regard to such amendment or modification. Without limiting any of Landlord's other rights under this **Section 26.21**, Landlord may waive the receipt of any amount payable to Landlord hereunder and such waiver shall constitute an amendment or modification of this Lease with respect to such payment. Tenant expressly covenants and agrees not to enter into any sublease or assignment which provides for rental or other payment for such use, occupancy, or utilization based in whole or in part on the

net income or profits derived by any Person from the property leased, used, occupied, or utilized (other than an amount based on a fixed percentage or percentages of receipts or sales), and that any such purported sublease or assignment shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy, or utilization of any part of the Premises.

Section 26.22 Incentive Programs. If at any time Landlord applies to participate in any Incentive Programs, or at such time as Landlord is participating in any Incentive Programs, Tenant shall cooperate with Landlord, at Tenant's expense, and shall deliver to Landlord within ten (10) Business Days after request such completed forms and/or other information in connection with such Incentive Programs as Landlord shall reasonably request.

Section 26.23 Anti-Terrorism Requirements. Tenant hereby represents and warrants that: (i) Tenant is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("**OFAC**") pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "**Prohibited Person**"); (ii) Tenant is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) from and after the effective date of the above-referenced Executive Order, Tenant (and any person, group, or entity which Tenant controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including, without limitation, any assignment of this Lease or any subletting of all or any portion of the Premises or the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. Landlord hereby represents and warrants that: (i) Landlord is not, nor is it owned or controlled directly or indirectly by, any Prohibited Person; (ii) Landlord is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) from and after the effective date of the above-referenced Executive Order, Landlord (and any person, group, or entity which Landlord controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. The representations and warranties contained in this **Section 26.23** shall be continuing in nature and shall survive the expiration or earlier termination of this Lease.

ARTICLE 27

LETTERS OF CREDIT

Section 27.1 Letter of Credit. (a) Tenant shall deliver to Landlord, (i) upon Tenant's execution of this Lease, and maintain with Landlord throughout the term of this Lease, a Letter of Credit (as defined below) in the amount set forth as the Security Deposit under **Article 1** as security for all obligations of Tenant under this Lease (the "**Initial Security Deposit Letter of Credit**"). If Tenant exercises its option to extend the Term pursuant to **Article 29** of this Lease, then no later than thirty (30) days prior to the first day of the Renewal Term, Tenant shall deliver to Landlord (as to each Letter of Credit then held by Landlord at the time) a substitute Letter of Credit (or amendment thereto) evidencing that the expiration date of such Letter of Credit is at least forty five (45) days after the expiration of the Renewal Term.

(b) "**Letter of Credit**" means a clean, irrevocable, non-documentary and unconditional standby letter of credit issued by and drawable upon a U.S. commercial bank, trust company, national banking association or savings and loan association with offices for banking purposes in the City of New York (the "**Issuing Bank**") rated, without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation, "A" or better, by Moody's Investors Service or "A" or better by Standard & Poor's Rating Service, and complying with the other terms of this Lease. Each Letter of Credit shall (i) name Landlord as beneficiary, (ii) have a term of not less than 1 year and shall renew automatically as set forth below, (iii) permit multiple drawings, (iv) be fully transferable by Landlord without the payment of any fees or charges by Landlord, and (v) otherwise be in form and content reasonably satisfactory to Landlord. The form of Letter of Credit attached hereto as **Exhibit F** is hereby approved by Landlord as well as such Issuing Bank. If upon any transfer by Landlord of any Letter of Credit, any fees or charges shall be imposed, then such fees or charges shall be payable solely by Tenant, and the Letter of Credit shall specify that it is transferable without charge to Landlord. If Landlord pays any such fees or charges, Tenant shall reimburse Landlord therefor upon demand. Each Letter of Credit shall provide that it shall be automatically renewed, without amendment or need for any other action, for consecutive periods of 1 year each during the Term (as the Term may be extended) and in no event shall the Letter of Credit expire prior to the 30th day following the Expiration Date unless the Issuing Bank sends notice (the "**Non-Renewal Notices**") to Landlord by registered or certified mail, return receipt requested, or by nationally recognized overnight courier, not less than forty five (45) days before the then-current expiration date of the applicable Letter of Credit, stating that the Issuing Bank has elected not to renew such Letter of Credit. Each Letter of Credit shall provide that the Issuing Bank agrees with all beneficiaries, drawers, endorsers, transferees and bona fide holders that drafts drawn under and in compliance with the terms of the Letter of Credit will be duly honored upon presentation to the Issuing Bank at an office location in Manhattan (or outside Manhattan provided such Letter of Credit can be presented by nationally recognized overnight courier, and, at Landlord's option fax (with no requirement for presentation of the original Letter of Credit)). Each Letter of Credit shall be subject in all respects to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590.

(c) All Letters of Credit from time to time held by Landlord hereunder (and the proceeds thereof) secure all obligations of Tenant under this Lease; and upon any default by Tenant (beyond the expiration of any applicable grace, notice and/or cure periods) entitling Landlord to draw on any Letter of Credit, or to apply the proceeds of any Letter of Credit (or any cash security held by Landlord), to any such obligation, Landlord, at its option, may elect which Letter of Credit to draw upon, and may elect which proceeds to apply to such obligation.

(d) If the Issuing Bank becomes insolvent, or is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, or if a trustee, receiver or liquidator is appointed for the Issuing Bank, or if the credit rating of the Issuing Bank has been downgraded below the rating required above (any such occurrence, an “**Issuing Bank Credit Failure**”), then, effective as of the date of the occurrence of such Issuing Bank Credit Failure, the Letters of Credit shall be deemed to not meet the requirements of this **Article 27**, and Tenant shall replace the Letters of Credit with new Letters of Credit from a different Issuing Bank that complies with this **Article 27** in all respects within thirty (30) days demand therefor by Landlord.

Section 27.2 Application of Proceeds of Letters of Credit. If (a) an Event of Default occurs in the payment or performance of any of the terms, covenants or conditions of this Lease, including the payment of Rent, (b) Landlord receives a Non-Renewal Notice and/or (c) an Issuing Bank Credit Failure occurs and Tenant has failed to deliver new Letters of Credit from a bank with a credit rating meeting the standard specified above and otherwise meeting the requirements set forth in this **Article 27** as required pursuant to **Section 27.1(d)** above, then Landlord shall have the right to draw, at its election, all or a portion of the proceeds of any or all of the Letters of Credit and thereafter hold, use, apply, or retain the whole or any part of such proceeds (x) to the extent required for the payment of any Rent or any other sum as to which Tenant is in default (beyond the expiration of any applicable grace, notice and/or cure periods), including (i) any reasonable and actual out-of-pocket sum that Landlord expends by reason of Tenant’s default, and/or (ii) any damages to which Landlord is entitled pursuant to this Lease, whether such damages accrue before or after summary proceedings or other reentry by Landlord; and/or (y) as cash proceeds to secure Tenant’s obligations hereunder, unless and until Tenant delivers to Landlord substitute Letters of Credit that meet the requirements of this **Article 27**; but if at such time a default or Event of Default by Tenant exists (beyond the expiration of any applicable grace, notice and/or cure periods), Landlord shall have no obligation to accept such substitute Letters of Credit and shall have the right to retain the cash proceeds. If Landlord applies any part of the cash proceeds of any Letter of Credit, Tenant shall promptly thereafter amend such Letter of Credit to increase the amount thereof by the amount so applied (or provide Landlord with an additional Letter of Credit in the amount so applied) so that Landlord shall have the full amount thereof on hand at all times during the Term. If Tenant shall comply with all of the terms, covenants and conditions of this Lease, the Letters of Credit or the cash proceeds thereof (in each case if not applied to any obligations of Tenant hereunder), as the case may be, shall be returned to Tenant (and Landlord shall cooperate with the Tenant and the Issuing Bank in the cancellation thereof) within thirty (30) days after the later of the Expiration Date and delivery of possession of the Premises to Landlord in the manner required by this Lease (including the removal of any Specialty Alterations as required under **Section 5.3**).

Section 27.3 Transfer. Upon a sale, assignment or other transfer of Landlord's interest in this Lease, Landlord shall transfer the Letters of Credit or the cash proceeds to its transferee. With respect to the Letters of Credit, within ten (10) Business Days after notice of such transfer, Tenant, at its sole cost, shall (if required by Landlord) arrange for the transfer of the Letters of Credit to the new landlord (as designated by Landlord in a notice) or have the Letters of Credit reissued in the name of the new landlord. Upon such transfer, Tenant shall look solely to the new landlord for the return of the Letters of Credit or the cash proceeds and thereupon the transferring Landlord shall without any further agreement between the parties be released by Tenant from all liability therefor, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Letters of Credit or the cash proceeds to a new landlord. Tenant shall neither assign, encumber nor attempt to assign or encumber the Letters of Credit or the cash proceeds; and neither Landlord nor its successors or assigns shall be bound by any such action or attempted assignment or encumbrance.

ARTICLE 28

SIGNAGE

Section 28.1 Elevator Lobby Identification Signs. As interior identification in the elevator lobby on the floor on which the Premises is located from time to time, Tenant shall have the right during the Term to have signs in the elevator lobby ("**Elevator Lobby Identification Signs**"), at its sole cost and expense, bearing the name of Tenant and/or Tenant's logo and placed as reasonably approved by Landlord. All Elevator Lobby Identification Signs shall be subject to Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed for any Elevator Lobby Identification Signs that comply with this Lease and with the standard and character of the Building. Tenant's rights under this **Section 28.1** are transferable or assignable to any permitted assignee or subtenant.

Section 28.2 General. Upon the expiration or sooner termination of this Lease, or to the extent Tenant's rights to any signage terminate under this **Article 28**, Tenant, at its sole cost and expense, shall remove any signs which are no longer permitted under this **Article 28**, and shall restore any damage caused by such removal; or at Landlord's option, Landlord may perform such work at Tenant's sole cost and expense, and within 30 days of demand, Tenant shall reimburse Landlord for any actual out-of-pocket costs and expenses so incurred. All Tenant's rights under this **Article 28** shall be subject to the applicable provisions of this Lease, including **Article 5**.

ARTICLE 29

RENEWAL TERM

Section 29.1 Renewal Term. The Named Tenant shall have the right, at its sole option, and subject to the terms of this **Article 29**, to renew the Term for the entire Premises for a single renewal term (the "**Renewal Term**") of five (5) years by delivering notice to Landlord (the "**Renewal Notice**") (A) not less than twelve (12) months prior to the Initial Expiration Date and (B) not more than fifteen (15) months prior to the Initial Expiration Date (except in the case where Tenant is extending the Term in connection with giving an Acceptance Notice, defined below, in

order to comply with the conditions under **Section 30.4(e)**), which notice shall be irrevocable. Tenant's rights under this **Section 29.1** are subject to the conditions that (a) no Event of Default shall exist on the date the Renewal Notice is given or on the Renewal Term Commencement Date (as defined below); (b) the Named Tenant is the Tenant hereunder on the date the Renewal Notice is given and on the Renewal Term Commencement Date; and (c) the Occupancy Requirements are met on the date the Renewal Notice is given and on the Renewal Term Commencement Date. Provided the foregoing conditions are met, upon the timely giving of the Renewal Notice, this Lease shall be deemed automatically renewed for the entire Premises for the Renewal Term with the same force and effect as if the Renewal Term had originally been included in the Term. The Renewal Term shall commence on the day after the Initial Expiration Date (the "**Renewal Term Commencement Date**") and shall expire on the fifth (5th) anniversary of the Initial Expiration Date. **TIME SHALL BE OF THE ESSENCE** with respect to Tenant's giving of the Renewal Notice. The Renewal Term shall be upon all of the terms, covenants and conditions of this Lease, except that (w) the Fixed Rent for the Renewal Term shall be determined as provided in **Section 29.2**, (x) Tenant shall have no further right to renew the Term, (y) during the Renewal Term, the Base Tax Year for the entire Premises shall be the Tax Year commencing on July 1st of the calendar year in which the Renewal Term Commencement Date occurs, and (z) during the Renewal Term, the Base Expense Year for the entire Premises shall be the calendar year commencing on January 1st of the calendar year in which the Renewal Term Commencement Date occurs. Upon the Renewal Term Commencement Date, (1) the Renewal Term shall be added to and become part of the Term for the entire Premises, (2) any reference to "this Lease", to the "Term", the "term of this Lease" or any similar expression shall be deemed to include the Renewal Term, and (3) the expiration date of the Renewal Term shall become the Expiration Date. Any termination, cancellation or surrender of the entire interest of Tenant under this Lease at any time on or prior to the Initial Expiration Date shall terminate any right of renewal of Tenant hereunder; and if at any time during the Term, Tenant shall not satisfy the Occupancy Requirements by virtue of a sublease or license (excluding a license to a Permitted Occupant in accordance with **Section 13.10**) of all or a portion of the Premises to one or more third parties for a term (or terms, as the case may be) expiring during the last 24 months of the Initial Term, Tenant's right to renew the Term pursuant to this **Article 29** shall immediately terminate and be of no further force and effect.

Section 29.2 Renewal Term Rent. (a) The annual Fixed Rent payable during the Renewal Term ("**Renewal Rent**") shall be equal to the annual Fair Market Rent of the entire Premises as of the Renewal Term Commencement Date. "**Fair Market Rent**" means the annual fair market rental value of the entire Premises as of the Renewal Term Commencement Date for a term equal to the Renewal Term, based on comparable space in the Building, or on comparable space in Comparable Buildings, including all of Landlord's services provided for in this Lease, (i) assuming the Premises are vacant, and otherwise in "as is" condition existing on the Renewal Term Commencement Date, (ii) assuming the Base Tax Year and the Base Expense Year are as set forth above in **Section 29.1**; and (iii) taking into account all other relevant factors.

(b) If Tenant timely gives the Renewal Notice, then for the next sixty (60) days thereafter (the "**Renewal Rent Determination Period**"), Landlord and Tenant shall attempt to agree in writing on the Renewal Rent. If Tenant and Landlord are not able to agree in writing on the

Renewal Rent during the Renewal Rent Determination Period, the Renewal Rent shall be determined as provided in **Section 29.3**.

(c) If the Renewal Rent is not determined prior to the Renewal Term Commencement Date, Tenant shall pay Renewal Rent in an amount equal to Landlord's Determination, hereinafter defined (the "**Interim Rent**"). Upon final determination of the Renewal Rent, Tenant shall commence paying such Renewal Rent as so determined, and within thirty (30) after such determination, Tenant shall pay any deficiency in prior payments of Renewal Rent, or if the Renewal Rent as so determined shall be less than the Interim Rent, Tenant shall be entitled to a credit against the next succeeding installments of Renewal Rent for any overpayment of Renewal Rent.

Section 29.3 Arbitration. (a) If Tenant and Landlord are not able to agree on the Renewal Rent during the Renewal Rent Determination Period, either Tenant or Landlord may submit such dispute to arbitration in accordance with the then prevailing Expedited Procedures of the Arbitration Rules for the Real Estate Industry of the American Arbitration Association or its successor for arbitration of commercial disputes, except that the rules shall be modified as follows:

(i) Landlord and Tenant shall attempt to jointly designate and appoint an impartial real estate broker or appraiser with at least 10 years' full-time commercial lease brokerage or appraisal experience in Manhattan and who is familiar with the fair market value of first-class office space in Comparable Buildings as the arbitrator within ten (10) Business Days of the expiration of the Renewal Rent Determination Period. If the parties do not agree on the arbitrator within such 10 Business Day period, then either party, on behalf of both, may request appointment of such a qualified person as the arbitrator by the then president of the Real Estate Board of New York, which appointed person shall serve as the arbitrator for all purposes of this **Section 29.3**.

(ii) Within ten (10) Business Days of appointment of the arbitrator, Landlord shall submit its determination of the Renewal Rent ("**Landlord's Determination**") and Tenant shall submit its determination of the Renewal Rent ("**Tenant's Determination**") to the arbitrator. Renewal Rent shall be fixed by the arbitrator in accordance with the following procedures. The arbitrator shall have the right to consult experts and competent authorities for factual information or evidence pertaining to a determination of Renewal Rent, but any such determination shall be made in the presence of both parties with full right on their part to cross-examine. The arbitrator shall conduct such hearings and investigations as he or she deems appropriate and shall, within thirty (30) days after being appointed, select which of the two (2) proposed determinations (Landlord's Determination or Tenant's Determination) most closely approximates his or her determination of Renewal Rent and the determination that is closest to his or her determination shall be deemed the Renewal Rent for all purposes hereunder. The arbitrator shall have no right to propose a middle ground or any modification of either of the two (2) proposed determinations (i.e., Landlord's Determination and Tenant's Determination). Such selection shall constitute the decision

of the arbitrator and shall be final and binding upon the parties. The arbitrator shall render the decision in writing with counterpart copies to each party. The arbitrator shall have no power to add to or modify the provisions of this Lease. Promptly following receipt of the arbitrator's decision, the parties shall enter into an amendment to this Lease evidencing the extension of the Term for the Renewal Term, the base years for Taxes and Operating Expenses and the Renewal Rent for the Renewal Term, but the failure of the parties to do so shall not affect the effectiveness of the arbitrator's determination. Costs of the arbitrator shall be shared equally by Landlord and Tenant (but each side shall be responsible to pay for its own attorneys, witnesses and experts). For the avoidance of doubt, the arbitrator's final determination shall be either Landlord's Determination or Tenant's Determination.

(iii) In the event of a failure, refusal or inability of the arbitrator to act, his or her successor shall be appointed in the same manner as he or she was appointed.

ARTICLE 30

RIGHT OF FIRST OFFER

Section 30.1 Exercise of Right. Subject to **Sections 30.2 and 30.4** below, if at any time on or before (x) the date that is three (3) years prior to the Expiration Date if the Term has been renewed in accordance with **Section 29.1** or (y) the date that is twelve (12) months prior to the Initial Expiration Date if the Term has not been renewed in accordance with **Section 29.1**, the entire (or a portion of the) rentable area of the 9th floor of the Building (the "**Expansion Space**") is, or Landlord reasonably believes will become, Available (as defined below), and Landlord proposes to lease the Expansion Space, Landlord shall deliver notice thereof to Tenant (the "**Expansion Notice**") setting forth the date Landlord reasonably anticipates that the Expansion Space will become Available (the "**Anticipated Expansion Space Commencement Date**"). Provided that all of the conditions set forth in this **Article 30** are satisfied, Tenant shall have a one-time option (the "**Expansion Option**"), exercisable by Tenant's delivering irrevocable notice to Landlord (the "**Acceptance Notice**") within 30 days of Landlord giving the Expansion Notice, **WITH TIME BEING OF THE ESSENCE**, to lease the entire Expansion Space upon the terms and conditions set forth in this **Article 30**. The Expansion Option may be exercised only with respect to the entire Expansion Space. Any termination, cancellation or surrender of the interest of Tenant under this Lease at any time shall terminate any obligation of Landlord, and any right of Tenant, under this **Article 30**, to lease the Expansion Space.

Section 30.2 One-Time Right. Notwithstanding anything hereunder to the contrary, the Expansion Option shall be a one-time option for Tenant, such that Landlord shall have no further obligation, and Tenant shall have no further right, under this **Article 30** to lease the Expansion Space from and after the occurrence of any of the following:

(a) Landlord sends Tenant the Expansion Notice and Tenant fails to timely give the Acceptance Notice, **WITH TIME BEING OF THE ESSENCE**.

(b) Landlord reasonably determines that any of the conditions set forth in **Section 30.4** below are not met on the date the Expansion Notice is or otherwise would have been given, on the date the Acceptance Notice is delivered to Landlord or on the Expansion Space Commencement Date.

Section 30.3 Definitions.

(a) **“Available”** means that at the time in question no Person leases or occupies the Expansion Space, whether pursuant to a lease or other agreement. In no event shall Landlord be liable to Tenant for any failure by any tenant or occupant to vacate the Expansion Space on or before any particular date. Notwithstanding anything to the contrary herein, the Expansion Space shall be not deemed to be Available (x) prior to the date that any such lease that is entered into not in violation of this Article 30 expires or terminates and is not renewed or extended by the tenant or occupant (or its affiliate) under such lease, whether pursuant to a right or option contained in such lease or otherwise, and (y) prior to the date that Landlord offers to lease the Expansion Space to any other tenants that have a right, as of the Effective Date, to lease the Expansion Space and such other tenants fail to accept such offer. The current tenant’s lease on the 9th floor expires on January 31, 2028 and no other parties in the Building have any existing rights to the Expansion Space.

(b) **“Expansion Space Fair Market Rent,”** means the annual fair market rental value of the Expansion Space at the commencement of the leasing by Tenant of the Expansion Space for a term commencing on the Expansion Space Commencement Date and ending on the Expiration Date (provided that if the then remaining Term is less than 5 years, such term shall be deemed to be 5 years for the purposes of determining the Expansion Space Fair Market Rent), based on comparable space in the Building, or on comparable space in Comparable Buildings, including all of Landlord’s services provided for in this Lease, (i) assuming the Expansion Space is vacant and delivered in its “as is” condition on the Expansion Space Commencement Date, (ii) assuming the Base Tax Year for the Expansion Space is the Tax Year commencing on July 1st of the calendar year in which the Anticipated Expansion Space Commencement Date occurs, and (iii) assuming the Base Expense Year for the Expansion Space is the calendar year commencing on January 1st of the calendar year in which the Anticipated Expansion Space Commencement Date occurs. The determination of Expansion Space Fair Market Rent shall also take into account any other relevant factors.

Section 30.4 Conditions to Exercise. Landlord shall have no obligation to give the Expansion Notice, and Tenant shall have no right to exercise the Expansion Option or to lease the Expansion Space, unless all of the following conditions have been satisfied on the date the Expansion Notice is or otherwise would have been given, on the date the Acceptance Notice is delivered to Landlord and on the Expansion Space Commencement Date:

(a) This Lease is in full force and effect;

(b) No Event of Default exists and Tenant is not in default of any of its monetary or material non-monetary obligations under this Lease beyond the expiration of any applicable grace, notice and/or cure periods;

(c) The Occupancy Requirements are met;

(d) If there are less than three (3) years left in the Initial Term and Tenant has not theretofore effectively extended the Term for the Renewal Term in accordance with **Section 29.1** above, Tenant shall extend the Term by giving a Renewal Notice for the Renewal Term in accordance with **Section 29.1** above simultaneously with the Acceptance Notice.

(e) Tenant's net worth (excluding good will and intangibles) is at least \$75,000,000, as reasonably evidenced to Landlord.

Section 30.5 Incorporation of Expansion Space. Effective as of the date on which Landlord delivers vacant possession of the Expansion Space to Tenant (the "**Expansion Space Commencement Date**");

(a) Fixed Rent for such Expansion Space (the "**Expansion Space Rent**") shall be the Expansion Space Fair Market Rent as determined in accordance with this **Article 30**. If the Expansion Space Fair Market Rent is not determined prior to the Expansion Space Commencement Date, Tenant shall pay Expansion Space Rent for such interim period (the "**Expansion Space Interim Rent**") in an amount equal to Landlord's Determination (as submitted in connection with an arbitration to determine the Expansion Space Rent pursuant to this **Section 30.5(a)**). Upon final determination of the Expansion Space Fair Market Rent, Tenant shall commence paying such Expansion Space Rent as so determined, and (x) if the Expansion Space Fair Market Rent as so determined shall be more than the Expansion Space Interim Rent, within thirty (30) days after such determination, Tenant shall pay such deficiency, or (y) if the Expansion Space Fair Market Rent as so determined shall be less than the Expansion Space Interim Rent, Tenant shall be entitled to a credit against the next succeeding installments of Expansion Space Rent in the amount of such overpayment. If Tenant timely gives the Acceptance Notice, then for the next sixty (60) days thereafter (the "**Expansion Space Rent Determination Period**"), Landlord and Tenant shall attempt to agree in writing on the Expansion Space Rent. If Tenant and Landlord are not able to agree in writing on the Expansion Space Rent during the Expansion Space Rent Determination Period, the Expansion Space Rent shall be determined using the same process for determining Renewal Rent under **Section 29.3** above.

(b) Tenant shall pay Tenant's Tax Payment with respect to the Expansion Space in accordance with the provisions of **Article 7**, except that the Base Tax Year for the Expansion Space shall be as set forth in **Section 30.3(b)** above.

(c) For all purposes of this Lease, the rentable square footage of the Expansion Space shall be deemed to be 13,671 rentable square feet, the Tenant's Tax Share for the Expansion Space shall be 7.14% and the Tenant's Expense Share for the Expansion Space shall be 7.69% .

(d) The Expansion Space shall be delivered in its "as is" condition, and Landlord shall not be obligated to perform any work with respect thereto or make any contribution to Tenant to prepare the Expansion Space for Tenant's occupancy.

(e) The Expansion Space shall be added to and be deemed to be a part of the Premises for all purposes of this Lease (except as otherwise provided in this **Article 30**).

Section 30.6 Possession. In no event shall Landlord be obligated to incur any fee, cost, expense or obligation, nor to prosecute any legal action or proceeding, in connection with the delivery of the Expansion Space to Tenant nor shall Tenant's obligations under this Lease with respect to any part of the Premises be affected thereby. Landlord shall not be subject to any liability and this Lease shall not be impaired if Landlord shall be unable to deliver possession of an Expansion Space to Tenant on any particular date; provided, however, if the Expansion Space Commencement Date has not occurred within six (6) months of the Anticipated Expansion Space Commencement Date then Tenant may thereafter give Landlord notice electing to rescind its Acceptance Notice, effective as of the date that is thirty (30) days after the giving of such notice, and if by such 30th day, the Expansion Space Commencement Date has not occurred (and would not have occurred except for Unavoidable Delay), then effective as of such 30th day, Tenant's Acceptance Notice shall be deemed rescinded for all purposes of this Lease, and Tenant shall have no further rights to lease the Expansion Space hereunder. Tenant hereby waives any right to rescind this Lease or any Acceptance Notice under the provisions of Section 223-a of the Real Property Law of the State of New York, and agrees that the provisions of this **Section 30.6** are intended to constitute "an express provision to the contrary" within the meaning of said Section 223-a.

Section 30.7 Agreement of Terms. Landlord and Tenant, at either party's request, shall promptly execute and exchange an appropriate agreement evidencing the leasing of an Expansion Space and the terms thereof in a form reasonably satisfactory to both parties, but no such agreement shall be necessary in order to make the provisions hereof effective.

ARTICLE 31

COVID-19

Section 31.1 Tenant Acknowledgment. Tenant acknowledges that (i) Landlord cannot guarantee that the Building is free of COVID-19 or any other diseases or virus; (ii) there are inherent enhanced risks and dangers in entering public areas during an epidemic, pandemic or public health emergency including, without limitation, the COVID-19 pandemic; and (iii) access to the Building and use of the Premises, the common areas and/or the amenity spaces may result in exposure to the underlying disease or virus including, without limitation, COVID-19, whether caused by the negligence or other conduct of Landlord, its managing agent, its employees, contractors or agents or by any other person, tenant or employee, guest or invitee of any of the foregoing. With respect to any such epidemic, pandemic or public health emergency, Tenant agrees to abide by all guidelines established by all applicable local and federal governmental agencies including, without limitation, guidance issued by the Center for Disease Control and Prevention (the "CDC").

Section 31.2 No Warranty. Landlord in no way warrants that the presence or spread of COVID-19 or other viruses or diseases will not occur through Tenant or its agents, employees and invitees' access to the Building and use of the Premises, the common areas and/or the

amenity spaces, and Landlord assumes no responsibility for any loss or damage to property or injury, illness or death to persons that Tenant, its agent, employees or invitees may sustain as a result of their access to the Building and use of the Premises, the common areas and/or the amenity spaces during the COVID-19 pandemic or any other epidemic, pandemic or public health emergency. Tenant expressly and voluntarily agrees to assume all risks and dangers, whether foreseeable or not, and to be solely responsible for all loss or damage to property or injury, illness or death to persons, whether caused in whole or in part by the negligence or other conduct of Landlord, its managing agent, employees or by any other person.

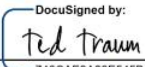
Section 31.3 Tenant's Release. To the maximum extent permitted by law, Tenant hereby releases and forever discharges Landlord, its managing agent, its mortgagee and each of their respective direct and indirect partners, officers, shareholders, directors, members, managers, trustees, beneficiaries, employees, principals, servants, agents, and representatives (collectively, the "**Releasees**") from any and all claims, demands, losses, expenses, damages, judgments, actions, causes of action or suits of any kind or nature whatsoever, which Tenant may now have or may hereafter have, arising out of or in any way relating to any and all injuries and damages of any and every kind, to both person and property as a result of or in any way relating to the possibility of exposure to COVID-19 or other viruses or diseases (the "**Released Claims**"), whether caused in whole or in part by the negligence or other conduct of Landlord, its managing agent, employees or by any other person, and Tenant hereby agrees not to make, assert, or pursue any claim or action against the Releasees with respect to a Released Claim. In the event that any of Tenant's agents, employees or invitees nevertheless asserts any Released Claims against any Releasee(s), Tenant agrees to indemnify, defend and protect the Releasee(s) from and against such Released Claims.

[Signatures next page]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed as of the Effective Date.

LANDLORD:

300 PARK AVE. SO. L.L.C.,
a New York limited liability company

DocuSigned by:
By: 
Name: Edward H. Traum
Title: Authorized Signatory

TENANT:

1STDIBS.COM, INC.,
a Delaware corporation

DocuSigned by:
By: 
Name: Tom Etergino
Title: CFO

Tenant's Federal Identification Number:
94-3389618

EXHIBIT A

FLOOR PLAN

The floor plan which follows is intended solely to identify the general location of the Premises, and should not be used for any other purpose. All areas, dimensions and locations are approximate, and any physical conditions indicated may not exist as shown.

[see attached]



300 Park Avenue South - 1STDIBS.COM, INC.
FLOOR 10 - No Theme
Monday, October 30, 2023

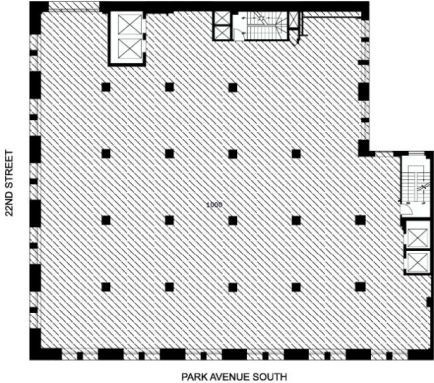


EXHIBIT B

LANDLORD'S WORK

The following work (unless otherwise specifically provided herein) shall be a material, manufacture, design, capacity, quality, finish and color of the standard adopted by Landlord for the Building, and where quantities are specified, such quantities shall include any existing installations to the extent usable and used in the performance of such work.

The plans attached hereto as Schedule 1 (the "**Indicative Plans**") are used only for the purpose of providing details as to the following work items, and shall in no way be deemed to indicate that Landlord will perform any work except as listed in items 1 through 12 below on this Exhibit B or provide any furniture shown on the Indicative Plans.

For avoidance of doubt, any actual delay that Landlord encounters in the performance of Landlord's Work by reason of Tenant failing to designate colors, specifications or locations, or provide fixtures, for Landlord Work items by the dates specified below shall constitute Tenant Delay.

1. Paint the walls and ceilings of the Premises colors to be reasonably designated by Tenant by email to Jennifer Fridman (JenniferF@Rockrose.com) and Bill Feeks (Bill.Feeks@rockrose.com) no later than December 1, 2023.
 2. Install small meeting rooms along Park Avenue South frontage of the Premises as shown in the bubbled areas on the Indicative Plans.
 3. Remove abandoned duct in IT Closet and patch and repair ceiling as required.
 4. Two Traditional Conference Rooms at Corners: repair de-laminating/damaged wood panels on wall, and provide floor core with provisions for (1) quad power receptacle, (2) data ports, HDMI, and AV, and provide hard wired connection between floor core and wall mounted TV, all in locations shown on the Indicative Plans.
 5. Casual Conference Room at Corner: provide floor core with provisions for (1) quad power receptacle, (2) data ports, HDMI, and AV, and provide hard wired connection between floor core and wall mounted TV, all in locations shown on the Indicative Plans.
 6. Open Work Area: provide floor poke thrus in locations shown on the Indicative Plans.
 7. Newly Constructed Rooms: provide new duct (supply and return) and balancing as required to accommodate new layout. Provide power at locations to accommodate furniture layout as shown on Indicative Plans. Provide ceiling and lighting to match existing finishes and fixtures.
-

8. Pantry: remove existing black pendants and replace with new building standard white surface mounted fixtures. Provide power and install new accent fixture furnished by Tenant; Tenant shall reasonably designate specifications and locations for such accent fixture by email to Jennifer Fridman (JenniferF@Rockrose.com) and Bill Feeks (Bill.Feeks@rockrose.com) no later than December 1, 2023 and shall provide such fixture no later than December 15, 2023. Provide power and water line for BEVI; Tenant shall reasonably designate specifications for BEVI by email to Jennifer Fridman (JenniferF@Rockrose.com) and Bill Feeks (Bill.Feeks@rockrose.com) no later than December 1, 2023.
 9. Reception: Demo existing glass wall. Construct new GWB wall to align with beam overhead. Provide floor core with provisions for (1) quad receptacle and (2) data drops, all in locations shown on the Indicative Plans. Remove existing black pendants at reception and replace with new building standard white surface mounted fixtures. Provide power and install new accent fixture furnished by Tenant; Tenant shall reasonably designate specifications and locations for such accent fixture by email to Jennifer Fridman (JenniferF@Rockrose.com) and Bill Feeks (Bill.Feeks@rockrose.com) no later than December 1, 2023 and shall provide such fixture no later than December 15, 2023.
 10. Provide full height sound batt insulation at all partitions, new and existing (if it does not already exist).
 11. Room Schedulers: provide gang back boxes for room schedulers in locations shown on the Indicative Plans (2 locations on GWB; all other locations to be mounted on office front frames). Tenant to furnish and install devices.
 12. Ceiling Mounted Cameras: provide mounted back boxes and power for 3 ceiling mounted cameras; Tenant shall reasonably designate specifications and locations for same by email to Jennifer Fridman (JenniferF@Rockrose.com) and Bill Feeks (Bill.Feeks@rockrose.com) no later than December 1, 2023. Tenant to furnish and install devices.
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SCHEDULE 1
INDICATIVE PLANS

[see attached]

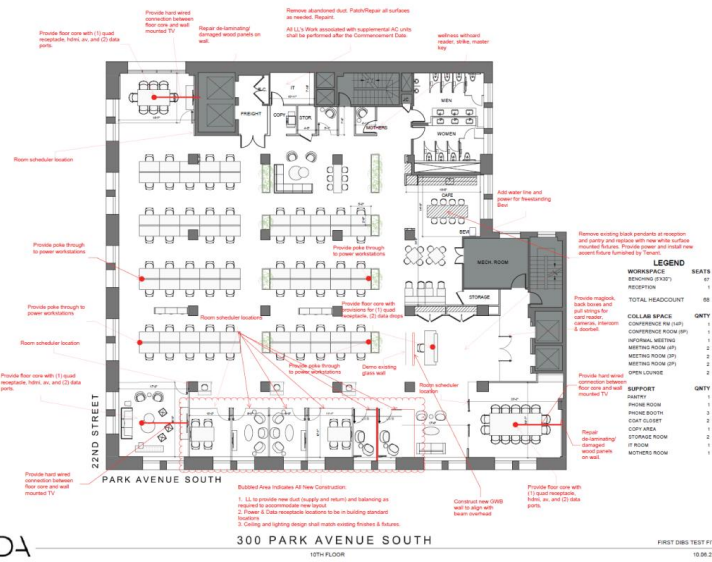


EXHIBIT C

CLEANING SPECIFICATIONS

General:

All linoleum, rubber, asphalt tile and other similar types of flooring (that may be waxed) to be swept nightly, using approved dust-check type of mop. All carpeting and rugs to be carpet swept nightly and vacuum cleaned weekly.

Hand dust and wipe clean all furniture, fixtures, window sills, and glass partitions of all offices nightly, wash sills when necessary.

Empty all waste receptacles and remove wastepaper. Change liners as necessary. (Tenant to supply receptacles and liners.)

Wash clean all water fountains and coolers nightly.

Lavatories in the Core:

Sweep and wash all lavatory floors nightly using disinfectants. Wash and polish all mirrors, powder shelves, bright work and enameled surfaces in all lavatories, nightly.

Wash, scour and disinfect all basins, urinals and toilet seats and bowls, nightly.

Empty paper towel receptacles and transport wastepaper to designated area in basements, nightly. (Towels, receptacles and soap to be provided by Landlord.) Empty sanitary disposal receptacles nightly.

Fill toilet tissue holders nightly (tissue to be provided by Landlord).

Wash and polish all wall tile and stall surfaces as reasonably necessary, but not less than once per month.

High Dusting: Damp dust all window blinds, frames, charts, graphs and similar wall hangings and vertical surfaces not reached in nightly cleaning, quarterly.

Glass: Exterior windows to be cleaned inside and outside twice per annum.

Conditions: All cleaning to be performed by Landlord's recognized cleaning contractor. As herein used, "nightly" means nightly on Business Days. Furniture will not be moved. Storage areas and other areas to which the requisite access is impeded will not be cleaned.

EXHIBIT D

RULES AND REGULATIONS

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress to and egress from the Premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Landlord. There shall not be used in any space, or in the public hall of the Building, either by any tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks except those equipped with rubber tires and sideguards.
2. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the tenant who, or whose clerks, agents, employees or visitors, shall have caused it.
3. No carpet, rug or other article shall be hung or shaken out of any window of the Building; and no tenant shall sweep or throw or permit to be swept or thrown from the Premises any dirt or other substances into any of the corridors or halls, elevators, or out of the doors or windows or stairways of the Building and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors, and/or vibrations or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be kept in or about the Building except for service animals as required by law. Smoking or carrying lighted cigars or cigarettes in the elevators of the Building is prohibited.
4. No awnings or other projections shall be attached to the outside walls of the Building without the prior written consent of Landlord.
5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any tenant on any part of the outside of the Premises or the Building or on the inside of the Premises if the same is visible from the outside of the Premises without the prior written consent of Landlord, except that the name of Tenant may appear on the entrance door of the Premises. In the event of the violation of the foregoing by any tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant or any other tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each tenant by Landlord at the reasonable expense of such tenant, and shall be of a size, color and style reasonably acceptable to Landlord.

6. No tenant shall mark, paint, drill into, or in any way deface any part of the Building other than as part of approved Alterations in the Premises or Decorative Changes, except for nails, hooks or fixtures and other wall hangings and no boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct. No tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the Premises, and, if linoleum or other similar floor covering is desired to be used as interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.
7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made in existing locks or mechanism thereof without the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Each tenant must, upon the termination of his tenancy, return to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such tenant, and in the event of the loss of any keys, so furnished, such tenant shall pay to Landlord the reasonable cost thereof. Tenant shall be permitted, at its own cost, to install a security system in the Premises (which shall be synched with the Building's security system so that Tenant and its officers, owners, employees shall only be required to use one (1) key card to access the Building and the Premises).
8. Landlord reserves the right to require all tenant move-ins and move-outs from the Building to be performed between the hours of 6 P.M. and 8 A.M. on business days. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the Premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner reasonably approved by Landlord. Landlord reserves the right to inspect all freight to be brought into the Building and to exclude from the Building all freight which violates any of these Rules and Regulations.
9. Canvassing, soliciting and peddling in the Building is prohibited and each tenant shall cooperate to prevent the same.
10. Access to the Premises by Tenant's employees or officers, or any invitees, guests or contractors thereof shall be subject, in all instances, to Landlord's reasonable security procedures and requirements. Landlord reserves the right to exclude from the Building, Premises and/or elevators between the hours of 6 P.M. and 8 A.M. on business days, and at all hours on Saturdays, Sundays, and legal holidays, all persons who do not possess and present a valid Building identification card valid, pass or other appropriate identification to the security personnel for the Building or comply with any other requirements as may then be imposed by the applicable governmental authorities. Each tenant shall be responsible for all persons for whom he requests a pass and shall be liable to Landlord for all acts of such persons. Tenant shall not have a claim against Landlord by reason of Landlord

excluding from the Building any person who does not present such pass or other identification or otherwise comply with such requirements.

11. Tenant shall not bring or permit to be brought or kept in or on the Premises, any inflammable, combustible or explosive fluid, material, chemical or substance (other than such material or substance, and only in such quantities as are customarily maintained, for any ordinary cleaning or maintenance of the Premises), or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the Premises. Notwithstanding the foregoing, Tenant may keep in the Premises ordinary office supplies.
12. Tenant shall reasonably cooperate with Landlord in obtaining maximum effectiveness of the cooling system by lowering and closing venetian blinds and/or drapes and curtains when the sun's rays fall directly on the windows of the Premises.
13. If any safe, machinery, equipment, bulky matter or fixtures (other than office copiers and computers, and office furniture) requires special handling, all work in connection therewith shall comply with the Administrative Code of the City of New York and all other laws and regulations applicable thereto and shall be done during such hours as Landlord may reasonably designate.
14. Tenant covenants and agrees, at its sole cost and expense, to comply with all present and future laws, orders, and regulations, of all state, federal, municipal, and local governments, departments, commissions and boards regarding the internal office collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant shall sort and separate such waste products, garbage, refuse and trash into such categories as provided by law. Each separately sorted category of waste products, garbage, refuse and trash shall be placed in separate receptacles. Such separate receptacles shall be removed from the Premises in accordance with a collection schedule prescribed by law. Landlord has the option to refuse to collect or accept from Tenant waste products, garbage, refuse or trash that is not separated and sorted as required by law.
15. No noise or other activity, including the playing of musical instruments, radio, television or other sound reproduction system, which would, in Landlord's reasonable judgment, disturb other tenants in the Building, shall be made or permitted by Tenant, and no cooking shall be done in the Premises, except as expressly approved in writing by Landlord except that Tenant shall be permitted to operate coffee machines, water heating units, a dishwasher and a microwave or convection oven for the warming or reheating of prepared foods for its employees and invitees.
16. All entrance doors in the Premises shall be left locked by Tenant when the Premises are not in use. Entrance doors shall be kept closed at all times.

17. All locks affording access to the Premises and to circulation within the Premises shall be conformed to Landlord's master key system and shall be installed by Landlord's approved vendors.
18. The requirements of Tenant will be attended to only upon application to the Building Management at their office in the Building or elsewhere. Building employees shall not be requested by Tenant, and will not be permitted, to perform any work or services specially for Tenant, unless expressly authorized to do so by the Building superintendent.
19. Landlord reserves the right to rescind, alter, waive, expand or add any rule or regulation at any time prescribed for the Building when, in its reasonable judgment, it deems it necessary, desirable or proper for its best interests and for the best interests of the tenants thereof, and no alteration or waiver of any rule or regulation in favor of one tenant shall operate as an alteration or waiver in favor of any other tenant. Landlord shall not be responsible to Tenant for the non-observance or violation by any other tenant of any of the rules and regulations at any time prescribed for the Building.
20. If attendance of Landlord's security personnel shall be required, as determined by Landlord in its reasonable discretion, in connection with the use by Tenant of freight elevators or other Building services or equipment, Tenant shall pay to Landlord within thirty (30) days of demand, as additional rent, Landlord's then established rate as a charge for such Landlord's security personnel.
21. Tenant shall not at any time store or keep any material, supplies, furniture, furnishings or equipment of any kind in any machine room or in any mechanical or electrical equipment room in the Building whether such room be within or outside the Premises.
22. In no event and under no circumstances shall hand trucks (other than rubber- wheeled small hand trucks or mail carts used to transport interoffice mail or packages) be brought into or used in any passenger elevators in the Building, it being understood that all freight, furniture, business equipment and bulky matters of every description shall be moved into and out of the Building and between floors therein only on the freight elevator and otherwise in accordance with Rule 1 and the other Rules annexed to this Lease.
23. In no event at any time or under any circumstances shall (i) any smoking be permitted in the Building, whether or not on a routine, sporadic or one-time basis, by Tenant or any employee, guest or invitee of Tenant, (ii) any dogs or other pets (except for service animals as required by law) be permitted in the Building, whether or not on a routine, sporadic or one-time basis, and whether or not owned by Tenant or any employee, guest or invitee of Tenant, or (iii) any bicycles, scooters, skateboards, rollerblades or other wheeled vehicles be permitted in the Building (except for bicycles and scooters in the bicycle storage area at the 22nd Street service entrance to the Building), whether or not on a routine, sporadic or one-time basis, and whether or not owned or used by Tenant or

any employee, guest or invitee of Tenant, including messengers, or (iv) affix or attach any signage, lettering or decorations to the exterior windows of the Building.

24. Tenant shall not solicit, suffer, or permit other tenants or occupants of the Building to use any network or other communications service, including, without limitation, any wired or wireless Internet service that passes through, is transmitted through, or emanates from the Premises. Tenant agrees that Tenant's communications equipment and the communications equipment of Tenant's service providers and contractors located in or about the Premises or installed in the Building to service the Premises including, without limitation, any antennas, switches, or other equipment (collectively, **"Tenant's Communications Equipment"**) shall be of a type and, if applicable, a frequency that will not cause radio frequency, electromagnetic, or other interference to any other party or any equipment of any other party including, without limitation, Landlord, other tenants, or occupants of the Building or any other party. In the event that any of Tenant's Communications Equipment causes or is reasonably believed to cause any such interference, upon receipt of notice from Landlord of such interference, Tenant will take all steps necessary to correct and eliminate the interference. If the interference is not eliminated within 24 hours (or a shorter period if Landlord believes a shorter period to be appropriate) then, upon request from Landlord, Tenant shall shut down the Tenant's Communications Equipment pending resolution of the interference, with the exception of intermittent testing upon prior notice to and with the approval of Landlord. Tenant hereby acknowledges that Landlord has granted and/or may grant lease rights, licenses, and other rights to various other tenants and occupants of the Building and to telecommunications service providers.
25. Notwithstanding anything to the contrary contained herein, in the event of any conflict between the terms of these Rules and Regulations (as originally or as hereafter adopted) and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

EXHIBIT E

TENANT DELIVERIES

1. First month's Fixed Rent for the Premises in the amount of \$80,886.75 (the **"Advance Rent"**).
2. The Initial Security Deposit Letter of Credit.
3. One executed form W-9 for Tenant.

EXHIBIT F

FORM OF LETTER OF CREDIT

[SEE ATTACHED]



Wells Fargo Bank, N.A.
U.S. Trade Services
Standby Letters of Credit
401 N. Research Pkwy, 1st Floor
MAC D4004-017,
Winston-Salem, NC 27101-4157
Phone: 1(800) 776-3862 Option 2
E-Mail: StandbyCustomerCare@wellsfargo.com

THIS SAMPLE WORDING IS PRESENTED WITHOUT ANY RESPONSIBILITY ON OUR PART. THIS PROFORMA IS PROVIDED TO YOU AT YOUR REQUEST ONLY AS SUGGESTED WORDING FOR THE LETTER OF CREDIT. PLEASE NOTE THAT THE LETTER OF CREDIT IS IN DRAFT FORM ONLY AND REMAINS UNISSUED AND IS NOT AN ENFORCEABLE INSTRUMENT.

BANK MAY, IN ITS SOLE DISCRETION, ACCEPT A PHOTOCOPY, FACSIMILE, ELECTRONICALLY TRANSMITTED, OR OTHER REPRODUCTION OF A SIGNED COPY OF THIS PROFORMA (INCLUDING A PDF VERSION RECEIVED VIA EMAIL) OR AN ELECTRONICALLY EXECUTED COPY OF THIS PROFORMA (INCLUDING VIA SWIFT OR DOCUSIGN) AS THE BINDING AND EFFECTIVE RECORD OF THIS PROFORMA, IN EACH CASE WITH THE SAME EFFECT AS AN ORIGINAL MANUALLY SIGNED PROFORMA, WHETHER OR NOT AN ORIGINAL MANUALLY SIGNED PROFORMA IS ALSO RECEIVED BY BANK FROM APPLICANT. APPLICANT REPRESENTS TO BANK THAT THE SIGNATURE (WHETHER A PHOTOCOPY, FACSIMILE, ELECTRONICALLY TRANSMITTED COPY OR REPRODUCTION OF AN INK SIGNATURE OR AN ELECTRONIC SIGNATURE) THAT APPEARS ON THE PROFORMA THAT IS TRANSMITTED BY APPLICANT TO BANK IN ANY MANNER IS INTENDED BY APPLICANT TO AUTHENTICATE THE PROFORMA AND EVIDENCE APPLICANT'S AGREEMENT WITH ITS TERMS NOTWITHSTANDING THAT SUCH SIGNATURE MAY NOT BE AN ORIGINAL MANUAL SIGNATURE. APPLICANT FURTHER AGREES THAT ANY SUCH PROFORMA RECEIVED BY BANK SHALL CONSTITUTE AN ORIGINAL DOCUMENT FOR ALL PURPOSES, INCLUDING ESTABLISHING THE PROVISIONS OF THE PROFORMA, SHALL BE BINDING ON AND ENFORCEABLE AGAINST APPLICANT, AND SHALL BE LEGALLY ADMISSIBLE UNDER THE BEST EVIDENCE RULE.

APPLICANT(S) HEREBY AGREE WITH THE FORM AND WORDING OF THE FOLLOWING PROFORMA LETTER OF CREDIT, AND REQUEST THAT WELLS FARGO BANK, N.A. ISSUE THE LETTER OF CREDIT WITH SUCH FORM AND WORDING. IF THERE ARE MULTIPLE APPLICANTS FOR THE LETTER OF CREDIT, THE SIGNATURE OF ONE APPLICANT DENOTES APPROVAL BY ALL APPLICANTS AND BINDS ALL APPLICANTS.

BY: _____ DATE: _____
AUTHORIZED SIGNATURE

PRINTED NAME AND TITLE:

THIS PROFORMA LETTER OF CREDIT IS AN INTEGRAL PART OF THE APPLICATION AND AGREEMENT FOR THE ISSUANCE OF THE LETTER OF CREDIT. THE LETTER OF CREDIT CANNOT BE ISSUED UNTIL THE PROFORMA LETTER OF CREDIT IS RETURNED TO US WITH THE APPLICANT'S SIGNATURE ABOVE.

Irrevocable Standby Letter Of Credit

Number : IS000411186U
Issue Date : November 2, 2023

BENEFICIARY

300 PARK AVE. SO. L.L.C.
C/O ROCKROSE DEVELOPMENT L.L.C.

APPLICANT

1STDIBS.COM, INC.
51 ASTOR PLACE, 3RD FLOOR



15 EAST 26TH STREET, 7TH FLOOR
ATTN: TED TRAUM
NEW YORK, NEW YORK 10010

NEW YORK, NEW YORK 10003

LETTER OF CREDIT ISSUE AMOUNT USD 242,660.25 EXPIRY DATE AUGUST 30, 2024

LADIES AND GENTLEMEN:

AT THE REQUEST AND FOR THE ACCOUNT OF THE ABOVE REFERENCED APPLICANT, WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT (THIS "LETTER OF CREDIT") IN YOUR FAVOR IN THE AMOUNT OF TWO HUNDRED FORTY TWO THOUSAND, SIX HUNDRED SIXTY AND 25/100 U.S. DOLLARS (USD 242,660.25) AVAILABLE WITH US AT OUR ABOVE OFFICE BY PAYMENT AGAINST PRESENTATION OF THE FOLLOWING DOCUMENTS:

1. A DRAFT DRAWN ON US AT SIGHT MARKED "DRAWN UNDER WELLS FARGO BANK, N.A. STANDBY LETTER OF CREDIT NO. IS000411186U."
2. THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT AND ANY AMENDMENTS THERETO.
3. BENEFICIARY'S SIGNED AND DATED STATEMENT WORDED AS FOLLOWS (WITH THE INSTRUCTIONS IN BRACKETS THEREIN COMPLIED WITH):

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY OF WELLS FARGO BANK LETTER OF CREDIT NO.IS000411186U HEREBY DRAWS THE AMOUNT OF THE DRAFT ACCOMPANYING THIS STATEMENT PURSUANT TO AND IN CONNECTION WITH THAT CERTAIN LEASE DATED (INSERT DATE) BETWEEN 1STDIBS.COM, INC. AND 300 PARK AVE. SO. L.L.C. (AS SUCH LEASE MAY BE AMENDED, RESTATED OR REPLACED)."

DRAWINGS MAY ALSO BE PRESENTED TO US BY FACSIMILE TRANSMISSION TO FACSIMILE NUMBER 844-879-5593 (EACH SUCH DRAWING, A "FAX DRAWING"); PROVIDED, HOWEVER, THAT A FAX DRAWING WILL NOT BE EFFECTIVELY PRESENTED UNTIL YOU CONFIRM BY TELEPHONE OUR RECEIPT OF SUCH FAX DRAWING BY CALLING US AT TELEPHONE NUMBER 1-800-776-3862, OPTION 2. IF YOU PRESENT A FAX DRAWING UNDER THIS LETTER OF CREDIT YOU DO NOT NEED TO PRESENT THE ORIGINAL OF ANY DRAWING DOCUMENTS, AND IF WE RECEIVE ANY SUCH ORIGINAL DRAWING DOCUMENTS THEY WILL NOT BE EXAMINED BY US. IN THE EVENT OF A FULL OR FINAL DRAWING THE ORIGINAL STANDBY LETTER OF CREDIT MUST BE RETURNED TO US BY OVERNIGHT COURIER.

THIS LETTER OF CREDIT EXPIRES AT OUR ABOVE OFFICE ON AUGUST 30, 2024. IT IS A CONDITION OF THIS LETTER OF CREDIT THAT SUCH EXPIRATION DATE SHALL BE DEEMED AUTOMATICALLY EXTENDED, WITHOUT WRITTEN AMENDMENT, FOR ONE YEAR PERIODS TO AUGUST 30 IN EACH SUCCEEDING CALENDAR YEAR, UNLESS AT LEAST 90 CALENDAR DAYS PRIOR TO SUCH EXPIRATION DATE WE SEND WRITTEN NOTICE TO YOU AT YOUR ADDRESS ABOVE BY OVERNIGHT COURIER OR REGISTERED MAIL THAT WE ELECT NOT TO EXTEND THE EXPIRATION DATE OF THIS LETTER OF CREDIT BEYOND THE DATE SPECIFIED IN SUCH NOTICE. THIS STANDBY LETTER OF CREDIT SHALL NOT BE EXTENDED BEYOND 11/30/2029 WHICH WILL BE CONSIDERED THE FINAL EXPIRATION DATE. ANY REFERENCE TO A FINAL EXPIRATION DATE DOES NOT IMPLY THAT WELLS FARGO BANK, N.A. IS OBLIGATED TO EXTEND THIS CREDIT BEYOND THE INITIAL EXPIRY DATE OR ANY EXTENDED DATE HEREOF.

UPON OUR SENDING YOU SUCH NOTICE OF THE NON-EXTENSION OF THE EXPIRATION DATE OF THIS



LETTER OF CREDIT, YOU MAY ALSO DRAW UNDER THIS LETTER OF CREDIT, ON OR BEFORE THE EXPIRATION DATE SPECIFIED IN SUCH NOTICE, BY PRESENTATION OF THE FOLLOWING DOCUMENTS TO US AT OUR ABOVE ADDRESS:

1. A DRAFT DRAWN ON US AT SIGHT MARKED "DRAWN UNDER WELLS FARGO BANK, N.A. STANDBY LETTER OF CREDIT NO. IS000411186U.
2. THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT AND ANY AMENDMENTS THERETO.
3. YOUR SIGNED AND DATED STATEMENT WORDED AS FOLLOWS (WITH THE INSTRUCTIONS IN BRACKETS THEREIN COMPLIED WITH):

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY OF WELLS FARGO BANK, N. A. LETTER OF CREDIT NO. IS000411186U, HEREBY DRAWS THE AMOUNT OF THE DRAFT ACCOMPANYING THIS STATEMENT PURSUANT TO AND IN CONNECTION WITH THAT CERTAIN LEASE DATED (INSERT DATE) BETWEEN 1STDIBS.COM, INC. AND 300 PARK AVE. SO. L.L.C. (AS SUCH LEASE MAY BE AMENDED, RESTATED OR REPLACED)."

MULTIPLE AND PARTIAL DRAWING(S) ARE PERMITTED UNDER THIS LETTER OF CREDIT; PROVIDED, HOWEVER, THAT THE TOTAL AMOUNT OF ANY PAYMENT(S) MADE UNDER THIS LETTER OF CREDIT WILL NOT EXCEED THE TOTAL AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT IS TRANSFERABLE ONE OR MORE TIMES, BUT IN EACH INSTANCE ONLY TO A SINGLE TRANSFEREE AND ONLY IN THE FULL AMOUNT AVAILABLE TO BE DRAWN UNDER THE LETTER OF CREDIT AT THE TIME OF SUCH TRANSFER. ANY SUCH TRANSFER MAY BE EFFECTED ONLY THROUGH WELLS FARGO BANK, N.A. AND ONLY UPON PRESENTATION TO US AT OUR PRESENTATION OFFICE SPECIFIED HEREIN OF A DULY EXECUTED TRANSFER REQUEST IN THE FORM ATTACHED HERETO AS EXHIBIT A, WITH INSTRUCTIONS THEREIN IN BRACKETS COMPLIED WITH, TOGETHER WITH THE ORIGINAL OF THIS LETTER OF CREDIT AND ANY AMENDMENTS THERETO. EACH TRANSFER SHALL BE EVIDENCED BY OUR ENDORSEMENT ON THE REVERSE OF THE ORIGINAL OF THIS LETTER OF CREDIT, AND WE SHALL DELIVER SUCH ORIGINAL TO THE TRANSFEREE. THE TRANSFEREE'S NAME SHALL AUTOMATICALLY BE SUBSTITUTED FOR THAT OF THE BENEFICIARY WHEREVER SUCH BENEFICIARY'S NAME APPEARS WITHIN THIS STANDBY LETTER OF CREDIT. ALL CHARGES IN CONNECTION WITH ANY TRANSFER OF THIS LETTER OF CREDIT ARE FOR THE APPLICANT'S ACCOUNT AND SHALL NOT BE A CONDITION OF TRANSFER.

WE AGREE IN THE EVENT THAT THE ORIGINAL OF THIS LETTER OF CREDIT IS LOST, STOLEN, MUTILATED OR DESTROYED THAT UPON YOUR REQUEST, WE WILL PROVIDE A REPLACEMENT TO THE ORIGINAL OF THIS LETTER OF CREDIT IN THE FORM OF AN AUTHENTICATED COPY OF THE ORIGINAL LETTER OF CREDIT PROVIDED THAT YOUR REQUEST IS ACCOMPANIED BY YOUR INDEMNIFICATION IN FORMAT AND SUBSTANCE ACCEPTABLE TO US (THE FORM OF WHICH WE WILL PROVIDE TO YOU UPON REQUEST) AND OUR CUSTOMARY FEE. WE FURTHER AGREE THAT FOR PURPOSES OF THIS LETTER OF CREDIT, SUCH AN AUTHENTICATED COPY OF THIS LETTER OF CREDIT SHALL BE CONSIDERED THE ORIGINAL OF THIS LETTER OF CREDIT.

WE WILL NOT BE LIABLE FOR DELAY, NON-RETURN OF DOCUMENTS, NON-PAYMENT, OR OTHER ACTION OR INACTION COMPELLED BY A LAW, EXECUTIVE OR JUDICIAL ORDER OR GOVERNMENT REGULATION APPLICABLE TO US.

WE HEREBY ENGAGE WITH YOU THAT EACH DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TOGETHER WITH THE DOCUMENTS SPECIFIED IN THIS LETTER OF CREDIT AT OUR OFFICE LOCATED AT, 401 N. RESEARCH PKWY, MAC D4004-017, WINSTON-SALEM, NC 27101, ATTENTION: US TRADE SERVICES, STANDBY LETTERS OF CREDIT ON OR BEFORE THE ABOVE STATED EXPIRY DATE, OR ANY EXTENDED EXPIRY DATE IF APPLICABLE.



THIS IRREVOCABLE STANDBY LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. THIS UNDERTAKING IS INDEPENDENT OF AND SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR INCORPORATED BY REFERENCE TO ANY DOCUMENT, CONTRACT OR AGREEMENT REFERENCED HEREIN OTHER THAN THE STIPULATED ICC RULES AND GOVERNING LAWS.

CANCELLATION PRIOR TO EXPIRATION: YOU MAY RETURN THIS LETTER OF CREDIT TO US FOR CANCELLATION PRIOR TO ITS EXPIRATION PROVIDED THAT THIS LETTER OF CREDIT IS ACCOMPANIED BY YOUR WRITTEN AGREEMENT TO ITS CANCELLATION. SUCH WRITTEN AGREEMENT TO CANCELLATION SHOULD SPECIFICALLY REFERENCE THIS LETTER OF CREDIT BY NUMBER, CLEARLY INDICATE THAT IT IS BEING RETURNED FOR CANCELLATION AND BE SIGNED BY A PERSON IDENTIFYING THEMSELVES AS AUTHORIZED TO SIGN FOR YOU.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICE 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590.

Very Truly Yours,

WELLS FARGO BANK, N.A.

ProForma

By: _____

Authorized Signature

The original of the Letter of Credit contains an embossed seal over the Authorized Signature.

Please direct any written correspondence or inquiries regarding this Letter of Credit, always quoting our reference number, to **Wells Fargo Bank, National Association**, Attn: U.S. Standby Trade Services

at either 794 Davis Street, 2nd Floor
MAC A0283-023,
San Leandro, CA 94577-6922

or 401 N. Research Pkwy, 1st Floor
MAC D4004-017,
WINSTON-SALEM, NC 27101-4157

Phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals
1-800-776-3862 Option 2
(Hours of Operation: 8:00 a.m. ET to 5:00 p.m. PT)



EXHIBIT A

REQUEST FOR FULL TRANSFER OF LETTER OF CREDIT

TO: WELLS FARGO BANK, N.A.

DATE: _____

STANDBY LETTER OF CREDIT DEPARTMENT
794 DAVIS STREET, 2ND FLOOR, MAC A0283-023
SAN LEANDRO, CA 94577-6922

STANDBY LETTER OF CREDIT DEPARTMENT
401 NORTH RESEARCH PARKWAY, 1ST FLOOR,
MAC D4004-012 WINSTON-SALEM, NC 27101-4157

LETTER OF CREDIT NUMBER: IS000411186U WELLS FARGO REF NUMBER (IF DIFFERENT): _____

ISSUING BANK: _____

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY OF THE ABOVE REFERENCED LETTER OF CREDIT (THE "TRANSFEROR") HEREBY IRREVOCABLY TRANSFERS ALL ITS RIGHTS UNDER THE LETTER OF CREDIT AS AMENDED TO THIS DATE (THE "CREDIT") TO THE FOLLOWING TRANSFEREE (THE "TRANSFEREE"):

TRANSFEREE NAME: _____

ADDRESS: _____

PHONE NUMBER: _____

BY THIS TRANSFER, ALL RIGHTS OF TRANSFEROR IN THE LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE, AND THE TRANSFEREE SHALL BE THE SOLE BENEFICIARY OF THE LETTER OF CREDIT, POSSESSING ALL RIGHTS PERTAINING THERETO, INCLUDING, BUT NOT LIMITED TO, SOLE RIGHTS RELATING TO THE APPROVAL OF ANY AMENDMENTS MADE AFTER THE DATE HEREOF. YOU ARE HEREBY IRREVOCABLY INSTRUCTED TO ADVISE FUTURE AMENDMENT(S) TO THE LETTER OF CREDIT TO THE TRANSFEREE WITHOUT THE TRANSFEROR'S CONSENT OR NOTICE TO THE TRANSFEROR.

ENCLOSED ARE THE ORIGINAL LETTER OF CREDIT AND THE ORIGINAL OF ALL AMENDMENTS ISSUED TO DATE WHICH WE REQUEST THAT WELLS FARGO SEND TO THE TRANSFEREE AFTER NOTING THIS TRANSFER ON THE CREDIT.

WE REPRESENT AND WARRANT TO WELLS FARGO THAT TO THE BEST OF OUR KNOWLEDGE THIS TRANSFER AND THE TRANSACTION(S) THEREUNDER DO NOT VIOLATE ANY LAW OR REGULATION.

PLEASE NOTIFY THE TRANSFEREE OF THIS TRANSFER AND OF THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT AS TRANSFERRED. THIS TRANSFER WILL BECOME EFFECTIVE UPON WELLS FARGO BANK, N.A.'S WRITTEN NOTIFICATION TO THE TRANSFEREE THAT SUCH TRANSFER WAS EFFECTED.

[TRANSFEROR'S NAME]



BY: _____
PRINTED NAME: _____
TITLE: _____
PHONE NUMBER: _____

THE BANK SIGNING BELOW GUARANTEES THAT THE
TRANSFEROR'S SIGNATURE IS GENUINE AND THAT THE
INDIVIDUAL SIGNING THIS TRANSFER REQUEST HAS THE
AUTHORITY TO DO SO:

[BANK'S NAME]
BY: _____
PRINTED NAME: _____
TITLE: _____

AS AN ALTERNATIVE TO THE ABOVE REQUIREMENT FOR A BANK'S SIGNATURE GUARANTEE, THE FOLLOWING
AUTHORIZED SIGNER CERTIFICATION MAY BE COMPLETED:

I, THE UNDERSIGNED DO HEREBY CERTIFY THAT I HOLD THE TITLE OF _____ SECRETARY, _____ ASSISTANT
SECRETARY, _____ CHIEF FINANCIAL OFFICER, _____ CHIEF EXECUTIVE OFFICER, _____ PRESIDENT, _____ VICE PRESIDENT, _____
TREASURER, _____ MANAGING MEMBER, _____ MANAGER, OR _____ OTHER _____ AND I AM
AUTHORIZED TO CERTIFY ON BEHALF OF THE BENEFICIARY, AS OF THE DATE OF THIS AUTHORIZED SIGNER
CERTIFICATION, THAT THE PERSON(S) SIGNING AS TRANSFEROR ABOVE PRESENTLY HOLDS THE TITLE
SPECIFIED IN THE TRANSFEROR SIGNATORY SECTION AND THE SIGNATURE IS GENUINE OF SUCH PERSON.

THAT SUCH PERSON SIGNING ABOVE AS TRANSFEROR IS AUTHORIZED ON BEHALF OF THE BENEFICIARY TO
ENTER INTO OR EXECUTE AND DELIVER THIS REQUEST TO TRANSFER A LETTER OF CREDIT ISSUED BY WELLS
FARGO BANK, N.A. INCLUDING THE ABOVE TERMS AND CONDITIONS IN SUCH REQUEST FOR FULL TRANSFER
OF LETTER OF CREDIT.

WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME THIS DAY OF , 20 .

*BY: _____ (SIGNATURE)
PRINTED NAME: _____

*THE PERSON MAKING THIS CERTIFICATION MAY NOT BE THE AUTHORIZED SIGNATORY ON THE REQUEST FOR
FULL TRANSFER OF LETTER OF CREDIT.

EXHIBIT G

REQUIREMENTS REGARDING USE OF ROOF DECK

Use of the Roof Deck will be subject to additional Rules and Regulations to be promulgated by Landlord from time to time upon reasonable advanced written notice. Tenant's exclusive use of the Roof Deck is subject to the following:

1. Without limiting the prior sentence, Landlord reserves the right to terminate Tenant's right to reserve the Roof Deck for exclusive use if Tenant is in monetary or material non-monetary default (beyond the expiration of any applicable grace, notice and/or cure periods) under the Lease and/or if Tenant violates any material provisions of this Lease (including Rules and Regulations) relating to use of the Roof Deck (beyond the expiration of any applicable grace, notice and/or cure periods).

2. For so long as Tenant complies with the Roof Deck Occupancy Requirements, Tenant shall have the right to reserve the Roof Deck for its exclusive use, subject to the terms of the Lease and these rules and regulations, and excluding holidays and other event days (e.g. the Super Bowl). Reservations by Tenant for exclusive use of the Roof Deck will be made with Landlord on a first-come, first served basis no later than 15 days prior to the event. Reservations shall be made by providing the following information: **hours; number of guests; purpose of party; names of caterers, and any people or companies who will be at the Building that is not currently a tenant in the building (if any)**

3. Tenant's exclusive use of the Roof Deck may be for professional social events only (that is, business events hosted and sponsored by Tenant) and may not be used for personal social events or for events hosted or sponsored by anyone other than Tenant.

4. The Roof Deck may be reserved for Tenant's exclusive use year-round (weather permitting), between the hours of 8 am and 10 pm on Business Days and 9 am and 10 pm on all other days. Such hours include all time required for setup through departure of all persons attending or servicing the event. Exclusive use of the Roof Deck shall be scheduled in minimum increments of 4 hours. Any deliveries made in connection with any event on the Roof Deck must use the freight elevator to the 15th floor, which must be reserved as set forth in the Lease, and the emergency staircase from the 15th floor to the Roof Deck.

5. All catering and other services for events on the Roof Deck shall be provided by contractors and other providers approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to entering the Building, all such contractors and other providers must provide Landlord with an insurance certificate, naming Landlord, Landlord's Agent and the other Insured Parties as additional insureds, and evidencing coverage effective on the date of the event substantially in accordance with the same certificate attached hereto as Exhibit 1.

6. Tenant shall pay Landlord at the time of reservation a deposit in an amount equal to 4 times the hourly Roof Deck Fee, which amount shall be credited against the actual Roof Deck Fee payable by Tenant. Such deposit shall be refundable up until 48 hours prior to the time reserved for the event, and non-refundable thereafter.

7. As of the Effective Date, the hourly Roof Deck Fee is \$200, which fee is subject to increase from time to time to cover Landlord's actual out-of-pocket costs as reasonably determined by Landlord. The Roof Deck Fee includes the costs to Landlord of providing additional security on the Roof Deck, and the costs of normal cleaning the Roof Deck after the event and removal of refuse (i.e. wiping down of furniture, sweeping and clearing of garbage receptacles; removal of excess garbage and extra cleaning would be subject to additional charges). Such fee does not include extraordinary cleaning and removal of any property left by Tenant after the period of exclusive use expires, all of which shall be performed by Tenant at its sole cost, and may be performed by Landlord at Tenant's expense if Tenant fails to perform same. In addition, if in Landlord's reasonable opinion, more than one (1) security personnel is needed, then Landlord will provide such additional personnel and charge Tenant an additional fee therefor at the rate of \$75 per hour (such amount to be increased from time to time in the same manner as the hourly Roof Deck Fee). The Roof Deck Fee and any other amount due by Tenant to Landlord as set forth on these rules and regulations are Additional Rent, and except as otherwise expressly provided, shall be due and payable within 30 Business Days after receipt from Landlord of an invoice therefor.

8. Tenant agrees and acknowledges that if during a Roof Deck event, anything is dropped or thrown from, or pushed off, or falls from, the Roof Deck, or if anyone at the event is inebriated, high, belligerent, raucous, or disruptive, Landlord's security personnel shall have the right to remove from the Building any such person causing a disruption and/or to immediately terminate the event, in which event Tenant shall cooperate with such security personnel to cause such persons to be removed, and/or to cause the Roof Deck to be promptly vacated. The decisions of Tenant's security personnel are final.

9. Maximum number of people allowed on the Roof Deck at any time is 74 people. Tenant may request Landlord to approve additional people, which request Landlord may approve or reject in its sole discretion, including without limitation, conditioning such approval on Tenant obtaining any necessary licenses or permits in connection therewith, and filing for such licenses or permits with Landlord's code consultant or expeditor.

10. An officer of Tenant shall be present at any Roof Deck event.

11. Tenant shall cause all of its employees, contractors, guests and other invitees to use the Roof Deck in compliance with all Requirements, including those regarding noise. Tenant shall obtain all permits and licenses required in connection with its use of the roof deck (including without limitation for use of amplified equipment), and provide copies thereof to Landlord prior to any period of exclusive use.

12. Tenant acknowledges that there is no temporary storage available on the Roof Deck, and Tenant agrees that it shall remove all of its property (including without limitation, tables, chairs, bars, and catering equipment) prior to the end of any exclusive use period, and in the event that Tenant fails to remove any of such property, Landlord shall (in addition to its other remedies) be entitled to charge the hourly Roof Deck Fee until such time as all of such property is removed.

13. Tenant shall not sell or permit the sale of alcohol during its exclusive use of the Roof Deck under any circumstances whatsoever provided Tenant and its employees, guests, invitees, and clients shall be permitted to serve (to Tenant's employees, guests, invitees and clients, without payment therefor), and consume alcohol in accordance with this Exhibit H and the Lease.

Exhibit 1

ACORD®		CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY)	
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.							
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).							
PRODUCER				CONTACT			
Broker				Broker Contact			
Address				PHONE (A/C No. Ext.)		FAX (A/C No.)	
				E-MAIL ADDRESS:			
				INSURER(S) AFFORDING COVERAGE			
				INSURER A: Insurance Company		NAIC #	
				INSURER B: Insurance Company			
				INSURER C: Insurance Company			
				INSURER D:			
				INSURER E:			
				INSURER F:			
INSURED							
Tenants / Vendors Name							
Address							
City, State Zip							
COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:			
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
POST LT/N	TYPE OF INSURANCE	ADDITIONAL COVERAGE	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY					EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		Policy #	Eff Date	Eff Date	MED EXP (Any one person)	\$ 10,000
						PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE	\$ 2,000,000
	POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC					PRODUCTS - COMP/OP AGG	\$ 2,000,000
							\$
A	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per person)	\$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS	<input checked="" type="checkbox"/> SCHEDULED AUTOS	Policy #	Eff Date	Eff Date	BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident)	\$
							\$
B	UMBRELLA LIAB					EACH OCCURRENCE	\$ 5,000,000
	EXCESS LIAB	<input checked="" type="checkbox"/> OCCUR	Policy #	Eff Date	Eff Date	AGGREGATE	\$ 5,000,000
		<input checked="" type="checkbox"/> CLAIMS-MADE					\$
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					<input checked="" type="checkbox"/> WC STATU-TORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER MEMBER EXCLUDED? (Mandatory in NY)	Y / N	Policy #	Eff Date	Eff Date	E.L. EACH ACCIDENT	\$ Statutory Limit
	If yes, describe under DESCRIPTION OF OPERATIONS below	N / A				E.L. DISEASE - EA EMPLOYEE	\$ Statutory Limit
						E.L. DISEASE - POLICY LIMIT	\$ Statutory Limit
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)							
As respects to the space leased or work to be performed by the named insured at 300 Park Avenue South, NY, New York 10010, 300 Park Ave. So. L.L.C., Rockrose Development Corp., Rockrose Development I Corp., Rockrose Development L.L.C. and their respective directors, shareholders, partners, officers, members, affiliates, subsidiaries, managers, agents, employees, companies, corporations, partnerships, limited liability partnerships, limited liability companies, firms, trusts, trustees, successors, assigns, mortgagees and/or other designees of any of the above are additional insured as required by written contract. Coverage is primary and non-contributory. The named insured waives their right of subrogation against the certificate holder and all additional insureds. [FOR NY LOCATIONS, ADD: The general liability and umbrella policies do not have a third party action over exclusion or exclusions related to New York Labor Law.]							
CERTIFICATE HOLDER				CANCELLATION			
300 Park Ave. So. L.L.C.				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.			
c/o Rockrose Development L.L.C.; Attn: Property Manager				AUTHORIZED REPRESENTATIVE			
15 East 28th Street, 7th Floor							
New York NY 10010				Must be signed by authorized broker			
© 1988-2010 ACORD CORPORATION. All rights reserved.							
ACORD 25 (2010/05)				The ACORD name and logo are registered marks of ACORD			

GENERAL RULES AND REGULATIONS

The Roof Deck at 300 Park Avenue South, New York, NY is a special amenity for tenants of the Building (“**Tenants**”). All Tenants should enjoy the Roof Deck responsibly and carefully. Please observe the following guidelines.

- Share the Rooftop with others; it is for the nonexclusive use of Tenants unless reserved for special tenant functions.
 - To ensure a comfortable atmosphere for everyone, please be courteous and respectful to others. No abusive or provocative language.
 - Appropriate attire inclusive of shirt or top, shorts and or pants, and appropriate shoes. No bare feet allowed.
 - Any spills must be cleaned immediately.
 - Act responsibly. Tenant is responsible for Tenant’s employees, agents, contractors, subcontractors, invitees and others who have gained access to the Roof Deck in connection with the Event (“**Guests**”).
 - For safety purposes, glass containers are not allowed on the roof deck. Caterers are allowed to pour drinks from glass containers, but all users and guests must use plastic containers.
 - Barbeques or other cooking devices are not allowed.
 - Do not use or operate any equipment or machinery which produces music, sound or noise which is audible beyond the Roof Deck.
 - No items likely to be blown off the roof are allowed. Tenants and contractors should be aware of potential wind hazards.
 - Any property, furniture or equipment (e.g. chairs, tables, benches) on the Roof Deck shall not be removed from the Roof Deck area for any reason without the prior written consent of Building Management.
 - Doors shall not be propped open.
 - Do not throw or permit to be thrown from the Roof Deck any refuse or other objects.
 - Do not place, exhibit or affix any signs, advertisements, notices or banners on any part of the Roof Deck.
 - Tenants shall pay for any loss or damage to property for which they are responsible.
 - Tenants are fully responsible for personal items that are lost, stolen, or damaged at the Roof Deck.
-

- Recognize that there is a possibility of physical injury or death arising out of Tenant's and/or Guests' use of the Rooftop. Tenant and Guests use the Rooftop at their own risk.
 - Smoking is NOT permitted on the Roof Deck.
 - Landlord may close the Roof Deck at any time and from time to time as reasonably determined by Landlord, for purposes of repair, cleaning, emergency. Or for any other reason reasonably determined by Landlord.
 - Users must immediately notify the building management in the event they discover any unsafe or hazardous defect or condition relating to the Roof Deck Facility, or any serious breakage, fire or disorder at the Roof Deck.
 - Please note that any User who continuously or intentionally disregards and/or breaks the Rules & Regulations of the Roof Deck will have all building amenity privileges revoked, including but not limited to the Roof Deck, indefinitely.
-

EXHIBIT H

FORM OF COMMENCEMENT DATE AGREEMENT

COMMENCEMENT DATE AGREEMENT

THIS **COMMENCEMENT DATE AGREEMENT** is made as of _____, 202__,
between **300 PARK AVE. SO. L.L.C. ("Landlord")** and **1STDIBS.COM, INC. ("Tenant")**.

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to the Office Lease (the "Lease"), dated as of _____, 2023, regarding certain premises leased by Landlord to Tenant at 300 Park Avenue South, New York, NY; and

WHEREAS, the Lease provides that the parties shall execute an agreement setting forth the Commencement Date, the Rent Commencement Date and the Initial Expiration Date;

NOW THEREFORE, the parties hereto, intending to be legally bound and hereby covenant and agree as follows:

1. Capitalized terms used but not defined herein shall have the meanings given them in the Lease.

2. The Commencement Date is _____, the Rent Commencement Date is _____, and the Initial Expiration Date is _____.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Landlord

300 PARK AVE. SO. L.L.C.

By: _____
Name:
Title:

Tenant

1STDIBS.COM, INC.

By: _____
Name:
Title:

ISSUER REPURCHASES OF EQUITY SECURITIES

Use the checkbox to indicate if any officer or director reporting pursuant to section 16(a) of the Exchange Act (15 U.S.C. 78p(a)), or for foreign private issuers as defined by Rule 3b-4(c) (17 CFR 240.3b-4(c)), any director or member of senior management who would be identified pursuant to Item 1 of Form 20-F (17 CFR 249.220f), purchased or sold shares or other units of the class of the issuer's equity securities that are registered pursuant to section 12 of the Exchange Act and subject of a publicly announced plan or program within four (4) business days before or after the issuer's announcement of such repurchase plan or program or the announcement of an increase of an existing share repurchase plan or program. Yes ☐ No ☒

Trade date	Class of shares	Total number of shares purchased	Average price paid per share	Total number of shares purchased under publicly announced programs	Approximate dollar value that may yet be purchased under publicly announced plan	Total number of shares purchased on open market	Total number of shares purchased that are intended to qualify for the safe harbor in Rule 10b-18	Total number of shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) ⁽¹⁾
8/11/2023	Common	7,434	\$3.97	7,434	\$19,970	7,434	7,434	—
8/14/2023	Common	15,000	\$4.13	15,000	\$19,909	15,000	15,000	—
8/15/2023	Common	51,000	\$4.15	51,000	\$19,697	51,000	51,000	—
8/16/2023	Common	36,931	\$4.17	36,931	\$19,543	36,931	36,931	—
8/17/2023	Common	25,369	\$4.17	25,369	\$19,437	25,369	25,369	—
8/18/2023	Common	31,000	\$4.07	31,000	\$19,311	31,000	31,000	—
8/21/2023	Common	26,000	\$4.12	26,000	\$19,204	26,000	26,000	—
8/22/2023	Common	14,000	\$4.19	14,000	\$19,145	14,000	14,000	—
8/23/2023	Common	2,680	\$4.22	2,680	\$19,134	2,680	2,680	—
8/24/2023	Common	4,373	\$4.22	4,373	\$19,116	4,373	4,373	—
8/25/2023	Common	5,281	\$4.31	5,281	\$19,093	5,281	5,281	—
8/28/2023	Common	5,810	\$4.18	5,810	\$19,069	5,810	5,810	—
8/29/2023	Common	1,472	\$4.18	1,472	\$19,062	1,472	1,472	—
8/30/2023	Common	926	\$4.32	926	\$19,058	926	926	—
8/31/2023	Common	1,800	\$4.45	1,800	\$19,050	1,800	1,800	—
9/1/2023	Common	2,271	\$4.52	2,271	\$19,040	2,271	2,271	—
9/6/2023	Common	1,379	\$4.52	1,379	\$19,034	1,379	1,379	—
9/7/2023	Common	3,500	\$4.39	3,500	\$19,019	3,500	3,500	—
9/8/2023	Common	6,500	\$4.27	6,500	\$18,991	6,500	6,500	—
9/11/2023	Common	9,543	\$4.26	9,543	\$18,950	9,543	9,543	—
9/12/2023	Common	4,990	\$4.17	4,990	\$18,929	4,990	4,990	—
9/13/2023	Common	18,000	\$4.20	18,000	\$18,854	18,000	18,000	—
9/14/2023	Common	18,000	\$4.07	18,000	\$18,780	18,000	18,000	—
9/15/2023	Common	18,000	\$3.94	18,000	\$18,710	18,000	18,000	—
9/27/2023	Common	5,900	\$3.59	5,900	\$18,688	5,900	—	5,900
9/28/2023	Common	7,400	\$3.66	7,400	\$18,661	7,400	—	7,400
9/29/2023	Common	10,400	\$3.65	10,400	\$18,623	10,400	—	10,400
TOTAL		334,959	\$4.11	334,959	\$18,623	334,959	311,259	23,700

(1) On August 28, 2023, the Company entered into a "Rule 10b5-1 trading arrangement" intended to satisfy the affirmative defense conditions of Rule 10b5-1(c), pursuant to which the Company purchased the applicable shares. The Company is authorized to repurchase up to an aggregate of \$20 million of the Company's common stock. The repurchase may be effected, from time-to-time, through open market purchases, privately negotiated transactions, Rule 10b5-1 plans, accelerated stock repurchases, block trades, derivative contracts or otherwise in compliance with Rule 10b-18 of the Exchange Act. The repurchase program is not subject to a termination or expiration date, and it does not obligate the Company to acquire any specific number of shares. The timing, price and volume of repurchases will be based on a number of factors, including market conditions, relevant securities laws, and other considerations.

**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, David Rosenblatt, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of 1stdibs.com, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2023

By: /s/ David S. Rosenblatt
David S. Rosenblatt
Chief Executive Officer

**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Thomas Etergino, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of 1stdibs.com, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2023

By: /s/ Thomas Etergino
Thomas Etergino
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO,
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of 1stdibs.com, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2023

By: _____ /s/ David S. Rosenblatt

David S. Rosenblatt
Chief Executive Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO,
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of 1stdibs.com, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2023

By: /s/ Thomas Etergino

Thomas Etergino
Chief Financial Officer