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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2023

OR

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

For The Transition Period From To

Commission File Number 001-38953

The RealReal, Inc.
(Exact name of Registrant as specified in its Charter)

Delaware	**45-1234222**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
55 Francisco Street Suite 150 San Francisco, CA	**94133**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (855) 435-5893

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, $0.00001 par value	REAL	The Nasdaq Global Select Market

Securities registered pursuant to Section 12(g) of the Act: **None**

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

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

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

Indicate by check mark whether the Registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer	☐	Accelerated filer	☒
Non-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. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒
If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of the common equity held by non-affiliates of the Registrant was approximately $207,273,202 as of June 30, 2023, the last business day of the registrant's most recently completed second fiscal quarter, based on the closing price of the shares of common stock on The NASDAQ Stock Market reported for June 30, 2023. Excludes an aggregate of 8,769,715 shares of the registrant's common stock held by officers, directors, affiliated stockholders as of June 30, 2023.

The number of shares of Registrant's Common Stock outstanding as of February 20, 2024 was 104,692,411.

DOCUMENTS INCORPORATED BY REFERENCE

Part III incorporates information by reference from the definitive proxy statement for the registrant's 2024 Annual Meeting of Stockholders.

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Unless the context suggests otherwise, references in this Annual Report on Form 10-K (the "Annual Report") to "The RealReal," the "Company," "we," "us" and "our" refer to The RealReal, Inc.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the federal securities laws. All statements other than statements of historical fact contained in this Annual Report on Form 10-K, including statements regarding our future results of operations and financial position, business strategy and plans, objectives of management for future operations, long term operating expenses, the opening of additional retail stores in the future, the development of our automation technology, expectations for capital requirements and the use of proceeds from our initial public offering, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as "may," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this Annual Report on Form 10-K are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this Annual Report on Form 10-K and are subject to a number of risks, uncertainties and assumptions described in the section titled "Risk Factors" included under Part I, Item 1A below and elsewhere in this Annual Report on Form 10-K. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Some of the key factors that could cause actual results to differ from our expectations include:

- our future financial performance, including our expectations regarding our revenue, cost of revenue, operating expenses, and our ability to achieve and maintain future profitability, in particular with respect to the impacts of macroeconomic uncertainty and geopolitical instability;
- our ability to return to historic levels of revenue growth and to effectively expand our operations;
- our ability to achieve anticipated savings in connection with our reduction in workforce and associated real estate reduction plan;
- our ability to successfully implement our growth strategies;
- our strategies, plans, objectives and goals;
- the market demand for authenticated, pre-owned luxury goods and new and pre-owned luxury goods in general and the online market for luxury goods;
- our ability to compete with existing and new competitors in existing and new markets and offerings;
- our ability to attract and retain consignors and buyers;
- our ability to increase the supply of luxury goods offered through our online marketplace;
- our ability to timely and effectively scale our operations;
- our ability to enter international markets;
- the accuracy and reliability of our authentication process;
- our ability to optimize, operate and manage our authentication centers;
- our ability to develop and protect our brand;
- our ability to comply with laws and regulations;
- our expectations regarding outstanding litigation;
- the reliable performance of our network infrastructure and content delivery process;
- our ability to detect and prevent data security breaches and fraud;
- our expectations and management of future growth;
- our expectations concerning relationships with third parties;

- economic and industry trends, projected growth or trend analysis;
- seasonal sales fluctuations;
- our ability to add capacity, capabilities and automation to our operations; and
- our ability to attract and retain key personnel.

In addition, statements such as “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this Annual Report on Form 10-K and, although we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted a thorough inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements. 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 time frame, or at all. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained in this Annual Report on Form 10-K, whether as a result of any new information, future events or otherwise.

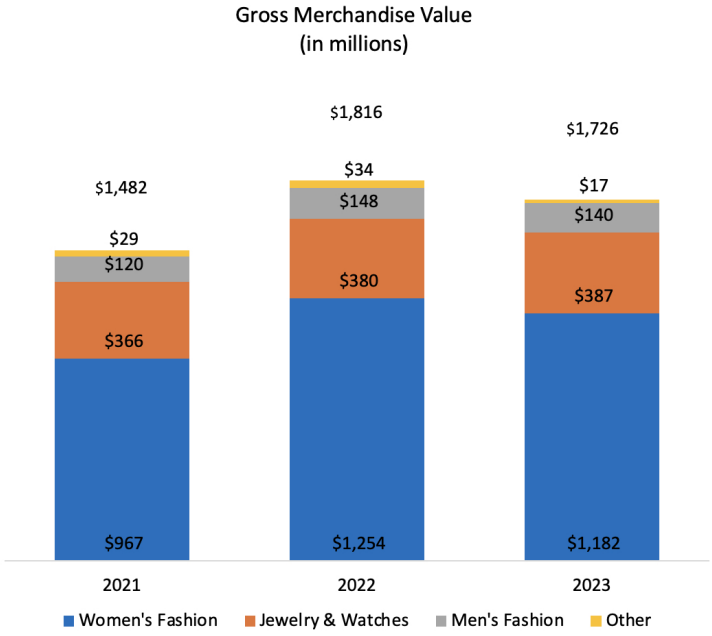
PART I

Item 1. Business.

Overview

The RealReal is the world's largest online marketplace for authenticated, resale luxury goods. We are revolutionizing luxury resale by providing an end-to-end service that unlocks supply and creates a trusted, curated online marketplace for buyers globally. Since our inception, we have cultivated a loyal and engaged consignor and buyer base through continuous investment in our technology platform, logistics infrastructure and people.

We offer a wide selection of authenticated, primarily pre-owned luxury goods on our online marketplace bearing the brands of thousands of luxury and premium designers. The top-selling luxury designers on our online marketplace include Cartier, Chanel, Christian Louboutin, Gucci, Hermès, Louis Vuitton, Prada, Rolex, Tiffany & Co. and Valentino. We offer products across multiple categories including women's fashion, men's fashion, jewelry and watches. We have built a vibrant online marketplace that we believe expands the overall luxury market, promotes the recirculation of luxury goods and contributes to a more sustainable world.



A strong network effect drives the growth of our online marketplace. As we bring more consignors onto our platform, we unlock more high-quality, luxury supply, which increases our merchandise assortment and attracts more buyers. This, in turn, increases sales velocity and commissions for our consignors. In addition, a meaningful share of our consignors are buyers and vice versa, which creates a differentiated flywheel that enhances the network effect of our online marketplace.

We also operate retail stores, including our smaller footprint neighborhood retail stores, or Neighborhood Stores. Our Neighborhood Stores are typically 1,800 to 3,500 square feet with items for sale reflecting a selection of the Company's online assortment and are located in areas we have identified as having a large amount of potential customers. In addition, we operate several larger footprint flagship stores, or Flagship Stores, in Los Angeles, California and New York, New York. Our Flagship Stores are typically 8,000 to 10,000 square feet with thousands of unique items for sale and are located in highly desirable, densely populated locations with strong foot traffic.

Our Market

The existing luxury resale market is outdated, fragmented, difficult to access and laden with counterfeit goods. Primarily due to these challenges, a vast quantity of consignable luxury goods languishes in homes, and buyers can be

hesitant to purchase pre-owned luxury goods. We are transforming the luxury resale experience by addressing these challenges.

- ***We provide a seamless consignment experience enabled by our proprietary technology platform and data.*** We leverage our proprietary technology and data analytics to provide world-class service, making consignment easy, convenient, reliable and fast. As a result, we unlock luxury supply from first-time consignors, convert consignors who typically consign at local brick-and-mortar shops to our online marketplace and drive high repeat consignment rates. We leverage data from millions of transactions and current market data to optimize pricing and sales velocity for our consignors.
- ***We offer buyers a vast, yet curated supply of primarily pre-owned luxury goods and instill trust in the buying process.*** All consigned items are put through our authentication process and thoroughly inspected for quality and condition, which builds trust in our buyer base. This trust drives repeat purchases from our buyer base and instills confidence in first-time buyers to purchase pre-owned luxury goods.
- ***We also operate Neighborhood and Flagship Stores.*** Our stores are valuable to us in multiple ways as they help us reach higher value buyers and consignors, increase lifetime value, increase average order value, and lower return rates. We also benefit from increased brand awareness that accelerates overall market growth.

Our Consignors

By making consignment easy, convenient, reliable and fast for our consignors, we aim to unlock a vast quantity of desirable, high-quality, primarily pre-owned luxury goods. Our sales professionals remove friction from the consignment process and build lasting relationships with our consignors. In 2023, approximately 85% of our gross merchandise value ("GMV") came from repeat consignors. Our unique service model incentivizes consumers to consign by making the process easy.

Our sales and service organization is responsible for obtaining exclusive supply for our online marketplace and retail stores. Our sales professionals generate a robust pipeline of new consignors and build lasting relationships, which cannot be easily replicated. They consult on the consignment process and leverage data to advise consignors on pricing, expected selling time and market trends.

- ***We deliver an end-to-end service experience.*** We remove friction from the consignment process by providing multiple consignment methods. We offer concierge at-home consultation and pickup, and virtual consultations with consignors via online face-to-face platforms. Consignors may also drop off items at our luxury consignment offices. Our Neighborhood and Flagship Stores provide an alternative location to drop off consigned items and an opportunity to interact with our authentication experts. Consignors may also utilize our complimentary shipping directly to our authentication centers.
- ***We do the work on behalf of consignors.*** All consigned items are authenticated, written up photographed, priced, sold and fulfilled on behalf of the individual consignor, making the consignment process seamless. Improvements in our automation of authentication, pricing, copywriting and photo retouching have improved the efficiency of our operations.
- ***We generate high commissions for consignors.*** Our scale and global reach combined with our technology-driven online marketplace and proprietary data enable consignors to realize optimal value for their pre-owned luxury goods. In November 2022, we launched a pricing tool for our consignors that provides transparency and detail on commission rates for specific categories and other aspects of the take rate structure. Our consignors can earn up to 90% of the proceeds from the sale of their consigned items in commissions and achieved an overall commission rate of approximately 63% in 2023.
- ***We offer a range of payment options for consignors and businesses.*** Our consignors are generally paid after an item has sold, however, we also offer trade-in terms and “Get Paid Now” options to both businesses we purchase items directly from and individuals who consign their items with us. “Get Paid Now” is a program whereby items are evaluated, authenticated and priced and the business or consignor receives payment based on this process in advance of the sale of the item.
- ***We drive rapid monetization.*** Our online marketplace efficiently matches supply with demand resulting in sales velocity of approximately 54% and 58% of the products on our online marketplace sold within 30 days, in 2023 and 2022 respectively. In addition to sales velocity, we measure the ratio of demand versus supply in a given period, which we refer to as our online marketplace sell-through ratio. Sell-through ratio is defined as GMV in the measurement period divided by the aggregate initial value of

items added to our online marketplace in that period. In 2023 and 2022, our online marketplace sell-through ratios were 92% and 91%, respectively.

Our Buyers

We make it easy for buyers to shop our vast, yet curated selection of authenticated, primarily pre-owned luxury goods. In 2023, we had approximately 1 million active buyers and approximately 87% of our GMV came from repeat buyers. As we continue to unlock exclusive luxury supply, we aim to attract new buyers and drive repeat purchases from our existing buyers.

- ***We offer a seamless buying experience.*** Buyers access our omni-channel online marketplace through our website, mobile app and retail stores, enabling them to purchase anytime, anywhere. Our Neighborhood and Flagship Stores also offer our buyers a sophisticated shopping experience, in a beautifully designed space, where they can shop our dynamic curation of authenticated pre-owned luxury goods across all of our categories.
- ***We build trust through our authentication process.*** We continue to invest and innovate in authentication, both in our people and our technology. We believe we have the most rigorous authentication process in the resale luxury goods marketplace. We have highly trained gemologists, horologists, brand experts and art curators who collectively inspect thousands of items each day. All items pass through a rigorous brand-specific authentication process before they are accepted for consignment. This process includes, among other things, inspecting the item for attributes such as appropriate brand markings, date codes, serial tags and hologram stickers. In 2022, we implemented proprietary AI microphotography to assist in authenticating high-end handbags. As of 2023, over 50% of handbags are first-pass authenticated using AI microphotography. Our gemologists and horologists inspect and authenticate fine jewelry and watches, and each piece we sell comes with an authentication certificate. We utilize state-of-the-art gemological devices, including proprietary gemstone technology, to assist these experts. Additionally, across all of our categories, our experts leverage proprietary item and consignor risk scoring algorithms to assist in authentication. For inventory sold through our drop-ship consignment service that does not pass through our authentication centers, our authentication process includes diligence of our partners and procedures for establishing provenance, as well as quality checks and audits. We have a zero-tolerance policy when it comes to counterfeit goods. Items that are deemed to be counterfeit are removed from our authentication centers.
- ***We provide access to unique, highly coveted and exclusive products.*** We provide buyers with access to a vast, yet curated selection of unique, authenticated, pre-owned luxury goods. In 2023, we sold goods bearing the brands of thousands of luxury and premium designers, including highly coveted items such as rare watches and handbags.
- ***We provide a gateway to luxury brands.*** We believe we are expanding the overall market for both new and pre-owned luxury goods, as the ability to experience and engage with luxury brands through our online marketplace results in an earlier appreciation for high-quality, well-crafted items, and inspires consumers to purchase new luxury items.

Our Technology

Technology powers all aspects of our business, including our complex, single-SKU inventory management system. Our supply comes from thousands of individual consignors and businesses across the United States. Each item we sell is a unique, individual stock keeping unit (“single-SKU”) and is exclusively available on our online marketplace or in our retail stores. Given the complexity of our inventory model, we developed specialized, proprietary applications to optimize inbound processes. We increasingly use our technology platform to automate authentication, pricing, copywriting and photo retouching for goods sold through our online marketplace.

Our powerful data analytics capabilities enable us to improve both consignor and buyer experiences. Our online marketplace generates and aggregates hundreds of millions of unique data points, including data from approximately 1.1 billion views of items by potential buyers on our online marketplace in 2023, which we refer to as item views, and approximately 37.5 million item sales since our inception. Each consigned item also has up to 50 unique attributes. Informed by this data, we have developed proprietary machine learning technology and business processes to optimize our operations, including supply sourcing, merchandising, authentication, pricing and marketing.

Environmental, Social and Governance

Our stakeholders are essential to our business—shareholders, consignors, buyers, employees and the communities in which we do business. We aspire to operate our business with positive social and environmental impact.

Our board of directors and its committees provide oversight on certain human capital matters, including our diversity and inclusion programs and initiatives. As noted in its charter, our Compensation, Diversity and Inclusion Committee is responsible for reviewing and recommending to our board of directors compensation plans, policies and programs intended to attract, retain and appropriately reward employees, as well as provide oversight of the Company's policies, programs, and initiatives focusing on leadership and workforce diversity and inclusion. Our Corporate Governance and Nominating Committee provides oversight of the Company's policies, programs and initiatives focusing on social responsibility, including environmental, sustainability, social and human rights matters. Our Audit Committee works closely with our management to discuss current and emerging risks related to our workforce and what steps management is taking to manage and reduce the Company's exposure to risk. The actions of these committees and the work of our board of directors and management seek to attract, retain and develop a diverse and inclusive workforce that is motivated to achieve the Company's business objectives.

Our Sustainability Program

We are committed to extending the lifecycle of luxury goods by promoting their recirculation, rather than creating waste. In this way, sustainability is woven into the fabric of our business, and we hope to create a more sustainable future for fashion. Additionally, we believe a growing awareness of the reduced environmental impact of recirculating luxury goods compared to the production of new products significantly contributes to the appeal of consigning and purchasing on our online marketplace.

As we move forward, we strive to continuously review our sustainability commitments, strategies and priorities. Recent sustainability efforts include:

- ***Fair Condition Program.*** This new program has enabled us to offer more secondhand, luxury items and has the effect of increasing the total number of consigned items in the circular economy. To aid buyers in assessing the condition of items in our online marketplace, we assign items a condition level. In the first quarter of 2022, we began accepting items in "fair" condition, which tend to be listed at more accessible price points given their level of wear. In 2023, demand for items in fair condition remained strong.
- ***Sustainability Task Force.*** In 2020, we formed a cross-functional Sustainability Task Force to identify projects throughout the organization that have the potential to reduce our environmental impact. The Sustainability Task Force prioritizes high impact projects and aims to embed a focus on sustainability across the organization. In early 2022, we reorganized the Sustainability Task Force into several individual working groups so we could concentrate our efforts on specific, meaningful projects, including preferred materials, transportation optimization, employee travel, employee experience and waste. In 2023, the Sustainability Task Force focused on reducing energy expenditures and limiting use of packaging materials. Throughout 2022 and 2023, members of the Sustainability Task Force provided periodic updates to our executives and the Corporate Governance and Nominating Committee of the Board of Directors on our progress toward achieving our goals and initiatives.
- ***Sustainability Calculator.*** In 2018, we launched our Sustainability Calculator on National Consignment Day as a tool to quantify the positive impact consignment has on the planet. We developed the Sustainability Calculator to measure the greenhouse gas emissions and water footprint reduction of consignment as compared to producing new products.
- ***National Consignment Day.*** We founded National Consignment Day as a national recognition day that occurs on the first Monday of October. National Consignment Day celebrates the positive impact consigning has on the environment.
- ***Carbon Neutral Pledge.*** In November 2019, we were the first company to take the pledge in the CEO Carbon Neutral Challenge issued by the CEO of Gucci. We pledged to be carbon neutral in 2021, and we reached that goal in 2020 (Scope 1, Scope 2 and certain Scope 3 emissions). Our path to carbon neutrality included implementing reductions and annually offsetting emissions that cannot be eliminated.
- ***United Nations Climate Change's Fashion Industry Charter for Climate Action.*** In April 2019, we became the first company in the resale industry to join the United Nations Climate Change's Fashion Industry Charter for Climate Action, which aims to limit global warming within the fashion industry and

inspire climate action. The charter endeavors to achieve a 50% reduction in carbon emissions in the fashion industry by 2030 and net zero emissions by 2050.

- ***ReCollections.*** Through our ReCollection program, we transform unwearable or damaged items into unique, premium luxury upcycled items. In 2023 and early 2024, we partnered with the Fashion Institute of Technology ("FIT"). As part of a design and upcycling competition, we asked eight FIT students to create one-of-a-kind coats from otherwise unwearable or damaged items. The reimagined and upcycled coats were debuted and sold in January 2024.

Human Capital Resources

Our employees are guided by our mission to empower consignors and buyers to extend the life cycle of luxury goods. We are part of a diverse global community, and we aim to reflect that diversity within our team. We believe diversity and inclusion foster a collaborative culture, which fuels our ability to innovate as we work to create a more sustainable future. We proactively seek feedback and guidance from our employees, who we see as our partners in building a strong organizational culture.

As of December 31, 2023, we had 3,032 full-time equivalent employees. Additionally, we rely on independent contractors and temporary personnel to supplement our workforce, primarily in our authentication centers. None of our employees is represented by a labor union or covered by a collective bargaining agreement. We consider our relations with our employees to be positive.

Diversity and Inclusion

We work to inspire and empower our employees to think creatively and authentically, share their ideas, bring their whole selves to work, and strive for greatness every day. We are proud to have a diverse team, and we recognize there is opportunity for us to continue improving representation, particularly among our senior leadership. We support and celebrate diversity, and are committed to providing an equal employment opportunity regardless of race, color, ancestry, religion, sex, national origin, sexual orientation, age, citizenship, marital status, disability, gender identity or expression, or veteran status. Below is a breakdown of how our team self-identifies as of December 31, 2023 (table does not reflect, of the total individuals surveyed, approximately 9% who chose not to self-identify, approximately 1% who identified as Native American, and approximately 1% who identified as Hawaiian or Pacific Islander):

	All	Corporate	Management	Executives	Board
Black	15 %	13 %	7 %	0 %	13 %
Hispanic/Latinx	31 %	16 %	16 %	4 %	0 %
Asian	7 %	12 %	11 %	11 %	0 %
Two or More Races	4 %	6 %	4 %	4 %	0 %
White	33 %	42 %	50 %	63 %	87 %
Female	66 %	67 %	62 %	48 %	50 %

DEI Vision and Strategy. We believe that creating a more sustainable future by growing the circular economy requires us to bring different perspectives. We believe that a more sustainable future is an equitable one, and that growing the circular economy requires us to unlock the power of differences and solve problems together in new and meaningful ways. We aim to design equitable future through our four-pillar strategy: People, Culture, Commerce and Community. We are committed to building a strong culture of trust, safety, collaboration and belonging to fuel our purpose, people and performance. Since introducing our diversity, equity and inclusion (“DEI”) vision and strategy in 2021, we have taken meaningful action to follow through on those commitments, keeping our employees' voices at the center of our work, and taking a renewed look at our strategy to ensure continued alignment with our mission. We continue to assess self-reporting options that reflect our diverse workforce and encourage our employees to share how they self-identify, including gender identity, LGBTQ identity, veteran status, and disability status. Since introducing the ability for our employees to share pronouns across our technologies, approximately 62% of our total employee population has chosen to share their pronouns as of December 31, 2023 in support of allyship and gender inclusion.

Employee Resource Groups. Our Employee Resource Groups (“ERGs”) help to engage employees and advance inclusion and belonging through opportunities for education, awareness, development, community and social connection. Since forming in 2020, our six ERGs have continued to mature and progress into impactful communities that strengthen our culture. In 2023, we welcomed the addition of our seventh ERG, Real Chaverim, a space for our Jewish community and allies to share knowledge and experiences. In 2023, ERG membership and participation remained strong with over

1,000 employees participating in programs focused on leadership, culture, well-being, mental health, and community impact. Our groups collaborated to host compelling conversations with diverse thought leaders and experts, test hybrid and location specific approaches for reaching our distributed workforce, and led several local service projects in our authentication centers during Earth Month in April with community partners.

Culture. In 2023, we conducted our annual employee engagement survey to better understand employees' sentiment across a range of topics and factors; management, teamwork, alignment, enablement and inclusion were among our top scoring factors. In 2023, our engagement efforts focused on well-being, leadership, communication, and inclusion. In 2023, we continued to roll out our DEI learning platform throughout our businesses in 2023, expanding access to individual contributors and enabling more employees to build and develop inclusive leadership skills through self-paced learning to better serve our people, buyers, consignors and communities. As part of our work to build a culture of trust, we encourage employees to share real-time feedback on culture, bias, discrimination and harassment, or behavior that does not reflect our values and policies through our company-wide employee reporting tool.

The RealReal, Inc. Foundation. The RealReal, Inc. Foundation was founded at the time of our initial public offering in 2019 with the aim of advancing equity in the communities in which we operate through access to education. Since its formation, the foundation has provided annual college scholarships and supported numerous community organizations, including the Success Bound Youth Leadership Academy, the Secaucus Youth Alliance, Enterprise for Youth, Friendly House, Education Forward Arizona and the Virgil Abloh™ "Post-Modern" Scholarship Fund, which aims to preserve his vision for a more diverse and equitable fashion industry.

Director Refreshment. When searching for new directors, our board of directors has committed to including in any pool of director candidates for consideration highly qualified candidates who would bring racial, ethnic, and/or gender diversity our board of directors if chosen.

Talent Development and Training

We believe that the training and development of our employees is critical to our long-term success. We offer a variety of employee training programs in addition to the DEI programs discussed above, including onboarding, technical skills training, product and services training, and managerial soft skills training. These programs include training specific to each of our business functions, enabling us to provide our consignors and buyers with a consistent luxury experience. For example, we support our sales professionals by providing a three-week virtual onboarding sequence conducted through peer-to-peer, facilitated and self-learning sessions, followed by continuous professional development programs. In 2023, we provided a Manager Development Series to people managers in retail, sales and operations.

Our authentication teams receive training based on expertise level. Entry-level authenticators receive approximately 40 to 80 hours of training depending on their specialty in fashion or fine jewelry. Progression through the authentication training program is an additional minimum of 80 hours of training and at least three months per level. Training hours and tenure increase with expertise, with a Graduate Gemologist certification from GIA required in the highest levels of specialty in fine jewelry.

Each employee receives training appropriate to the scope and nature of their role. Our Fair Labor Standards Act-exempt employees receive an annual performance review and our people managers have quarterly meetings with their employees to address performance and development, as appropriate. As a part of our onboarding program, we have developed an engagement monitoring plan for our employees in the form of personal check-ins and questionnaires.

Health, Safety and Wellness

We are committed to ensuring the health and safety of all employees and require compliance with all applicable local laws and regulations governing working conditions, working hours, fair wages, and compensation.

We recognize that in addition to minimizing work-related injuries and illness, a safe and healthy work environment supports employee retention and morale and enhances the quality of products and services. We treat all applicable health and safety regulations as a minimum standard as we are committed to high standards for our working environments that protect the well-being of all employees. We encourage consultation and cooperation between management and employees in developing occupational health and safety mechanisms through ongoing dialogue. We expect senior management to integrate health and safety mechanisms in business activities and monitor the program's effectiveness. In 2022, we implemented the REAL Respect program, which provides community guidelines for our employees, consignors and buyers aimed toward creating a positive and safe experience for all. In 2023, we launched TRR

Secure, a smartphone security app that enables field employees to discreetly contact emergency services via multiple channels if they are in a situation that makes them feel uneasy, unsafe or uncomfortable.

We continued to focus on employees' overall well-being in 2023 through a range of programs that support access to care, along with resources and tools to address the following pillars of wellness: physical, mental/emotional, financial, and community.

Seasonality

Historically, we have observed trends in seasonality of supply and demand in our business. Specifically, our supply increases in the third and fourth quarters, and our demand increases in the fourth quarter. As a result of this seasonality, we typically see stronger average order value ("AOV"), and more rapid sell-through in the fourth quarter.

Intellectual Property

Our intellectual property, including copyrights and trademarks, is an important component of our business. We rely on trademark, copyright, trade secrets, patents, patent applications, confidentiality agreements and other practices to protect our brands, 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. Our principal trademark assets include the registered trademark "The RealReal" 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 "therealreal.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. We continually review our development efforts to assess the existence and patentability of new intellectual property and intend to pursue patent protection to the extent we believe it would be beneficial and cost-effective.

We control access to and use of our intellectual property through confidentiality procedures, non-disclosure agreements with third parties and our employment and contractor agreements. We rely on contractual provisions to protect our proprietary technology, brands and creative assets with consignors and buyers.

Corporate Information

We were incorporated in the state of Delaware in March 2011. Our principal executive offices are located at 55 Francisco Street, Suite 150, San Francisco, California 94133, and our telephone number is (855) 435-5893. You may access our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and other reports (and amendments and exhibits thereto) filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act with the Securities and Exchange Commission ("SEC"), as well as proxy statements filed by us, free of charge on our website at www.therealreal.com, as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC. Information contained on, or that can be accessed through, our website is not incorporated by reference into this or any other report we file with, or furnish to, the SEC, and you should not consider information on our website to be part of this or any other report we file with, or furnish to, the SEC. Such periodic reports, proxy statements and other information are also available at the SEC's website at http://www.sec.gov.

The RealReal and other trademarks or service marks of The RealReal, Inc. appearing in this Annual Report are the property of The RealReal, Inc. This Annual Report contains additional trade names, trademarks and service marks of others, which are the property of their respective owners. Solely for convenience, the trademarks, service marks, logos and trade names referred to in this Annual Report are without the ® and ™ symbols, but such references are not intended to indicate that we will not assert our rights in these trademarks, service marks and trade names.

Item 1A. Risk Factors.

Risk Factors Summary

The following is a summary of the principal risks and uncertainties described in more detail in this Annual Report on Form 10-K.

Risks Relating to Our Business and Industry

- We have a history of losses and we may not be able to achieve or maintain profitability in the future.
- The savings plan we implemented in February 2023 may not result in anticipated savings, could result in total costs and expenses that are greater than expected and could disrupt our business.
- We may not be able to return to historic levels of revenue growth rate or effectively manage growth or new opportunities.
- We may not accurately forecast revenue and appropriately plan our expenses.
- We have experienced seasonal and quarterly variations in our revenue and operating results.
- Greater than expected product returns may exceed our reserve for returns.
- We may require additional capital to support our business growth.
- Public health emergencies or outbreaks of epidemics, pandemics, or contagious diseases such as the COVID-19 pandemic have adversely affected, and could in the future, adversely affect our business and the business of our consignors and buyers.
- The failure of any bank in which we deposit our funds could reduce the amount of cash we have available to pay distributions and make additional investments.

Risks Relating to Our Strategy

- We may be unable to execute on our retail strategy.
- Expansion of our operations internationally will require significant management attention and resources.
- Our growth strategies may not be successfully implemented, help us achieve profitability or generate sustainable revenue and profit.

Risks Relating to Supply

- We may not be able to obtain sufficient new and recurring supply of pre-owned luxury goods.
- We may be unable to attract and retain talented sales professionals.
- Our growth and supply of product offerings are enhanced by our ability to maintain our brand partnerships.

Risks Relating to Demand

- Our continued growth depends on attracting new and retaining repeat buyers.
- National retailers and brands set their own retail prices and promotional discounts on new luxury goods, which could adversely affect our value proposition to consignors and buyers.
- We must successfully gauge and respond to changing preferences among our consignors and buyers.
- We may be unable to replicate our business model for newer categories of consigned goods or different product mixes of consigned goods.
- We rely on consumer discretionary spending, which is adversely affected by economic downturns, including economic recession or depression, and other macroeconomic conditions or trends.
- Our industry is highly competitive and we may not be able to compete effectively.

Risks Related to Marketing and Brand Management

- Our success depends on the accuracy and reliability of our authentication process.
- We may not succeed in promoting and sustaining our brand.
- Our marketing and advertising activity may fail to efficiently drive growth in consignors and buyers.
- We rely on third parties to drive traffic to our website.
- Use of social media, emails and text messages may adversely impact our reputation or subject us to fines.
- The public disclosure of our Environmental, Social and Governance (“ESG”) metrics may subject us to risks.

Risks Related to Our Merchandising and Fulfillment

- We may not be able to attract, train and retain specialized personnel and skilled employees.
- We may not be able to identify and lease authentication centers in suitable geographic regions.
- We may experience damage or destruction to our authentication centers or retail stores in which we store of the majority of the consigned luxury goods we offer through our online marketplace.
- Shipping is a critical part of our business and any changes in our shipping arrangements, costs, interruptions in shipping or damage to products in transit could adversely affect our operating results.
- We may be unable to successfully leverage technology to automate and drive efficiencies in our operations.

Risks Related to Data Security, Privacy and Fraud

- We rely on third parties to host our website and mobile app and to process payments.
- Failure of our data security could cause us to incur unexpected expenses or compromise our data assets.
- We may incur significant losses from fraud.

Risks Related to Our Employees

- We may be unable to attract and retain key personnel or effectively manage leadership succession.
- Labor-related matters, including labor disputes, may adversely affect our operations.

Risks Related to Our Intellectual Property

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

Risks Relating to Litigation and Regulatory Uncertainty

- We are currently, and may be in the future, party to lawsuits and other claims.
- Our use and other processing of personal information and other data is subject to laws and obligations relating to privacy and data protection.
- We pay or collect sales taxes in all jurisdictions which require such taxes.
- Failure to comply with applicable laws or regulations may subject us to fines, penalties, loss of licensure, registration, facility closures or other governmental enforcement action.
- Application of existing tax laws, rules or regulations are subject to interpretation by taxing authorities.
- Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.
- 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.

Risks Related to Ownership of Our Common Stock

- The market price of our common stock may be volatile or may decline steeply or suddenly regardless of our operating performance and we may not be able to meet investor or analyst expectations.
- Short sellers of our stock may be manipulative and may drive down the market price of our common stock.
- Delaware law and provisions in our certificate of incorporation and bylaws could make a merger, tender offer or proxy contest difficult, thereby depressing the trading price of our common stock.
- Our certificate of incorporation designates the Court of Chancery of the State of Delaware located within the State of Delaware as the exclusive forum for substantially all disputes between us and our stockholders.

Risks Related to Our Outstanding Notes

- We have incurred a significant amount of debt and may incur additional indebtedness in the future.
- Transactions relating to our Notes may dilute the ownership interest of our stockholders.
- The conversion of the Notes, if triggered, may adversely affect our financial condition and operating results.
- The accounting method for the Notes materially affects our reported financial results.
- The capped call transactions may affect the value of the Notes and our common stock.

Investing in our common stock involves a high degree of risk. You should consider and read carefully all of the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K and in our other filings with the Securities and Exchange Commission ("SEC"). The risks described below are not the only ones we face. The occurrence of any of the following risks or additional risks and uncertainties not presently known to us or that we currently believe to be immaterial could materially and adversely affect our business, financial condition or results of operations.

Risks Relating to Our Business and Industry

We have a history of losses and we may not achieve or maintain profitability in the future.

We experienced net losses of $236.1 million, $196.4 million and $168.5 million in 2021, 2022 and 2023, respectively, and as of December 31, 2023 we had an accumulated deficit of $1,119.6 million. Our key initiatives currently include growing profitable supply, improving efficiencies, and pursuing new revenue streams. If those initiatives or our investments do not prove successful or our market does not develop as we expect, we may not achieve profitability on the timeline we expect or at all, and may continue to experience losses over the long term. Any failure to increase our revenue sufficiently to keep pace with our investments and other expenses could prevent us from achieving or maintaining profitability or positive cash flow on a consistent basis. If we are unable to successfully address these risks and challenges as we encounter them, our business, financial condition and operating results could be adversely affected. We cannot assure you that we will ever achieve or sustain profitability and may continue to incur significant losses going forward.

The savings plan we implemented in February 2023 may not result in anticipated savings, could result in total costs and expenses that are greater than expected and could disrupt our business.

In February 2023, we implemented a reduction in workforce of approximately 7% and a reduction in our real estate presence to reduce our operating expenses. See “Note 11 – Restructuring” for further details.

We may not realize, in full or in part, the anticipated benefits, savings and improvements in our operating structure from these efforts due to unforeseen difficulties, delays or unexpected costs. If we are unable to realize the expected operational efficiencies and cost savings from these efforts, our operating results and financial condition, and cash flows would be adversely affected. In addition to the February 2023 workforce reduction, from time to time we have made workforce reductions, as part of cost cutting initiatives or otherwise. We cannot guarantee that we will not have to undertake additional workforce or real estate reductions in the future.

Furthermore, we may also discover that the workforce reduction will make it difficult for us to pursue new opportunities and initiatives and require us to hire qualified replacement personnel, which may require us to incur additional and unanticipated costs and expenses. We may further discover that, despite the implementation of our workforce reduction, we may require additional capital to continue expanding our business, and we may be unable to obtain such capital on acceptable terms, if at all. In addition, our real estate reduction plan could harm our brand reputation, constrain our ability generate new supply, and reduce demand in buyers. If we decide to open retail locations in the future, we may not be able to secure leases on comparable terms in comparable locations. Our failure to successfully accomplish any of the above activities and goals may have a material adverse impact on our business, financial condition, and results of operations.

We may not be able to return to historic levels of revenue growth rate or effectively manage growth or new opportunities.

Our past revenue growth should not be considered indicative of future performance. While we experienced revenue growth in 2019, 2021 and 2022, our revenue for fiscal 2023 decreased compared to 2022. Our online marketplace represents a substantial departure from the traditional resale market for luxury goods. While our business grew rapidly prior to the COVID-19 pandemic, the resale market for luxury goods 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. You should consider our business and prospects in light of the risks and difficulties we may encounter. As we grow our business, our revenue growth rates may continue to decline in future periods due to a number of factors, including our inability to attract and retain consignors, general economic conditions, including a recession, increased market adoption against which future growth will be measured, increasing competition, slowing demand for items on our online marketplace from existing and new customers, changes to our commission structure, take rate or business model, changes in our total product mix, including as a result of our strategic shift to focus on higher value item or our failure to capitalize on growth opportunities. Our rapid growth has placed significant demands on our management and our operational and financial infrastructure. Continued growth could strain our ability to maintain reliable service levels for our consignors and buyers, develop and improve our operational, financial and management controls, enhance our reporting systems and procedures and recruit, train and retain highly skilled personnel. Failure to effectively manage the growth of our business and operations would negatively affect our reputation and brand, business, financial condition and operating results.

We may not accurately forecast revenue and appropriately plan our expenses.

We make certain assumptions when planning our expenses based on our expected revenue. These assumptions are partly based on historical results. We rely on a constant supply of consigned goods to sustain and grow our revenue, making our revenue in any given period difficult to predict. 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 business, financial condition, operating results and the price of our stock.

We have experienced seasonal and quarterly variations in our revenue and operating results.

Our business is seasonal and historically we have realized a disproportionate amount of our revenue and earnings for the year in the fourth quarter as a result of the holiday season and seasonal promotions. We expect this to continue in the future. If we experience lower than expected revenue during any fourth quarter, it may have a disproportionately large impact on our operating results and financial condition for that year. In any given year, our seasonal sales patterns may become more pronounced, strain our personnel or reduce our profit margins in a given period, which could substantially harm our business, operating results and financial condition. In anticipation of increased activity during the fourth quarter, we also incur significant additional expenses, including additional marketing spend and staffing in our sales and customer support operations. In addition, we may experience an increase in our shipping costs due to complimentary upgrades, split-shipments and additional long-zone shipments necessary to ensure timely delivery for the holiday season. Such increased costs may harm our profitability, especially if we are experiencing lower than expected revenue during the holidays.

Greater than expected product returns may exceed our reserve for returns.

We generally allow buyers to return certain purchases from our website and retail stores under our return policy. We record a reserve for returns against proceeds we receive from the sale of goods on our online marketplace and retail stores when we calculate revenue. We estimate this reserve based on historical return trends and our current expectations. The introduction of new products in the retail market, changes in consumer confidence or other competitive and general economic conditions, and higher than expected returns in connection with fourth quarter holiday buying may cause actual returns to exceed our reserve for returns. Any significant increase in returns that exceeds our reserves could adversely affect our revenue and operating results.

We may require additional capital to support business growth.

We may require additional funds to support our growth and respond to business challenges. To support our future growth, we may need to further develop our online marketplace services, grow our retail presence, expand our categories of pre-owned luxury goods, enhance our operating infrastructure, expand the markets in which we operate and potentially acquire complementary businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds, which may result in significant dilution to existing stockholders or the granting of new equity securities which have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing secured by us 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 the future. 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 support our business growth and to respond to business challenges could be significantly limited, and our business and prospects could fail or be adversely affected.

Public health emergencies or outbreaks of epidemics, pandemics, or contagious diseases such as the COVID-19 pandemic have adversely affected, and could in the future, adversely affect our business and the business of our consignors and buyers.

An epidemic, pandemic or similar serious public health issue, and the measures undertaken by governmental authorities to address it, could significantly disrupt or prevent us from operating our business in the ordinary course for an extended period, and thereby, and/or along with any associated economic and/or social instability or distress, have a material adverse impact on our results of operations, cash flows and financial condition.

The extent to which an epidemic, pandemic or similar serious public health issue could impact our business, results of operations, financial condition and liquidity will depend on numerous evolving factors, known and unknown, that we cannot predict, including the duration and scope of the epidemic, pandemic or similar public health issue; government, business and individual actions that have been and continue to be taken in response; the impact of the public health issue on national and global economic activity; disruption of the financial and labor markets, including the possibility of a national or global economic recession or depression; the limitations on operations requiring employees to perform their duties in-person, such as our warehouse operations; the potential for shipping difficulties, including delayed deliveries to our buyers; and weakened consumer demand. Additionally, the increased number of employees who work remotely during a public health emergency or outbreak could introduce additional operational risk, such as an increased vulnerability to cyber-attacks, and harm productivity and collaboration. In addition, the risks and uncertainties described elsewhere in this “Risk Factors” section may be exacerbated by an epidemic, pandemic or similar serious public health issue.

The failure of any bank in which we deposit our funds could reduce the amount of cash we have available to pay distributions and make additional investments.

The Federal Deposit Insurance Corporation only insures amounts up to $250,000 per depositor. It is likely that we will have cash and cash equivalents and restricted cash deposited in certain financial institutions in excess of federally insured levels. If any of the banking institutions in which we deposit funds ultimately fails, we may lose any amounts of our deposits over federally insured levels. The loss of our deposits could reduce the amount of cash we have available to distribute or invest and could result in a decline in the value of our stockholders' investment.

Risks Relating to Our Strategy

We may be unable to execute on our retail growth strategy.

We currently operate a limited number of retail stores, including a number of Neighborhood Stores with smaller footprints. We believe that retail stores are effective at raising brand awareness with consignors and buyers and generating new supply. We also believe that an expansion of our brick-and-mortar presence complements our online marketplace and strengthens the omni-channel consigning and buying experience. We have in the past and may in the future continue to reassess our retail footprint and adjust our retail strategy in particular geographies. The opening and closing of retail stores brings operational challenges. We may have to enter into long-term leases before we know whether our retail strategy or a particular geography will be successful. We face a number of challenges in opening new stores, including locating retail space having a cost and geographic profile that will allow us to operate in highly desirable shopping locations, hire in-store talent and expand our retail operations in a cost-effective manner. We also have faced and may in the future face a number of challenges in closing existing stores, which may include significant exit costs, managing lease obligations and employee-related costs, including in connection with our recently announced real estate reduction plan. Closing existing stores may also limit our ability to attract new members, generate new supply and increase demand. We must provide our consignors and buyers with a consistent luxury experience across our retail locations. In the past, our stores have been the target of theft and have also experienced property damage. Any such future incidents may result in a disruption to our retail operations and significant costs if not covered by our insurance policies. In addition, the offering of unique, single-SKU products creates supply chain, merchandising and pricing challenges, as we must select the right product mix for each individual store while continuing to manage inventory at our authentication centers. If we are not able to manage or execute on our retail strategy, our business, operating results, prospects and reputation may be harmed.

Expansion of our operations internationally will require significant management attention and resources.

While we have members from outside the United States who purchase items from our online marketplace, we have not expanded our physical operations internationally. If we choose to do so, we would need to adapt to various local cultures, languages, standards, laws and regulations and policies. Our business model we employ may not appeal to consignors and buyers outside of the United States. Furthermore, to succeed with clients in international locations, it will be necessary to locate authentication centers in foreign markets and hire local employees in those markets, and we may have to invest in such facilities before demonstrating that we can successfully run operations outside of the United States. If we invest substantial time and resources to establish and expand our operations internationally and are unable to do so successfully and in a timely manner, our operating results would suffer.

Our growth strategies may not be successfully implemented, help us achieve profitability or generate sustainable revenue and profit.

Our growth strategies, including our initiatives to pursue new revenue streams, are evolving. For example, we have recently introduced third party advertising on our online marketplace. However, these efforts might not be successful, have been, in the case of our third-party advertising, and in other cases perceived negatively by potential consignors and buyers using our online marketplace, or we may not be able to pursue them at all. We may limit the user data shared with third-party advertising partners, which could have a negative effect on our ability to maximize our advertising revenue. In addition, we seek to balance new initiatives with our desire to provide an optimal user experience on our online marketplace, and we may not be successful in achieving a balance that continues to retain and attract consignors and buyers. If our growth strategies, including our initiatives to pursue new revenue streams, are not successful, do not generate sustainable revenue or help us achieve profitability, it could have a material adverse impact on our business and operating results.

Risks Relating to Supply

We may not be able to obtain sufficient new and recurring supply of pre-owned luxury goods.

Our success depends on our ability to generate a consistent supply of luxury goods to sell through our stores and online marketplace. To do this we must cost-effectively attract, retain and grow relationships with consignors. To expand our consignor base, we must appeal to and engage individuals new to consignment, or who have consigned through traditional brick-and-mortar shops but are unfamiliar with our business. We find new consignors by converting buyers utilizing our online marketplace, shopping in our retail stores, or utilizing our luxury consignment offices. We also reach new consignors through paid advertising, marketing materials, digital marketing, referral programs, organic word-of-mouth and other methods, such as mentions in the press, Internet search engine results and through our brand partnerships. We cannot be certain that these efforts will yield new consignors or be cost-effective. Moreover, new consignors may not choose to consign with us a second time or as frequently, or consign as many items or the same value of items, as has historically been the case with existing consignors. Therefore, the revenue generated from new consignors may not be as high as the revenue generated historically from our existing consignors or as high as we expect. Most of the luxury goods we offer through our online marketplace are initially sourced from consignors who are individuals. As a result, we may be subject to periodic fluctuations in the number, brands and quality of goods sold through our online marketplace on behalf of our consignors. In addition, a significant number of our new and existing consignors greatly prefer our concierge consultation method for consigning luxury goods, which involves our sales professionals meeting with our consignors in their homes. In November 2022, we updated our take rate structure with the goals of optimizing take rate, limiting consignment of lower value items, and increasing supply of higher value items. If our updated take rate structure is not successful in increasing the consignment of such items, our brand and reputation could be adversely affected, we may generate less revenue than expected, and we may choose to further refine the structure. We have a buy upfront program in an effort to generate additional supply. If we fail to attract new consignors or drive repeat consignments in a cost-effective manner, or fail to convert buyers to consignors, our ability to grow our business and our operating results would be adversely affected.

We may be unable to attract and retain talented sales professionals.

We rely on our sales professionals to drive our supply of luxury goods by identifying, developing and maintaining relationships with our consignors. The process of identifying and hiring sales professionals with the combination of skills and attributes required in these roles can be difficult and can require significant time. In addition, competition for qualified employees and personnel in the retail industry is intense and turnover amongst our sales professionals within a few years is not uncommon. If we are not successful in attracting and retaining effective sales professionals, the quantity and quality of the luxury goods sold through our online marketplace may be negatively impacted, which would have a material adverse effect on our business and operating results.

Our growth and supply of product offerings are enhanced by our ability to maintain our brand partnerships.

We have established brand partnerships with certain brands, and may seek to add additional brand partnerships in the future. We believe that these partnerships are important to increasing our supply and growing our business. We make direct purchases of products from our brand partners, which helps us to drive supply and expand our product offerings. To establish and maintain these partnerships, brands must trust, among other things, our authentication process and that we provide a level of customer service that matches those generally provided by luxury brands, for both consignors and buyers, online and in-store. If we are unable to provide value to our existing partners or to add new partners, the growth of our business may be harmed.

Risks Relating to Demand

Our continued growth depends on attracting new and retaining repeat buyers.

To expand our buyer base, we must appeal to and attract buyers who do not typically purchase luxury goods, who have historically purchased only new luxury goods or who used other means to purchase pre-owned luxury goods, such as traditional brick-and-mortar consignment shops, auction houses and the websites of other secondary marketplaces. We reach new buyers in part through television and digital advertising, other paid marketing, press coverage, referral programs, organic word of mouth, our brand partnerships and other methods of discovery, such as converting consignors to buyers. We expect to continue investing in these and other marketing channels in the future and cannot be certain that these efforts will yield more buyers or be cost-effective. Moreover, new buyers may not purchase through our online marketplace as frequently or spend as much with us as historically has been the case with 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. Failure to attract new buyers and to maintain relationships with existing buyers would adversely affect our operating results and our ability to attract and retain consignors.

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

National retailers and brands set pricing for new luxury goods that they sell and from time to time offer sales and promotional pricing, particularly during the fourth quarter holiday season, when we have historically made a substantial portion of our annual sales. Promotional pricing by these parties may lower the value of products consigned with us and our inventory and, in turn, reduce the value proposition for both our consignors and buyers. We have in the past experienced a reduction in our GMV and AOV due to fluctuations in the price of new luxury goods sold by retailers and brands, and we could experience similar reductions and fluctuations in the future. However, the timing and magnitude of such discounting can be difficult to predict and can be brought on by unique factors such as a retailer or brand going out of business and liquidating its inventory, which may happen to a greater extent as a result of macroeconomic uncertainty, inflation, geopolitical instability due in part to the conflict between Russia and Ukraine, the Israel-Hamas war and weakened consumer demand. Any of the foregoing risks could adversely affect our business, financial condition and operating results.

We must successfully gauge and respond to changing preferences among our consignors and buyers.

Our success is in large part dependent upon our ability to anticipate and identify trends in the market for pre-owned luxury goods in a timely manner and to obtain consignments of luxury goods that address those trends. We use data science to predict consignor and buyer preferences, and there can be no assurance that our data science will accurately anticipate consignor or buyer needs. Our business model limits our responsiveness to changing preferences, as the majority of our inventory consists of unique, single-SKU items. While we attempt to source goods that complement our existing inventory, we cannot ensure we will do so successfully. To the extent we do not accurately predict and successfully respond to the evolving preferences of our consignors and buyers, our ability to grow our business and our operating results would be adversely affected.

We may be unable to replicate our business model for newer categories of consigned goods or different product mixes of consigned goods.

In November 2022, we updated our take rate structure with the goals of optimizing take rate, limiting consignment of lower value items, and increasing supply of higher value items. If such higher value items are not attractive to our existing consignors or buyers, or if such items do not attract new consignors or buyers, our revenues may fall short of expectations, our brand and reputation could be adversely affected and we may incur expenses that are not offset by revenues. In addition, our business may be adversely affected if we are unable to attract new and repeat consignors that supply the necessary high-quality, appropriately priced and in-demand luxury merchandise in this high value category. Additionally, as we enter into new categories, potential consignors may demand higher commissions than our current categories, which would adversely affect our take rate and operating results. 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 novel challenges in our authentication process and methods as we expand our product offerings. In addition, we may experience greater competition in specific categories from companies that are more experienced in these categories. If any of these were to occur, it could damage our reputation, limit our growth and have an adverse effect on our operating results.

We rely on consumer discretionary spending, which is adversely affected by economic downturns, including economic recession or depression, and other macroeconomic conditions or trends.

Our business and operating results are subject to global economic conditions and their impact on consumer discretionary spending, particularly in the luxury goods market. Some of the factors that may reduce luxury spending include economic downturns, including economic recession or depression, high levels of unemployment, higher consumer debt levels, higher levels of inflation, reductions in net worth, declines in asset values, including home values, and related market and economic uncertainty, including as a result of geopolitical instability and disruptions in the financial industry. Many of these factors have occurred, and may occur in the future, as a result of the COVID-19 pandemic and recent macroeconomic uncertainty, rising interest rates, inflationary pressures, credit constraints and geopolitical instability due in part to the conflict between Russia and Ukraine and the Israel-Hamas war. Such economic uncertainty and the resulting decrease in the rate of new luxury goods purchases in the primary market may have a corresponding impact on luxury resale, which could manifest in a number of ways, including fewer individuals choosing to consign their goods with us, resulting in a decrease of items available in our online marketplace, fewer individuals choosing to buy pre-owned luxury goods, resulting in lower active buyer growth and order volume, and lower AOV due to a combination of lower average selling price per item and/or fewer items per average order, any of which could have an adverse effect on our business and operating results.

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 decreased supply, consumer spending habits could be adversely affected, and we could experience lower than expected revenue. Any of these developments could harm our business, financial condition and operating results.

Our industry is highly competitive and we may not be able to compete effectively.

We compete with vendors of new and pre-owned luxury goods, including branded luxury goods stores, department stores, traditional brick-and-mortar consignment stores, pawn shops, auction houses, specialty retailers, discount chains, independent retail stores, the online offerings of traditional retail competitors, resale players focused on niche or single categories, as well as technology-enabled marketplaces that may offer the same or similar luxury goods and services that we offer. Many of our competitors have longer operating histories, larger fulfillment infrastructures, greater brand recognition and technical capabilities, faster or lower-cost shipping, larger selections of goods for sale, greater financial, marketing, institutional and other resources and larger buyer bases than we do. As the market evolves, new competitors may emerge, including traditional retail competitors who expand their offerings to include resale. 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, acquire consignors at lower costs, achieve more favorable total product mixes or respond more quickly than we can to new or emerging technologies, such as artificial intelligence and machine learning, and changes in consumer shopping behavior or preferences. These competitors may also adopt more aggressive pricing policies, commission structures or take rates, which may allow them to build larger consignor or buyer bases or generate revenue from their existing buyer bases more effectively than we do. New competitors may force us to decrease our take rates to remain competitive and negatively impact on our financial performance. If we fail to respond to competition effectively, our business and operating results may be adversely affected.

Risks Relating to Marketing and Brand Management

Our success depends on the accuracy and reliability of our authentication process.

Our success depends on our ability to accurately and cost-effectively determine whether an item offered for consignment is an authentic product or genuine gemstone, piece of jewelry or work of art. From time to time, we receive counterfeit goods for consignment. While we continue to invest and innovate heavily in our authentication processes and methods, and we reject any goods we believe to be counterfeit, we cannot be certain that every counterfeit item consigned to us will be identified. In addition, when our authentication method does not involve taking physical possession of goods prior to the sale, our ability to identify counterfeits may decrease, and order cancellations may increase. As the sophistication of counterfeiters increases, it may be increasingly difficult to identify counterfeit products. We refund the cost of a product to a buyer if the buyer questions its authenticity and returns the item. The sale of any counterfeit goods may damage our reputation as a trusted online marketplace for authenticated, pre-owned luxury goods which may impact our ability to attract and maintain consignors, buyers and brand partners. Additionally, we have been and may in the future be subject to negative press or public allegations, including on social media, that our authentication processes and methods are inadequate. Any material failure or perceived failure in our authentication processes and methods could cause buyers and consignors to lose confidence in our platform and adversely affect our revenue.

We may not succeed in promoting and sustaining our brand.

We believe that growing The RealReal brand is critical to driving consignor and buyer engagement as well as attracting brand partners. An important goal of our brand promotion strategy is establishing and maintaining trust with our consignors, buyers and brand partners. Growing our brand will depend largely on our ability to continue providing our consignors with service that is consistent with the level of luxury associated with the goods they are consigning and delivering value for the goods they consign, all in a timely and consistent manner. For buyers, growing our brand requires that we foster trust through authentication, timely and reliable fulfillment of orders, and responsive and effective customer service. To establish and maintain relationships with existing and future brand partners, brands must trust our authentication process and that we provide a level of customer service that matches those generally provided by luxury brands, for both consignors and buyers, online and in-store. If we fail to provide consignors or buyers with the service and experience they expect, or experience consignor or buyer complaints or negative publicity about our products, services, delivery times or customer support, whether justified or not, the value of our brand would be harmed and our business may suffer.

Our marketing and advertising activity may fail to efficiently drive growth in consignors and buyers.

Our future growth and profitability depend in large part upon the effectiveness and efficiency of our marketing, promotion, public relations and advertising programs. We closely monitor the effectiveness of our advertising campaigns and changes in the advertising market, and adjust or re-allocate our advertising spend across channels, customer segments and geographic markets in real-time in an effort to optimize the effectiveness of these activities. We may increase marketing or advertising spend in future periods to drive growth. Even if our marketing and advertising expenses result in increased sales, the increase might not offset our related expenditures. We also face the unique challenge of attracting consignors and buyers to our online marketplace who may be unfamiliar with both our brand and our consignment business

model. If we struggle to attract new consignors and buyers to our luxury resale model, or 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 consignor and buyer base could be adversely affected, and our business, operating results, financial condition and brand could suffer.

We rely on third parties to drive traffic to our website.

We rely in part on digital advertising, including search engine marketing, to promote awareness of our online marketplace, grow our business, attract new consignors and buyers and increase engagement with existing consignors and buyers. In particular, we rely on search engines and major mobile app stores as important marketing channels. 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 consignors and buyers to our website and apps, which would harm our business, operating results and prospects.

Use of social media, emails and text messages may adversely impact our reputation or subject us to fines.

We use social media, emails, push notifications and text messages as part of our omni-channel approach to marketing. 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, consignors, buyers or others. Information concerning us or our consignors and brands, whether accurate or not, may be posted on social media platforms at any time. 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, operating results, financial condition and prospects.

The public disclosure of our Environmental, Social and Governance ("ESG") metrics may subject us to risks.

We voluntarily report certain metrics and goals for ESG. This transparency is consistent with our commitment to operate our business with positive economic, social, and environmental impact. The perception held by our consignors or buyers, other key stakeholders, or the communities in which we do business may depend, in part, on the metrics and goals we have chosen to aspire to and whether or not we meet our goals on a timely basis, if at all. Also, by electing to set goals and publicly disclose our ESG metrics, we may face increased scrutiny related to environmental, social, and governance activities. In addition, we may be required to disclose various ESG metrics, progress against goals and other detailed information under applicable laws and regulations. For example, the State of California has adopted new climate change disclosure requirements, which mandate public disclosure of certain greenhouse gas emissions data and climate-related financial risk reports. Our compliance with these and other ESG-related laws, regulations and policies could be costly, and any failure to meet our goals, change in our ESG priorities or strategies, or perception that we fail to act responsibly in the areas in which we report, may negatively affect our reputation and the value of our brand, including by impacting employee engagement and retention, the willingness of our consignors and buyers and our partners and vendors 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.

Risks Related to Our Merchandising and Fulfillment

We may not be able to attract, train and retain specialized personnel and skilled employees.

To grow our business, we must continue to improve and expand our merchandising and fulfillment operations, information systems and skilled personnel in the jurisdictions in which we operate so that we have the skilled talent necessary to effectively operate our business. The operation of our business is complex and requires the coordination of multiple functions that are highly dependent on numerous employees and personnel. Each luxury item that we offer through our online marketplace is unique and requires multiple touch points, including, among others, inspection, evaluation, authentication, photography, pricing, copywriting, application of a unique single-SKU and fulfillment. The market for employees is increasingly competitive and highly dependent on geographic location. Some of our employees have specific knowledge and skills that would make it more difficult to hire replacement personnel capable of effectively performing the same tasks without substantial training. We also provide specific training to our employees in each of our business functions in order to provide our consignors and buyers with a consistent luxury experience. If we fail to successfully locate, hire, train and retain personnel in the future, our operations would be negatively impacted, which would have an adverse effect on our business, financial condition and operating results.

We may not be able to identify and lease authentication centers in suitable geographic regions.

We lease facilities to store and accommodate the logistics infrastructure required to merchandise and ship pre-owned luxury goods we sell through our online marketplace. Our ability to successfully grow our business depends on the availability and cost of leasing additional authentication centers that meet our criteria for a geographic location with access to a large, qualified talent pool as well as square footage, cost and other factors. We currently have four authentication centers - one in Arizona and three in New Jersey. Optimal space may become scarce, and where it is available, the lease terms offered by landlords may become increasingly competitive. Companies who have more financial resources and negotiating leverage than us may be more attractive tenants and, as a result, may outbid us for the facilities we seek. We also may be unable to renew our existing leases or renew them on satisfactory terms. Failure to secure adequate authentication centers could have an adverse effect on our business and operating results.

We may experience damage or destruction to our authentication centers or retail stores in which we store the majority of the consigned luxury goods we offer through our online marketplace.

We store the majority of the luxury goods we offer through our online marketplace in our authentication centers in Arizona and New Jersey, with a smaller portion of luxury goods offered for sale in our retail stores. Any large scale damage to or catastrophic loss of goods stored in such authentication centers or retail stores or any other location where goods offered through our online marketplace are stored, due to natural disasters, especially as catastrophic weather events become more frequent due to climate change, or man-made causes such as arson or theft would result in liability to our consignors for the expected commission liability for the lost items, reduction in the value of our inventory and a significant disruption to our business. In addition, while we take measures to avoid damage, conduct inspections of consigned goods and inspect returned products, we cannot control items while they are out of our possession or prevent all damage while items are stored in our authentication centers. For example, we have in the past and may in the future experience contamination, such as mold, bacteria, viruses, insects and other pests, in the goods shipped to us by our consignors, which may cause contamination of other goods stored in our authentication centers or while shipping to buyers. We may incur additional expenses and our reputation could be harmed if buyers or potential buyers believe that the luxury goods we offer on behalf of our consignors are not of high-quality or may be damaged or contain contaminants. Additionally, given the nature of the unique consigned luxury goods we offer on our online marketplace, our ability to restore the supply of consigned luxury goods on our online marketplace would take time and would result in a limitation and delay of available supply for buyers which would negatively impact our revenue and operating results. While we carry insurance for the consigned luxury goods stored in these authentication centers as well as for business interruption and loss of income, our liabilities and expenses resulting from a catastrophic event could exceed our maximum insurance coverage amounts which could have a material adverse impact on our business and operating results.

Shipping is a critical part of our business and any changes in our shipping arrangements, costs, interruptions in shipping or damage to products in transit could adversely affect our operating results.

Our business depends on shipping vendors to meet our shipping needs. If we are not able to maintain acceptable pricing and other terms or if our vendors experience performance problems or other difficulties, including as a result of inflation, a labor strike by employees of our shipping vendors or rising shipping costs, it could negatively impact our operating results and our consignors' and buyers' experience. If we partner with additional vendors or switch vendors in response to such impact, we may experience a disruption in shipping, which may negatively impact our reputation with consignors and buyers. We face particular challenges in shipping internationally, including delays in shipments and customer service issues relating to the imposition of duties, which can be substantial for luxury items. Because of the seasonality of our business, any disruption to delivery services due to adverse weather, especially as climate change increases the frequency of such adverse weather, could result in delays that could adversely affect our reputation or operational results. In addition, most of the items we sell are considered highly valuable and require special handling and delivery. From time to time, such goods are damaged in transit which can increase return rates, increase our costs and harm our brand. Returned goods may also be damaged in transit as part of the return process which can significantly impact the price we are able to charge for such goods on our online marketplace. If our goods are not delivered to buyers in a timely fashion or are damaged or lost during the consignment or the delivery process, our consignors or buyers could become dissatisfied and cease using our services, which would adversely affect our business and operating results.

We may be unable to successfully leverage technology to automate and drive efficiencies in our operations.

We are building automation, artificial intelligence, machine learning and other capabilities to drive efficiencies in our merchandising and fulfillment 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 of our merchandising operations, including pricing, copywriting, authentication, photography and photo retouching, any flaws or failures of such technologies could cause interruptions in and delays to our operations which may harm our business. We have created our own purpose-built technology to operate our business, which may lack efficiency or become obsolete as

we grow and 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, the evolution of these technologies may create unforeseen competitive pressures or cause disruption.

Risks Related to Data Security, Privacy and Fraud

We rely on third parties to host our website and mobile app and to process payments.

Our brand and ability to attract and retain consignors and buyers depends in part on the reliable performance of our network infrastructure and content delivery process. The continuing and uninterrupted performance of our online marketplace is critical to our success. 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 members to access our online marketplace or complete purchases on our website and app. Volume of traffic and activity on our online marketplace spikes on certain days and during certain periods of the year, such as during a Black Friday promotion and generally 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.

We rely on third-party payment processors to process payments made by buyers or to consignors on our online marketplace. 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 consignors or conduct other payment transactions, any of which could make our platform less convenient and attractive and adversely affect our ability to attract and retain buyers and consignors.

Failure of our data security could cause us to incur unexpected expenses or compromise our data assets.

In the ordinary course of our business, we collect, process and store certain personal information (including credit card information) and other data relating to individuals, such as our consignors, buyers and employees. We also maintain other information, such as our trade secrets and confidential business information, that is sensitive and that we seek to protect. We rely substantially on commercially available systems, software, including third-party open source software, tools and monitoring to provide security for our processing, transmission and storage of personal information and other confidential information. We or our vendors, including cloud storage providers, could be the subject to attacks from computer viruses, break-ins phishing attacks, social engineering, ransomware attacks, unauthorized use, attempts to overload services with denial-of-service or other attacks, which may allow hackers or other unauthorized parties, including our employees, to gain access to personal information or other data, including payment card data or confidential business information. Further, the 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 compromise our platform. Our members use our web and mobile e-commerce applications to consign and shop with us. These applications may become subject to account takeovers, denials of service, content scraping, or other attacks, which may result in our members' accounts being compromised.

We and our vendors have faced these attacks previously and regularly must defend against or respond to such incidents. We expect to incur ongoing costs associated with the detection and prevention of security breaches and other security-related incidents. The techniques used to obtain unauthorized access or to sabotage systems change frequently and generally are not identified until they are launched against a target, and we and our vendors may be unable to anticipate these techniques or to implement adequate preventative measures. 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, damage our reputation, cause some participants to decrease or stop their use of our online marketplace and subject us to litigation, government action, increased transaction fees, remediation costs, regulatory fines or penalties or other additional costs and liabilities that could adversely affect our business, financial condition and operating results. While we carry insurance related to potential data breaches, the insurance we do carry may not be adequate to cover all possible losses that our business could suffer.

We may incur significant losses from fraud.

We may fail to prevent consignors from consigning stolen or counterfeit goods. 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 consignor agreement

includes a representation that the consignor has the necessary right and title to the goods they may consign, 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 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. In addition, negative publicity relating to the actual or perceived listing or sale of stolen or counterfeit goods could damage our reputation and make our consignors and buyers reluctant to use our services.

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, claims that a consignment of a good was not authorized and that a buyer did not authorize a purchase. 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 operating results.

Risks Relating to Our Employees

We may be unable to attract and retain key personnel or effectively manage leadership succession.

Our success depends in part on our ability to attract and retain key personnel on our executive team. Senior employees have left our company in the past and others may leave 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.

Labor-related matters, including labor disputes, may adversely affect 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 merchandising operations and shipping, and increases in our labor costs, which could have a material adverse effect on our business, financial condition or results of operations. In addition, increased inflation rates could adversely affect us by increasing costs, including labor and employee benefit costs.

Risks Relating to Our 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 "The RealReal" and our logos and taglines. We also hold the rights to the "therealreal.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. Our trademarks are valuable assets that support our brand and consumers' perception of our services and merchandise. If we are unable to protect our trademarks or domain names, our brand recognition and reputation would suffer, we would incur significant expense reestablishing brand equity and our operating results would be adversely impacted.

Risks Relating to Litigation and Regulatory Uncertainty

We are currently, and may be in the future, party to lawsuits and other claims.

We rely on the fair use doctrine when we routinely refer to third-party intellectual property, such as trademarks, on our platform. Third parties may dispute the scope of that doctrine and challenge our ability to reference their intellectual property in the course of our business. For instance, from time to time, we are contacted by companies controlling brands of goods consignors sell, demanding that we cease referencing those brands in connection with such sales, whether in advertising or on our website. We have consistently responded by reference to the holding in *Tiffany (NY), Inc. v. eBay* that factual use of a brand to describe and sell a used good is not false advertising. These matters have generally been resolved with no further communications, but some have resulted in litigation against us. For example, in November 2018, Chanel filed a lawsuit against us in the U.S. District Court for the Southern District of New York bringing various trademark and advertising-related claims under the Lanham Act and New York state law analogues. The final outcome of this litigation,

including our liability, if any, with respect to Chanel's claims, is uncertain. An unfavorable outcome in this or similar litigation could adversely affect our business and could lead to other similar lawsuits. See "Part II, Item 1 – Legal Proceedings" for a description of the Chanel litigation.

In addition, the Company, its officers and directors and the underwriters of the Company's initial public offering ("IPO") were named as defendants in numerous purported securities class actions in connection with the Company's IPO (the "Securities Litigation"). See "Part II, Item 1 – Legal Proceedings" for a description of the Securities Litigation.

In addition, we have in the past and could face in the future a variety of employee claims against us, including general discrimination, privacy, wage and hour, labor and employment, disability claims and claims related to the Employee Retirement Income Security Act of 1974. Further, the comprehensive safety measures and protocols that we have implemented may not be successful and we could face litigation or other claims related to unsafe working conditions, inadequate protection of our employees, or other similar or related claims. Any claims could also result in litigation against us or regulatory proceedings being brought against us by various federal and state agencies that regulate our business, including the U.S. Equal Employment Opportunity Commission. Often these cases raise complex factual and legal issues and create risks and uncertainties. In addition, stockholders have filed securities class action litigation against us following periods of market volatility. We have been the target of litigation associated with these fluctuations and market volatility and may be the target of this type of litigation in the future.

Defending litigation is costly and can impose a significant burden on management and employees, and there can be no assurances that favorable final outcomes will be obtained. The results of any such litigation, investigations and other legal proceedings are inherently unpredictable and expensive. Although we have insurance, it provides for a substantial retention of liability and is subject to limitations and may not cover a significant portion, or any, of the expenses we may incur or be subject to in connection with shareholder class action or other litigation to which we are party. In addition, plaintiffs may seek, and we may become subject to, preliminary or provisional rulings in the course of any such litigation, including potential preliminary injunctions requiring us to cease some or all of our operations or discontinue selling consigned goods from certain brands. We may decide to settle such lawsuits and disputes on terms that are unfavorable to us. Similarly, if any litigation to which we are a party is resolved adversely, we may be subject to an unfavorable judgment that may not be reversed upon appeal. The terms of such a settlement or judgment may require us to cease some or all of our operations, discontinue selling consigned goods from certain brands or pay substantial amounts to the other party. In addition, we may have to seek a license to continue practices found to be in violation of a third-party's rights, which may not be available on reasonable terms or at all and may significantly increase our operating costs and expenses. As a result, we may also be required to develop alternative practices or discontinue existing practices. The development of alternative practices could require significant effort and expense or may not be feasible. Our business, financial condition or operating results could be adversely affected as a result of an unfavorable resolution of the disputes and litigation referred to above.

Our use and other processing of personal information and other data is subject to laws and obligations relating to privacy and data protection.

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 that came into effect January 2020, the California Consumer Privacy Act (the "CCPA"), that requires covered companies to provide disclosures to California consumers and afford such consumers qualified privacy rights, such as rights of access, deletion and to opt-out of the sales of their personal information. The CCPA was amended by the California Privacy Rights Act (the "CPRA"), which went into effect on January 1, 2023. The CCPA, as amended, removes the exclusion of employment data from its auspices, adds new consumer privacy rights (such as the right to correct inaccurate personal information, or the right to opt out of the "sharing" of personal information for the purposes of cross-context behavioral advertising), expands business's obligations to secure contractual obligations from service providers and third parties, and expands business's obligations with respect to opt-out preference signals. The new California Privacy Protection Agency completed its first round of rule making but has left many new requirements, such as data privacy and security risk assessments and the right to opt out of certain data profiling activities, for its second round of rule making, which began in March 2023. It remains unclear how these new amendments will be interpreted or when the second round of rule making activity will conclude. The CCPA may require us to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply. Similarly, several other U.S. states, including Virginia, Connecticut, Colorado, Utah, Iowa, Indiana, Montana, Oregon, Tennessee and Texas have passed similar consumer data privacy laws that also extend privacy rights to individuals, including the rights to opt out of targeted advertising. Finally, the European Commission adopted a General Data Protection Regulation that became fully effective on May 25, 2018, imposing stringent EU data protection

requirements. Recent litigation in the EU has driven significant changes in enforcement and interpretation, and we cannot yet fully determine the impact these or future laws, rules and regulations may have on our business or operations.

Given the increased regulatory focus on the use of data for advertising, we may be subject to new and unexpected regulations, including proposals for regulation of artificial intelligence or other automated decision making processes. Future laws, regulations, standards and other obligations could, for example, impair our ability to collect or use information that we utilize to create targeted marketing and advertising and offer certain bespoke product features and other capabilities to drive efficiencies in our merchandising operations, thereby impairing our ability to maintain and attract new consignors and buyers, which could have a material adverse effect on our business and operating results.

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. 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, or litigation, and the expenditure of legal and other costs and of substantial time and resources, and fines, penalties or other liabilities.

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 change our business activities and practices or to expend significant resources to modify our product or services 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.

We pay or collect sales taxes in all jurisdictions which require such taxes.

An increasing number of states have considered or adopted laws that impose tax collection obligations on out-of-state sellers of goods. Additionally, in 2018, 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, states 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. While we currently 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 more taxes could result in substantial additional tax liabilities, including taxes on past sales, as well as penalties and interest, which could have a material adverse impact on our business and operating results.

Failure to comply with applicable laws or regulations may subject us to fines, penalties, loss of licensure, registration, facility closures or other governmental enforcement action.

The sale of consigned goods 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 receive luxury goods on consignment from numerous consignors located in all 50 U.S. states and Puerto Rico, and the goods we receive from our consignors may contain materials such as fur, skin, ivory and other exotic animal product components, that are subject to regulation. Our standard consignor terms and conditions require consignors to comply with applicable laws when consigning their goods. Failure of our consignors 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 California, New York and Florida, have regulations regarding the handling and sale of secondhand goods, and licensing requirements for secondhand dealers. Such government regulations could require us to change the way we conduct business, or our buyers to conduct their purchases in ways that increase costs, such as prohibiting or otherwise restricting the sale or shipment of certain items in some locations. To the extent we fail to comply with requirements for secondhand dealers, we may experience unanticipated permanent or temporary shutdowns of our facilities which may negatively affect our ability to increase the supply of our goods, result in negative publicity and subject us to penalties and fines.

Additionally, the luxury goods our consignors sell could be subject to recalls and other remedial actions and product safety, labeling and licensing concerns may require us to voluntarily remove selected goods from our online marketplace. Such recalls or voluntary removal of goods 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 have a material adverse effect on our operating results.

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

The application of the income and 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 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.

In addition, 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 buyers or consignors, 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.

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 they 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% 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 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. In addition, the Tax Cuts and Jobs Act imposes certain limitations on the deduction of NOLs generated in tax years that began on or after January 1, 2018, including a limitation on use of NOLs to offset 80% of taxable income and the disallowance of NOL carryback. Although NOLs generated in tax years before 2018 may still be used to offset future income without limitation, the Tax Cuts and Jobs Act may limit our ability to use our NOLs to offset any future taxable income.

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.

We are subject to the reporting requirements under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and the rules and regulations of the applicable listing standards of The Nasdaq Stock Market. Section 404 of the Sarbanes-Oxley Act 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 for management and our independent public accounting firm to report on the effectiveness of our internal control over financial reporting. If we are not able to continue to comply with the requirements of Section 404 of the Sarbanes-Oxley Act or if we encounter difficulties in the timely and accurate reporting of our financial results, or if we or our independent registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, our investors could lose confidence in our reported financial information, the market price of our stock may decline and we could be subject to lawsuits, sanctions or investigations by regulatory authorities, which would require additional financial and management resources.

Risks Relating to Ownership of Our Common Stock

The market price of our common stock may be volatile or may decline steeply or suddenly regardless of our operating performance and we may not be able to meet investor or analyst expectations.

If you purchase shares of our common stock, you may not be able to resell those shares at or above the price you paid. The market price of our common stock may fluctuate or decline significantly in response to numerous factors, many of which are beyond our control, including:

- actual or anticipated fluctuations in our consignor or buyer base, the level of consignor and buyer engagement, revenue or other operating results;
- adverse economic and market conditions, including declines in consumer discretionary spending, currency fluctuations, inflation, disruptions in the financial industry and geopolitical instability;
- the research and reports that securities or industry analysts may publish about us, our business, our market or our competitors;
- variations between our actual operating results and the expectations of securities analysts, investors and the financial community;
- any forward-looking financial or operating information we may provide to the public or securities analysts, any changes in this information or our failure to meet expectations based on this information;
- additional shares of our common stock being sold into the market by us or our existing stockholders, or the anticipation of such sales;
- hedging activities by market participants;
- sudden increased or decreased interest in our stock from retail investors;
- substantial fluctuations in the daily trading volume of our common stock;
- announcements by us or our competitors of significant products or features, technical innovations, acquisitions, strategic partnerships, joint ventures or capital commitments;
- changes in operating performance and stock market valuations of companies in our industry, including our competitors;
- price and volume fluctuations in the stock market, including as a result of trends in the economy;
- lawsuits threatened or filed against us;
- developments in new legislation and pending lawsuits or regulatory actions, including interim or final rulings by judicial or regulatory bodies; and
- other events or factors, including those resulting from war or incidents of terrorism, or responses to these events or threats to public health.

In addition, price and volume fluctuations in the stock markets have affected and may continue to affect many online marketplace and other technology companies' stock prices. Stock prices often fluctuate in ways unrelated or disproportionate to the companies' operating performance. Moreover, because of these fluctuations, comparing our operating results 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 revenue or operating results 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 revenue or earnings forecasts that we may provide.

Short sellers of our stock may be manipulative and may drive down the market price of our common stock.

Short selling is the practice of selling securities that the seller does not own but rather has borrowed or intends to borrow from a third party. A short seller hopes to profit from a decline in the value of the securities they are shorting. As it is in the short seller's interest for the price of the stock to decline, some short sellers publish opinions or characterizations regarding the relevant issuer intended to create negative market momentum. Issuers, like us, with securities that have historically had limited trading volumes and/or have been susceptible to relatively high volatility levels can be particularly vulnerable to such short seller attacks. Short selling may also lead to fluctuations of our stock price, particularly if retail investors or others holding "long" positions in our common stock seek to counter short selling activity by purchasing additional shares, thus making it more difficult and more expensive for short sellers to profit. No assurances can be made that declines in the market price of our common stock will not occur in the future in connection with such activity.

Delaware law and provisions in our certificate of incorporation and bylaws could make a merger, tender offer or proxy contest difficult, thereby depressing the trading price of our common stock.

Our certificate of incorporation and bylaws contain provisions that could depress the trading price of our common stock by acting to discourage, delay or prevent a change of control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions include the following:

- establish a classified board of directors so that not all directors are elected at one time;
- permit the board of directors to establish the number of directors and fill any vacancies and newly-created directorships;
- provide that directors may only be removed for cause;
- require super-majority voting to amend some provisions in our certificate of incorporation and bylaws;
- authorize the issuance of "blank check" preferred stock that our board of directors could use to implement a stockholder rights plan;
- prohibit stockholders from calling special meetings of stockholders;
- prohibit stockholder action by written consent;
- provide that the board of directors is expressly authorized to make, alter or repeal our bylaws;
- restrict the forum for certain litigation against us to Delaware; and
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

Any provision of our certificate of incorporation or bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

Our certificate of incorporation designates the Court of Chancery of the State of Delaware located within the State of Delaware as the exclusive forum for substantially all disputes between us and our stockholders.

Our certificate of incorporation provides that, the Court of Chancery of the State of Delaware is the sole and exclusive forum for any derivative action or proceeding, any action asserting a claim of breach of a fiduciary duty, any action arising pursuant to any provision of the Delaware General Corporation Law ("DGCL"), our certificate of incorporation or our bylaws, any other action that is governed by the internal affairs doctrine or any other action asserting an "internal corporate claim," as defined in the DGCL. These exclusive-forum provisions do not apply to claims under the Securities Act of 1933 (the "Securities Act") or the Exchange Act. Any person or entity purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to this provision. This exclusive-forum provision may limit a stockholder's ability to bring a claim in a judicial forum of its choosing for disputes with us or our directors, officers or other employees. If a court were to find the exclusive-forum provision to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could harm our results of operations.

Risks Related to Our Outstanding Notes

We have incurred a significant amount of debt and may incur additional indebtedness in the future.

In June 2020, we issued $172.5 million in aggregate principal amount of 3.00% Convertible Senior Notes due 2025, and in March 2021, we issued $287.5 million in aggregate principal amount of 1.00% Convertible Senior Notes due 2028, each issuance in an offering exempt from registration. We may be required to use a substantial portion of our cash flows from operations to pay interest and principal on our indebtedness. Such payments will reduce the funds available to use for working capital, capital expenditures and other corporate purposes and limit our ability to obtain additional financing, which may in turn limit our ability to implement our business strategy, heighten our vulnerability to downturns in our business, the industry, or in the general economy, limit our flexibility in planning for, or reacting to, changes in our business and the industry and prevent us from taking advantages of business opportunities as they arise. If we are unable to generate such cash flow to service our debt, we may be required to adopt one or more alternatives, such as selling assets, incurring additional debt, restructuring debt or issuing additional equity on terms that may be onerous or highly dilutive.

These alternatives may be insufficient to overcome macroeconomic conditions that may affect us. The duration and severity of macroeconomic uncertainty, any ensuing economic downturns, including economic recession or depression, could directly impact our ability to implement alternatives to service our debt. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

Transactions relating to our Notes may dilute the ownership interest of our stockholders.

The conversion of some or all of our outstanding Notes would dilute the ownership interests of existing stockholders to the extent we deliver shares upon conversion of any such Notes. If the Notes become convertible under the terms of the indenture, and if holders subsequently elect to convert the Notes, we could be required to deliver to them a significant number of shares of our common stock. Any sales or anticipated sales in the public market of the common stock issuable upon conversion could adversely affect prevailing market prices for our common stock. In addition, the existence of the Notes may encourage short selling by market participants because the conversion of the Notes could be used to satisfy short positions.

The conversion of the Notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion feature of the Notes is triggered, holders of the Notes will be entitled to convert their Notes at any time during specified periods at their option. If one or more holders elect to convert their Notes, unless we elect to satisfy our conversion obligation by delivering shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation in cash, which could adversely affect our liquidity. In addition, even if holders of the Notes do not elect to convert their Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Notes as a current rather than long-term liability, which could result in a material reduction in our net working capital.

The accounting method for the Notes materially affects our reported financial results.

Prior to the adoption of ASU 2020-06, under Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 470-20, Debt with Conversion and Other Options, we accounted for the liability and equity components of the Notes separately because the Notes may be settled entirely or partially in cash upon conversion in a manner that reflects our economic interest cost. This bifurcation resulted in a debt discount for Notes. See "Note 2—Summary of Significant Accounting Policies— Convertible Senior Notes." We used the effective interest method to amortize the debt discount to interest expense over the amortization period, which is the expected life of the Notes. However, we adopted ASU 2020-06 as of January 1, 2022, under which we now account for the Notes as a single liability measured at their amortized cost. Upon adoption, we recorded a cumulative effect adjustment of $13.4 million as a reduction to accumulated deficit and a reduction to additional paid in capital of $112.1 million related to amounts attributable to the value of the conversion options that had previously been recorded in equity. Additionally, we recorded an increase to the Notes balance by an aggregate amount of $98.6 million as a result of the reversal of the separation of the convertible debt between debt and equity. As a result of the adoption of ASU 2020-06, we also derecognized $27.5 million of deferred tax liabilities and recognized $0.2 million of deferred tax assets, resulting in a $27.7 million increase to the net deferred tax assets and a corresponding increase of $27.7 million in the offsetting valuation allowance.

The adoption of this standard also significantly decreased the amount of non-cash interest expense to be recognized in periods beginning on or after January 1, 2022 as a result of eliminating the discount associated with the equity component. In addition, following adoption, we are required to calculate diluted earnings per share using the "if converted" method, which assumes that all of the Notes were converted solely into shares of common stock at the beginning of the reporting period, unless the result would be anti-dilutive, which can adversely affect our diluted earnings per share. Future amendments to the accounting treatment for the Notes, could adversely affect our financial results, the trading price of our common stock and the trading price of the Notes.

The capped call transactions may affect the value of the Notes and our common stock.

In connection with the pricing of the Notes, we entered into privately negotiated capped call transactions with certain counterparties. The capped call transactions cover the number of shares of our common stock initially underlying the Notes. The capped call transactions are expected to offset the potential dilution to our common stock upon any conversion of the Notes. In connection with establishing their initial hedges of the capped call transactions, the counterparties or their respective affiliates entered into various derivative transactions with respect to our common stock. The counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various

derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions prior to the maturity of the Notes (and are likely to do so on each exercise date of the capped call transactions), or following any termination of any portion of the capped call transactions in connection with any repurchase, redemption or early conversions of the Notes or otherwise. This activity could also cause or avoid an increase or a decrease in the market price of our common stock.

Item 1B. Unresolved Staff Comments.

None.

Item 1C. Cybersecurity

Risk Management and Strategy

We have developed processes for assessing, identifying and managing material risks from cybersecurity threats. We review our security plans and strategies as threats and conditions evolve. The following is a summary of our cybersecurity risk management and strategy processes:

Enterprise Risk Management: Our enterprise risk management program includes management of material risks from cybersecurity threats alongside other Company risks as part of our overall risk assessment process. In 2023, our Internal Audit team completed an Enterprise Risk Assessment to identify and prioritize the most critical risks that could impact our ability to achieve our business priorities and make risk-informed strategic decisions. With management's input, our Board and Internal Audit team have identified cybersecurity as one of the risks that merits the highest level of prioritization. Informed by this designation, our Internal Audit team tracks cybersecurity key indicators and engages in discussions on the status, priorities and impact of cybersecurity risk response plans; reports key information to management throughout the year to inform decision making; and reports to the Audit Committee on a quarterly basis and to the full Board on the results and progress of the risk mitigation process.

In addition, we employ a range of tools and services to inform our assessment, identification and management of material risks from cybersecurity threats, which include from time to time:

- monitoring emerging data protection laws, including the California Consumer Privacy Act and the General Data Protection Regulation, and implementing responsive changes to our processes;
- undertaking periodic reviews of our policies and statements related to cybersecurity;
- conducting cybersecurity management and incident training for employees involved in our systems and processes that handle sensitive data;
- conducting phishing email simulations for employees and contractors with access to corporate email systems;
- requiring employees, as well as third-parties who provide services on our behalf, to treat information and data with care; and
- conducting tabletop exercises to simulate a response to a cybersecurity incident and using the findings to improve our processes and technologies.

Incident Response Team and Outside Resources: We have formed an Incident Response Team that monitors and mitigates material risks from cybersecurity threats. This team is composed of members from the information security, engineering and legal teams. The Incident Response Team and our internal legal team work in tandem to estimate the severity and materiality of a cybersecurity incident, create a response plan and inform other stakeholders as appropriate, including the Audit Committee or the full Board. In addition, we engage several third party service providers to monitor cybersecurity threats in the market more broadly, including in relation to phishing, data leaks on the dark web, firewalls, code security and endpoint protection. To identify risks from cybersecurity threats associated with these third-party service providers, we conduct pre-contract screening and due diligence and post-contract monitoring.

Cybersecurity Task Force: We have formed a cross-functional Cybersecurity Task Force that focuses on long-term cybersecurity strategy. The Cybersecurity Task Force is composed of members from the information security, engineering and legal teams and reports to our Chief Technology and Product Officer. The Cybersecurity Task Force meets periodically to discuss developments and best practices in cybersecurity incident response. In addition, the Cybersecurity Task Force reviews the business impact and severity of potential cybersecurity incidents, as reported by our automated systems, utilization of the bug bounty program, and public reports on the threat landscape.

For a discussion of whether and how any risks from cybersecurity threats, including as a result of any previous cybersecurity incidents, have materially affected or are reasonably likely to materially affect the Company, including our business strategy and results of operations, see "Risk Factors – Risks Related to Data Security, Privacy and Fraud," which are incorporated by reference into this Item 1C.

In the three most recently completed fiscal years, we have not experienced any material cybersecurity incidents and the expenses we have incurred from cybersecurity incidents were immaterial. This includes penalties and settlements, of which there were none.

Corporate Governance

Our Board of Directors provides oversight of risks from cybersecurity threats, in coordination with our Audit Committee and management team. The following is a summary of our governance processes related to cybersecurity risk management:

Board: Our full Board receives biannual updates on cybersecurity from our Chief Technology and Product Officer (the "CTPO") or head of cybersecurity (the "CISO") to, among other items, review cybersecurity incidents, review key metrics on our cybersecurity program and related risk management programs, and discuss our cybersecurity programs and goals. Our Board also regularly reviews cyber-related risks as part of our enterprise risk management program on a quarterly basis and receives updates from our Internal Audit team on the results of the risk monitoring and mitigation process, as described in more detail above.

Audit Committee: Our Audit Committee provides additional oversight of material risks from cybersecurity threats and engages with our CTPO or CISO regarding risk management of cybersecurity issues and to discuss potential updates to the Company's cybersecurity risk management program, including as a result of any Cybersecurity Task Force findings. The Audit Committee receives a quarterly report from the Company's cybersecurity team, which includes the CTPO, CISO, and members of the information security team, that summarizes progress on cyber-related key performance indicators, including product security, cloud security, risk and compliance, identity issues, and cyber defense. The Audit Committee updates the full Board on matters relating to material cybersecurity risks at least quarterly.

Management: Our CTPO is responsible for assessing and managing the Company's material risks from cybersecurity threats, and our CISO reports directly to our CTPO regarding such threats. Our CTPO is informed about and monitors the prevention, detection, mitigation and remediation or cybersecurity incidents through the management of and participation in the Company's Internal Audit team, Incident Response Team and Cybersecurity Task Force, as described above. As discussed above, our CTPO or CISO reports biannually to the full Board and quarterly to the Audit Committee about risks from cybersecurity threats among other cybersecurity related matters. To the extent a material cybersecurity incident occurs, our CTPO and broader management team would inform the chair of our Audit Committee of the nature, scope and impact of the incident, and involve the other members of the Audit Committee or the full Board as necessary to evaluate the risks and determine next steps. Our CTPO has served in this role since 2023 and has more than 20 years of experience in various senior leadership roles involving managing cybersecurity and compliance teams, including as Head of Tech and Digital at Lovevery and as Chief Technology and Product Officer at Zulilly.

Item 2. Properties.

Our corporate headquarters are located in San Francisco, California and are leased for a term that expires in 2027 with a right of renewal. We lease an aggregate of approximately 1.4 million square feet of space for storage, merchandising operations and fulfillment located in Arizona and New Jersey. The lease to our Arizona facility expires in 2031, and leases to our three New Jersey facilities each expire in 2029, all with a right of renewal. We lease additional offices located in Los Angeles and New York City, and we have leased several retail spaces and luxury consignment offices in other high traffic areas, including in New York City and Los Angeles.

Item 3. Legal Proceedings.

From time to time, the Company is subject to, and is presently involved in, litigation and other legal proceedings and from time to time, the Company receives inquiries from government agencies. Accounting for contingencies requires the Company to use judgment related to both the likelihood of a loss and the estimate of the amount or range of loss. The

Company records a loss contingency when it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. The Company discloses material contingencies when a loss is not probable but reasonably possible.

On November 14, 2018, Chanel, Inc. sued the Company in the U.S. District Court for the Southern District of New York. The Complaint alleged federal and state law claims of trademark infringement, unfair competition, and false advertising. On February 1, 2019, Chanel, Inc. filed its First Amended Complaint that included substantially similar claims against the Company. On March 4, 2019, the Company filed a Motion to Dismiss the First Amended Complaint, which was granted in part and dismissed in part on March 30, 2020. The surviving claims against the Company include trademark infringement under 15 U.S.C. § 1114, false advertising under 15 U.S.C. § 1125, and unfair competition under New York common law. On May 29, 2020, the Company filed its Answer to the Amended Complaint. On November 3, 2020, the Company sought leave to amend its Answer to assert counterclaims against Chanel, Inc. for violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. The motion for leave to amend was granted on February 24, 2021. On February 25, 2021, the Company filed its First Amended Answer, Affirmative Defenses and Counterclaims against Chanel. The Company's Counterclaims allege violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. On March 18, 2021, Chanel moved to dismiss the Company's Counterclaims and moved to strike the Company's unclean hands affirmative defense. Decisions on Chanel's motion to dismiss and motion strike are pending. The parties agreed to a stay in April 2021 to engage in settlement discussions. After several mediation sessions, the parties were unable to reach a resolution, and the stay was lifted in November 2021. Chanel then sought a partial stay of discovery on the Company's counterclaims and unclean hands defense while Chanel's motion to dismiss and strike those claims are pending, and on March 10, 2022, the Court granted Chanel's request. The parties have continued to engage in fact discovery regarding Chanel's counterfeiting and false advertising claims against the Company. Fact discovery was scheduled to be completed by August 15, 2023. However, on July 19, 2023, the Court ordered a stay of the case at the parties' request to enable the parties to attempt mediation again. The parties are working to schedule mediation in the first half of 2024. The final outcome of this litigation, including our liability, if any, with respect to Chanel's claims, is uncertain. An unfavorable outcome in this or similar litigation could adversely affect the Company's business and could lead to other similar lawsuits. The Company is not able to predict or reasonably estimate the ultimate outcome or possible losses relating to this claim.

Beginning on September 10, 2019, purported shareholder class action complaints were filed against the Company, its officers and directors and the underwriters of its IPO in the San Mateo Superior Court, Marin County Superior Court, and the United States District Court for the Northern District of California. On July 27, 2021, the Company reached an agreement in principle to settle the shareholder class action. On November 5, 2021, plaintiff filed the executed stipulation of settlement and motion for preliminary approval of the settlement with the federal court. On March 24, 2022, the court entered an order preliminarily approving the settlement. On July 28, 2022, the court entered an order finally approving the settlement and dismissing the case. The financial terms of the stipulation of settlement provide that the Company will pay $11.0 million within thirty (30) days of the later of preliminary approval of the settlement or plaintiff's counsel providing payment instructions. The Company paid the settlement amount on March 29, 2022 with available resources and recorded approximately $11.0 million for the year ended December 31, 2021 under our Operating expenses as a Legal settlement. One of the plaintiffs in the Marin County case opted out of the federal settlement and is pursuing the claim in Marin County Superior Court. The stay of the state court case has been lifted, and the opt out plaintiff filed an amended complaint on October 31, 2022 alleging putative class claims under the Securities Act of 1933 (the "Securities Act") on behalf of the two shareholders who opted out of the settlement and those who purchased stock from November 21, 2019 through March 9, 2020, based on purported new revelations. The claims are for alleged violations of Sections 11 and 15 of the Securities Act. On February 23, 2024, plaintiff filed a motion for class certification, which has been set for hearing on May 28, 2024. While the Company intends to defend vigorously against this litigation, there can be no assurance that the Company will be successful in its defense. For this reason, the Company cannot currently estimate the loss or range of possible losses it may experience in connection with this litigation.

Item 4. Mine Safety Disclosures.

None.

PART II

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

Market Information

Our common stock, par value $0.00001 per share, is listed on the Nasdaq Global Select Market, under the symbol "REAL" and began trading on June 28, 2019. Prior to that date, there was no public trading market for our common stock.

Stockholders

As of the close of business on February 20, 2024, there were 137 stockholders of record of our common stock. The actual number of holders of our common stock is greater than this number of record holders, and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers or other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

Dividend Policy

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all available funds and future earnings, if any, to fund the development and expansion of our business, and we do not anticipate paying any cash dividends in the foreseeable future. Any future determination regarding the declaration and payment of dividends, if any, will be at the discretion of our board of directors and will depend on then-existing conditions, including our financial condition, operating results, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant. Our ability to pay cash dividends on our capital stock is limited by the terms of our existing term loans and may be limited by any future debt instruments or preferred securities.

Securities Authorized for Issuance under Equity Compensation Plans

The information required by this item with respect to our equity compensation plans will be incorporated by reference to our 2024 proxy statement set forth in the section titled "Equity Compensation Plan Information" that will be filed with the SEC within 120 days of the year ended December 31, 2023 (the "Proxy Statement").

Recent Sales of Unregistered Securities

None.

Issuer Purchases of Equity Securities

None.

Item 6. Reserved

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion of our financial condition and results of operations should be read together with our financial statements and related notes and other financial information included in this Annual Report. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this Annual Report, particularly in the section titled "Risk Factors." Our historical results are not necessarily indicative of the results that may be expected for any period in the future.

Overview

We are the world's largest online marketplace for authenticated, resale luxury goods. We are revolutionizing luxury resale by providing an end-to-end service that unlocks supply from consignors and creates a trusted, curated online marketplace for buyers globally. Since our inception in 2011, we have cultivated a loyal and engaged consignor and buyer base through our investments in our technology platform, logistics infrastructure and people. We offer a wide selection of authenticated, primarily pre-owned luxury goods on our online marketplace bearing the brands of thousands of luxury and premium designers. We offer products across multiple categories including women's and men's fashion, fine jewelry and watches. We have built a vibrant online marketplace that we believe expands the overall luxury market, promotes the recirculation of luxury goods and contributes to a more sustainable world.

We have transformed the luxury consignment experience by removing the friction and pain points inherent in the traditional consignment model. For consignors, we offer concierge at-home consultation and pickup as well as virtual consultations via online face-to-face platforms. Consignors may also drop off items at our luxury consignment offices. Our Neighborhood and Flagship Stores provide an alternative location to drop off consigned items and an opportunity to interact with our authentication experts. Consignors may also utilize our complimentary shipping directly to our authentication centers. We leverage our proprietary transactional database and market insights from approximately 37.5 million item sales since our inception to deliver optimal pricing and rapid sell-through. For buyers, we offer highly coveted and exclusive authenticated pre-owned luxury goods at attractive values, as well as a high-quality experience befitting the products we offer. Our online marketplace is powered by our proprietary technology platform, including consumer facing applications and purpose-built software that supports our complex, single-SKU inventory management system.

The substantial majority of our revenue is generated by consignment sales. We also generate revenue from other services and direct sales.

- ***Consignment revenue***. When we sell goods through our online marketplace or retail stores on behalf of our consignors, we retain a percentage of the proceeds, which we refer to as our take rate. Take rates vary depending on the total value of goods sold through our online marketplace on behalf of a particular consignor as well as the category and price point of the items. In 2023 and 2022, our overall take rate on consigned goods was 37.5% and 36.0% respectively. The increase in our take rate was due to the update of our consignor commission structure (effective November 1, 2022). Additionally, we earn revenue from our subscription program, First Look, in which we offer buyers early access to the items we sell in exchange for a monthly fee.
- ***Direct revenue***. When we accept out of policy returns from buyers, or when we make direct purchases from businesses and consignors, we take ownership of goods and retain 100% of the proceeds when the goods subsequently sell through our online marketplace or retail stores.
- ***Shipping services revenue***. When we deliver purchased items to our buyers, we charge shipping fees to buyers for the outbound shipping and handling services. We also generate shipping services revenue from the shipping fees for consigned products returned by our buyers to us within policy. Shipping services revenue excludes the effect of buyer incentives and sales tax.

We generate revenue from orders processed through our website, mobile app and retail stores. Our omni-channel experience enables buyers to purchase anytime and anywhere. We have a global base of more than 35.2 million members as of December 31, 2023. We count as a member any user who has registered an email address on our website or downloaded our mobile app, thereby agreeing to our terms of service.

Through December 31, 2023, we have cumulatively paid approximately $4.0 billion in commissions to our consignors. Our GMV decreased to $1.7 billion in 2023 from $1.8 billion in 2022. Our AOV increased to $523 in 2023

from $483 in 2022. In 2023 and 2022, our total revenue was $549.3 million and $603.5 million, respectively, representing a decrease of 9% in 2023. In 2023 and 2022, our gross profit was $376.3 million and $348.7 million, respectively, representing an increase of 8% in 2023.

Impact of Public Health Emergencies and Macroeconomic Conditions on Our Business

The impact of public health emergencies or outbreaks of epidemics, pandemics, or contagious diseases such as the COVID-19 pandemic has affected, and may continue to affect our business and results of operations. During any public health emergency, our top priority is to protect the health and safety of our employees and our customers. Macroeconomic uncertainty and inflationary pressure have and may in the future drive lower demand for the end customer and increase costs of labor and shipping.

Business Developments

On February 15, 2023, we implemented a savings plan intended to reduce operating expenses by (a) terminating approximately 230 employees, representing approximately 7% of our workforce, and (b) reducing our real estate presence (see Note 10 — Leases, for further information). We may not be able to fully realize the cost savings and benefits initially anticipated from the savings plan, and the expected costs may be greater than expected. See "Risk Factors—Risks Related to Our Business and Industry— The savings plan we implemented in February 2023 may not result in anticipated savings, could result in total costs and expenses that are greater than expected and could disrupt our business."

Other Factors Affecting Our Performance

Other key business and marketplace factors, independent of the health and economic impact of public health emergencies and macroeconomic conditions, impact our business. To analyze our business performance, determine financial forecasts and help develop long-term strategic plans, we focus on the factors described below. While each of these factors presents significant opportunity for our business, collectively, they also pose important challenges that we must successfully address in order to sustain our growth, improve our operating results and achieve and maintain our profitability.

Consignors and Buyers

Consignor growth and retention. We grow our sales by increasing the supply of luxury goods offered through our consignment online marketplace. We grow our supply both by attracting new consignors and by creating lasting engagement with existing consignors. We generate leads for new consignors principally through our advertising activity. We convert those leads into active consignors through the activities of our sales professionals, who are trained and incentivized to identify and source high-quality, coveted luxury goods from consignors. Our sales professionals form a consultative relationship with consignors and deliver a high-quality, rapid consigning experience. Our existing relationships with consignors allow us to unlock valuable supply across multiple categories, including women's fashion, men's fashion, and jewelry and watches.

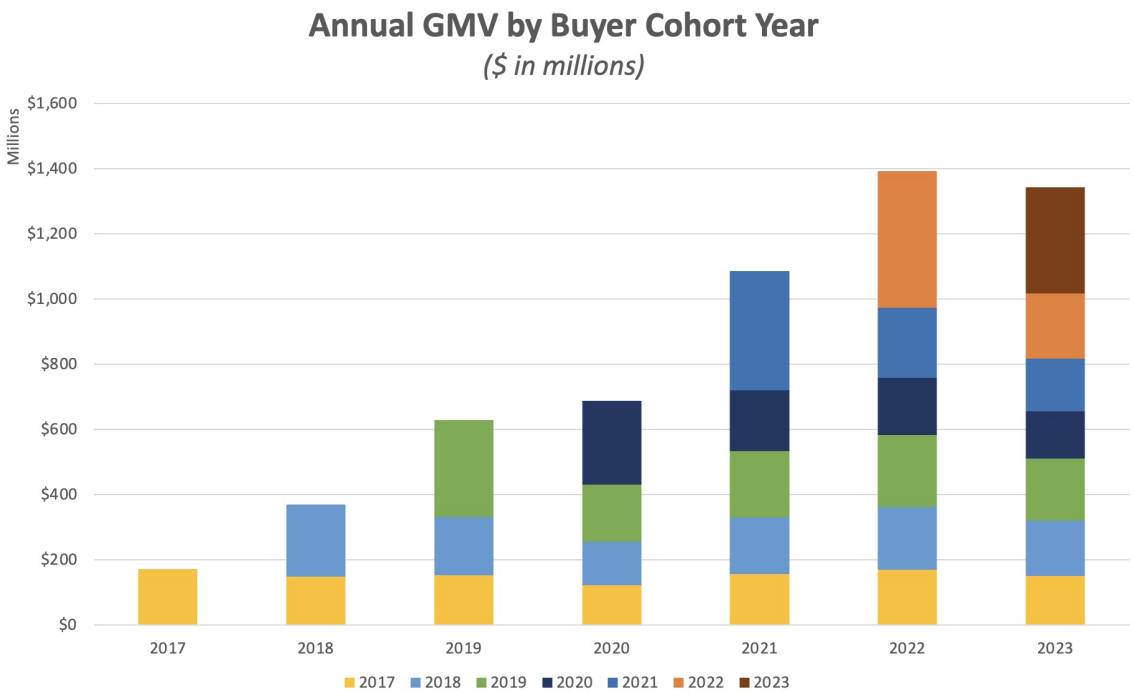
We measure the ratio of demand versus supply in a given period, which we refer to as our online marketplace sell-through ratio. Sell-through ratio is defined as GMV in the period divided by the aggregate initial value of items added to our online marketplace in the period. In 2023 and 2022, our marketplace sell-through ratios were 92% and 91%, respectively.

Our growth has been driven in significant part by repeat sales by existing consignors concurrent with growth of our consignor base. In 2023 and 2022, repeat consignors accounted for approximately 84% and 83% of GMV, respectively.

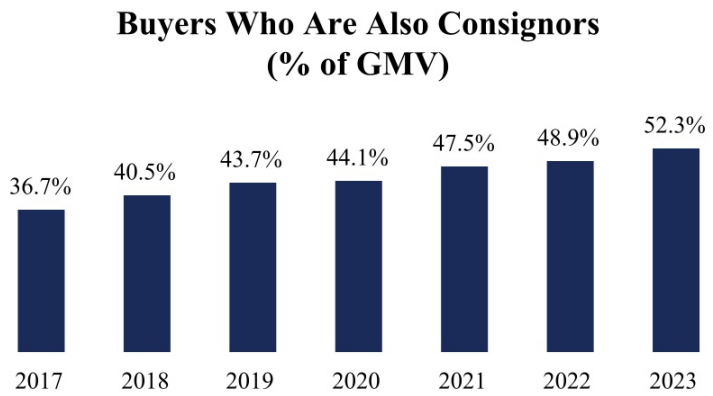
Buyer growth and retention. We grow our business by attracting and retaining buyers. We attract and retain buyers by offering highly coveted, authenticated, pre-owned luxury goods at attractive values and delivering a high-quality, luxury experience. We measure our success in attracting and retaining buyers by tracking buyer satisfaction and purchasing activity over time. We have experienced higher than average buyer satisfaction, as evidenced by our buyer net promoter score of 51 in 2023, and compared to our online shopping industry average of 45 according to NICE Satmetrix U.S. Consumer 2023 data. If we fail to continue to attract and retain our buyer base to our online marketplace, our operating results would be adversely affected.

The graph below shows trends in purchasing activity for buyer cohorts for each year beginning in 2017. Each cohort represents all buyers that first purchased across our online marketplace in the designated year and the aggregate

GMV purchased by such cohort for the initial year and each year thereafter. As illustrated in the graph below, we have seen consistent retention of buyer activity across cohorts through 2023. In 2020, buyer retention was impacted by the adverse impacts of COVID-19 on supply, and as a result, GMV.

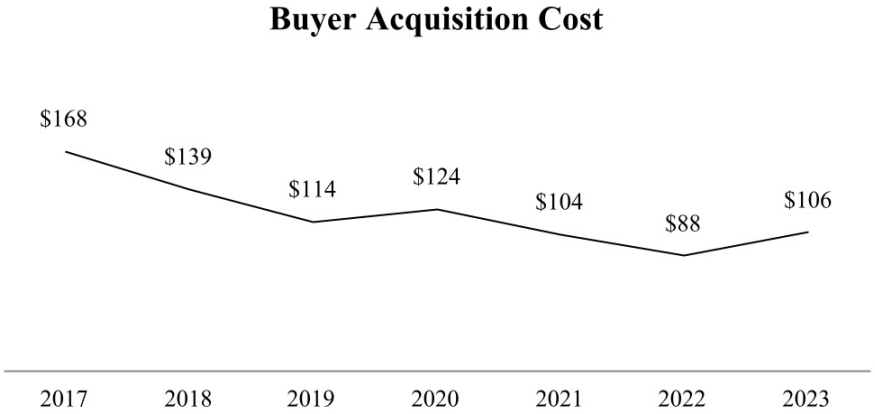


We believe there is substantial opportunity to grow our business by having buyers also become consignors and vice versa. As of December 31, 2023, 15% of our buyers had become consignors and 49% of our consignors had become buyers. The graph below shows the percentage of GMV in each year from buyers who have participated as both buyers and consignors on our online marketplace. GMV attributable to consigning activity of such buyers is not included.



Buyer acquisition cost. Our financial performance depends on effectively managing the expenses we incur to attract and retain buyers. We closely monitor our efficiency in acquiring new buyers. Our buyer acquisition cost ("BAC") for a given period is comprised of our total advertising spend for acquiring both buyers and consignors, which is principally the cost of television, digital and direct mail advertising, divided by the number of buyers acquired in that

period. We adjust or re-allocate our advertising in real-time to optimize our spend across channels, buyer demographics and geographies to improve our return on advertising spend.



Scaling operations and technology. To support the future growth of our business, we continue to invest in physical infrastructure, talent and technology. We principally conduct our intake, authentication, merchandising and fulfillment operations in our leased authentication centers located in Arizona and New Jersey comprising an aggregate of approximately 1.4 million square feet of space. We also operate retail stores in several geographies. In addition to scaling our physical infrastructure, growing our single-SKU business operations requires that we attract, train and retain highly-skilled personnel for purposes of authentication, copywriting, merchandising, pricing and fulfilling orders. We have invested substantially in technology to automate our operations and support growth, including proprietary machine learning technology to support efficiency and quality. We continue to strategically invest in technology, as innovation positions us to scale and support growth into the future.

Seasonality. Historically, we have observed trends in seasonality of supply and demand in our business. Specifically, our supply increases in the third and fourth quarters, and our demand increases in the fourth quarter. As a result of this seasonality, we typically see stronger AOV and more rapid sell-through in the fourth quarter.

Key Financial and Operating Metrics

The key operating and financial metrics that we use to assess the performance of our business are set forth below for 2023, 2022, and 2021.

	Year Ended December 31,		
	2023	2022	2021
	(In thousands, except AOV and percentages)		
GMV	$ 1,725,983	$ 1,815,983	$ 1,482,432
NMV	$ 1,269,880	$ 1,335,506	$ 1,092,353
Consignment revenue	$ 415,572	$ 384,979	$ 302,221
Direct revenue	$ 79,160	$ 158,726	$ 120,844
Shipping services revenue	$ 54,572	$ 59,788	$ 44,627
Number of orders	3,300	3,757	2,981
Take rate	37.5 %	36.0 %	34.7 %
Active buyers	922	998	797
AOV	$ 523	$ 483	$ 497

GMV

GMV represents the total amount paid for goods across our online marketplace in a given period. We do not reduce GMV to reflect product returns or order cancellations, which totaled 26.4%, 26.5%, and 26.3% of GMV in 2023, 2022, and 2021, respectively. GMV includes amounts paid for both consigned goods and our inventory net of platform-wide discounts and excludes the effect of buyer incentives, shipping fees and sales tax. Platform-wide discounts are made available to all buyers on the online marketplace, and impact commissions paid to consignors. Buyer incentives apply to specific buyers and consist of coupons or promotions that offer credits in connection with purchases on our platform. In addition to revenue, we believe this is an important measure of the scale and growth of our online marketplace and a key indicator of the health of our consignor ecosystem. We monitor trends in GMV to inform budgeting and operational decisions to support and promote growth in our business and to monitor our success in adapting our business to meet the needs of our consignors and buyers. While GMV is the primary driver of our revenue, it is not a proxy for revenue or revenue growth. See Note 2—Summary of Significant Accounting Policies—Revenue Recognition—Consignment Revenue.

NMV

Net merchandise value ("NMV") represents the value of sales from both consigned goods and our inventory net of platform-wide discounts less product returns and order cancellations and excludes the effect of buyer incentives, shipping fees and sales tax. We believe NMV is a supplemental measure of the scale and growth of our online marketplace. Like GMV, NMV is not a proxy for revenue or revenue growth.

Consignment Revenue

Consignment revenue is generated from the sale of pre-owned luxury goods through our online marketplace and retail stores on behalf of consignors. We retain a portion of the proceeds received, which we refer to as our take rate. We recognize consignment revenue, net of allowances for product returns, order cancellations, buyer incentives and adjustments. We also generate revenue from subscription fees paid by buyers for early access to products.

Direct Revenue

Direct revenue is generated from the sales of company-owned inventory. We recognize direct revenue upon shipment of the goods sold, based on the gross purchase price net of allowances for product returns, buyer incentives and adjustments.

Shipping Services Revenue

Shipping services revenue is generated from shipping fees we charge to buyers for outbound shipping and handling activities related to delivering purchased items to our buyers. We also generate shipping services revenue from the shipping fees for consigned products returned by our buyers to us within policy. We recognize shipping services revenue over time as the shipping activity occurs. Shipping services revenue excludes the effect of buyer incentives and sales tax.

Number of Orders

Number of orders means the total number of orders placed across our online marketplace and retail stores in a given period. We do not reduce number of orders to reflect product returns or order cancellations.

Take Rate

Take rate is a key driver of our revenue and provides comparability to other marketplaces. The numerator used to calculate our take rate is equal to net consignment sales and the denominator is equal to the numerator plus consignor commissions. Net consignment sales represent the value of sales from consigned goods net of platform-wide discounts less consignor commission, product returns and order cancellations. We exclude direct revenue from our calculation of take rate because direct revenue represents the sale of inventory owned by us, which costs are included in cost of direct revenue. Our take rate reflects the high level of service that we provide to our consignors across multiple touch points and the consistently high velocity of sales for their goods. In November 2022, we updated our take rate structure with the goals of optimizing take rate, limiting consignment of lower value items, and increasing supply of higher value items. We continue to assess the impact of our updated take rate structure and may implement further changes in the future. Previously, our take rate was primarily based on a tiered commission structure for consignors, where the more they sell the higher percent commission they earn. Consignors typically started at a 55% commission (which equals a 45% take rate for us) and could earn up to a 70% commission. In addition, there were commission exceptions from the tiered commission structure based on category and price point of the items.

Our take rate structure is primarily based on the category and the price point of the sold items. For example, under the updated take rate structure, consignors can earn 20% commission on all sold items under $100, and up to 90% commission on watches sold for over $7,500. We launched a pricing tool for our consignors that provides detail on commission rates for specific categories and other aspects of the take rate structure. Consignors are eligible to receive additional commissions based on total net sales under an added tiered commission structure. Management assesses changes in take rates by monitoring the volume of GMV and take rate across each discrete commission grouping, encompassing commission tiers and exceptions.

Active Buyers

Active buyers include buyers who purchased goods through our online marketplace during the 12 months ended on the last day of the period presented, irrespective of returns or cancellations. We believe this metric reflects scale, brand awareness, buyer acquisition and engagement.

Average Order Value (“AOV”)

Average order value (“AOV”) means the average value of all orders placed across our online marketplace and retail stores, excluding the effect of buyer incentives, shipping fees and sales taxes. Our focus on luxury goods across multiple categories drives a consistently strong AOV. Our AOV reflects both the average price of items sold as well as the number of items per order. Our AOV is a key driver of our operating leverage.

Components of our Operating Results

Revenue

Our revenue is comprised of consignment revenue, direct revenue, and shipping services revenue.

- *Consignment revenue*. We generate the substantial majority of our revenue from the sale of pre-owned luxury goods through our online marketplace and retail stores on behalf of consignors. For consignment sales, we retain a percentage of the proceeds received, which we refer to as our take rate. We recognize consignment revenue, net of allowances for product returns, order cancellations, buyer incentives and adjustments. Additionally, we generate revenue from subscription fees paid by buyers for early access to products, but to date our subscription revenue has not been material.
- *Direct revenue*. We generate direct revenue from the sale of items that we own, which we refer to as our inventory. We generally acquire inventory when we accept out of policy returns from buyers, and when we make direct purchases from businesses and consignors. We recognize direct revenue upon shipment based on the gross purchase price paid by buyers for goods, net of allowances for product returns, buyer incentives and adjustments.
- *Shipping services revenue.* We generate shipping services revenue from the outbound shipping and handling fees we charge when delivering purchased items to our buyers. We also generate shipping services revenue from the shipping fees for consigned products returned by our buyers to us within policy. We recognize shipping services revenue over time as the shipping activity occurs. Shipping services revenue excludes the effect of buyer incentives and sales tax.

Cost of Revenue

Cost of consignment revenue consists of credit card fees, packaging, customer service personnel-related costs, website hosting services, and consignor inventory adjustments related to lost or damaged products. Cost of direct revenue consists of the cost of goods sold, credit card fees, packaging, customer service personnel-related costs, website hosting services, and inventory adjustments for lower of cost or net realizable value provisions and for lost or damaged products. Cost of shipping services revenue consists of the outbound shipping and handling costs to deliver purchased items to our buyers, the shipping costs for consigned products returned by our buyers to us within policy, and an allocation of the credit card fees associated with the shipping fee charged.

Marketing

Marketing expense comprises the cost of acquiring and retaining consignors and buyers, including the cost of television, digital and direct mail advertising. Marketing expense also includes personnel-related costs for employees engaged in these activities. We expect these expenses to continue to decrease as a percentage of revenue.

Operations and Technology

Operations and technology expense principally includes personnel-related costs for employees involved with the authentication, merchandising and fulfillment of goods sold through our online marketplace and retail stores, as well as our general information technology expense. Operations and technology expense also includes allocated facility and overhead costs, costs related to our retail stores, facility supplies, inbound consignment shipping costs, and depreciation of hardware and equipment, as well as research and development expense for technology associated with managing and improving our operations. We capitalize a portion of our proprietary software and technology development costs. As such, operations and technology expense also includes amortization of capitalized technology development costs. We expect operations and technology expense to increase in future periods to support our growth, including continuing to invest in automation and other technology improvements to support and drive efficiency in our operations. These expenses may vary from year to year as a percentage of revenue, depending primarily upon when we choose to make more significant investments. We expect these expenses to continue to decrease as a percentage of revenue.

Selling, General and Administrative

Selling, general and administrative expense is principally comprised of personnel-related costs for our sales professionals and employees involved in finance and administration. Selling, general and administrative expense also includes allocated facilities and overhead costs and professional services, including accounting and legal advisors. We expect these expenses to continue to decrease as a percentage of revenue.

Restructuring

Restructuring expense is primarily comprised of right-of-use asset and fixed asset impairments, severance benefits, and other related charges, including net gain on lease terminations. Impairment losses are measured and recorded for the excess of carrying value over its fair value, estimated based on expected future cash flows using discount rate and other quantitative and qualitative factors. The assumptions used such as projected future cash flows, discount rates, and determination of appropriate market comparable, are subject to volatility and may differ from actual results.

Legal Settlement

Legal settlement expense primarily includes actual or estimated losses related to legal settlements when they become probable and estimable.

Provision for Income Taxes

Our provision for income taxes consists primarily of state minimum taxes in the United States. We have a full valuation allowance for our net deferred tax assets primarily consisting of net operating loss carryforwards, accruals and reserves, stock-based compensation, fixed assets, and other book-to-tax timing differences. We expect to maintain this full valuation allowance for the foreseeable future.

Results of Operations

The results of operations presented below should be reviewed in conjunction with the financial statements and notes included elsewhere in the Annual Report. Prior year comparisons for 2022 and 2021 are included in "Part II, Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations" of our Annual Report on Form 10-K for the fiscal year ended December 31, 2022. The following tables set forth our results of operations (in thousands) and such data as a percentage of revenue for the periods presented:

	Year Ended December 31,		
	2023	2022	2021
		(In thousands)	
Revenue:			
Consignment revenue	$ 415,572	$ 384,979	$ 302,221
Direct revenue	79,160	158,726	120,844
Shipping services revenue	54,572	59,788	44,627
Total revenue	549,304	603,493	467,692
Cost of revenue:			
Cost of consignment revenue	58,120	56,963	44,985
Cost of direct revenue	74,343	141,661	101,427
Cost of shipping services revenue	40,563	56,178	47,803
Total cost of revenue	173,026	254,802	194,215
Gross profit	376,278	348,691	273,477
Operating expenses:			
Marketing	58,275	62,988	62,749
Operations and technology	257,041	278,628	233,687
Selling, general and administrative	182,453	194,886	176,246
Restructuring	43,462	896	2,314
Legal settlement	1,340	456	13,389
Total operating expenses	542,571	537,854	488,385
Loss from operations	(166,293)	(189,163)	(214,908)
Interest income	8,805	3,191	365
Interest expense	(10,701)	(10,472)	(21,531)
Other income, net	—	171	23
Loss before provision for income taxes	(168,189)	(196,273)	(236,051)
Provision for income taxes	283	172	56
Net loss	$ (168,472)	$ (196,445)	$ (236,107)

	Year Ended December 31,		
	2023	2022	2021
Revenue:			
Consignment revenue	76 %	64 %	65 %
Direct revenue	14	26	26
Shipping services revenue	10	10	9
Total revenue	100	100	100
Cost of revenue:			
Cost of consignment revenue	11	9	10
Cost of direct revenue	14	24	22
Cost of shipping services revenue	7	9	10
Total cost of revenue	32	42	42
Gross profit	68	58	58
Operating expenses:			
Marketing	11	11	13
Operations and technology	47	46	50
Selling, general and administrative	33	33	38
Restructuring	8	—	—
Legal settlement	—	—	3
Total operating expenses	99	90	104
Loss from operations	(31)	(32)	(46)
Interest income	2	1	—
Interest expense	(2)	(2)	(5)
Other income, net	—	—	—
Loss before provision for income taxes	(31)	(33)	(51)
Provision for income taxes	—	—	—
Net loss	(31)%	(33)%	(51)%

Comparison of 2023 and 2022

Consignment Revenue

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Consignment revenue, net	$ 415,572	$ 384,979	$ 30,593	8 %

Consignment revenue increased by $30.6 million, or 8%, in 2023 compared to 2022. The increase in revenue was driven primarily by an increase in consignment GMV, and improvement in our take rate during the year ended December 31, 2023. Overall GMV decreased by 5% during the year ended December 31, 2023. The decrease in GMV is driven by a decrease in direct GMV, partially offset by the increase in consignment GMV.

Returns and cancellations as a percentage of GMV for the year ended December 31, 2023 was 26.4%, compared to 26.5% for the year ended December 31, 2022. Our take rate increased to 37.5% from 36.0% during the year ended December 31, 2023 compared to last year due to the update of our consignor commission structure which went into effect on November 1, 2022.

Direct Revenue

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Direct revenue	$ 79,160	$ 158,726	$ (79,566)	(50)%

Direct revenue decreased by $79.6 million, or 50%, in 2023 compared to 2022. The decrease was primarily driven by our planned actions to minimize vendor-purchased company-owned inventory as the margin profile of our direct revenue is lower than consignment revenue. We recognize direct revenue upon shipment of the purchased good to the buyer. Direct revenue as a percentage of total revenue may vary from period to period primarily based on the amount of consignment revenue.

Shipping Services Revenue

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Shipping services revenue	$ 54,572	$ 59,788	$ (5,216)	(9)%

Shipping services revenue decreased by $5.2 million, or 9%, in 2023 compared to 2022 primarily due to a decrease in the number of orders.

Cost of Consignment Revenue

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Cost of consignment revenue	$ 58,120	$ 56,963	$ 1,157	2 %
As a percent of consignment revenue	14 %	15 %		

Cost of consignment revenue increased by $1.2 million, or 2%, in 2023 compared to 2022. The increase was primarily attributable to the 8% increase in consignment revenue compared to the prior year, partially offset by efficiencies in our cost leverage.

Consignment revenue gross margin increased by 81 basis points in the year ended December 31, 2023 compared to the year ended December 31, 2022, primarily driven by the 8% increase in consignment revenue.

Cost of Direct Revenue

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Cost of direct revenue	$ 74,343	$ 141,661	$ (67,318)	(48)%
As a percent of direct revenue	94 %	89 %		

Cost of direct revenue decreased by $67.3 million, or 48%, in 2023 compared to 2022. The decrease was primarily attributable to the 50% decrease in direct revenue compared to the prior year as a result of our planned actions to minimize vendor-purchased company-owned inventory.

Direct revenue gross margin decreased by 467 basis points in the year ended December 31, 2023 compared to the year ended December 31, 2022, primarily driven by strategic liquidation of company owned inventory sold at discounted prices, which resulted in the sell through of inventory that was previously reserved. The margin profile of our direct revenue is lower than the margin profile of our consignment revenue.

Cost of Shipping Services Revenue

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Cost of shipping services revenue	$ 40,563	$ 56,178	$ (15,615)	(28)%
As a percent of shipping services revenue	74 %	94 %		

Cost of shipping services revenue decreased by $15.6 million, or 28%, in the year ended December 31, 2023 compared to the year ended December 31, 2022. The decrease is primarily due to a decrease in the number of orders, and due to realizing benefits of cost savings initiatives.

Shipping services revenue gross margin increased by 1,963 basis points in the year ended December 31, 2023 compared to the year ended December 31, 2022, primarily due to decreased costs related to cost savings initiatives.

Total Gross Margin

Our total gross margin increased by 1,072 basis point in the year ended December 31, 2023 compared to the year ended December 31, 2022 primarily driven by the increase in higher margin consignment revenue and decrease in lower margin direct revenue. Gross margin may vary from period to period.

Marketing

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Marketing	$ 58,275	$ 62,988	$ (4,713)	(7)%

Marketing expense decreased by $4.7 million, or 7%, in 2023 compared to 2022. The decrease was primarily due to a decrease in advertising costs and lower employee compensation related expenses due to a decrease in headcount.

As a percentage of revenue, marketing remained flat at 11% in the years ended December 31, 2023 and 2022. These expenses may vary from period to period as a percentage of revenue, depending primarily upon our marketing investments. We expect these expenses to decrease as a percentage of revenue over the longer term.

Operations and Technology

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Operations and technology	$ 257,041	$ 278,628	$ (21,587)	(8)%

Operations and technology expense decreased by $21.6 million, or 8%, in 2023 compared to 2022. The decrease was primarily due to lower employee compensation related expenses due to a decrease in headcount related to the savings plan implemented during 2023. The decrease was also attributed to lower rent and lease related expenses due to retail store closures related to the savings plan implemented during 2023.

As a percentage of revenue, operations and technology expense increased to 47% in 2023 from 46% in 2022 due to a decrease in direct revenue. These expenses may vary from period to period as a percentage of revenue, depending primarily upon when we choose to make more significant investments. We expect these expenses to decrease as a percentage of revenue over the longer term.

Selling, General and Administrative

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Selling, general and administrative	$ 182,453	$ 194,886	$ (12,433)	(6)%

Selling, general and administrative expense decreased by $12.4 million, or 6%, in 2023 compared to 2022. The decrease was due to lower employee compensation expenses due to a decrease in headcount related to the savings plan implemented during 2023. The decrease was also attributed to lower rent and lease related expenses due to office closures related to the savings plan implemented during 2023.

As a percentage of revenue, selling, general and administrative remained flat at 33% in the years ended December 31, 2023 and 2022 . These expenses may vary from period to period as a percentage of revenue. We expect these expenses to decrease as a percentage of revenue over the long term.

Restructuring

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Restructuring	$ 43,462	$ 896	$ 42,566	4,751 %

Restructuring increased by $42.6 million, or over 100%, in 2023 compared to 2022. The increase was primarily due to charges to reduce our real estate presence and operating expenses through the closure of certain retail and office locations and workforce reduction. Restructuring consisted of right-of-use asset impairment charge of $31.1 million, leasehold improvements impairment charge of $8.6 million, employee severance of $3.0 million, and other related charges of $1.5 million, partially offset by a $0.7 million gain on lease terminations. As of the date of this annual report, the real estate reduction plan we implemented in February 2023 is substantially complete.

Interest Income

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Interest income	$ 8,805	$ 3,191	$ 5,614	176 %

Interest income increased by $5.6 million, or over 100%, in the year ended December 31, 2023 compared to the year ended December 31, 2022. The increase was primarily driven by higher average interest rates.

Interest Expense

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Interest expense	$ (10,701)	$ (10,472)	$ 229	2 %

Interest expense increased by $0.2 million, or 2%, for the year ended December 31, 2023 compared to the year ended December 31, 2022.

Other Income, Net

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Other income, net	$ —	$ 171	$ (171)	-100 %

Other income decreased by $0.2 million, or 100%, in the year ended December 31, 2023 compared to the year ended December 31, 2022.

Legal Settlement

	Year Ended December 31,		Change	
	2023	2022	Amount	%
	(In thousands, except percentage)			
Legal settlement	$ 1,340	$ 456	$ 884	194 %

Legal settlement expense increased by $0.9 million, or over 100%, in 2023 compared to 2022. This increase was primarily due to settlements of two former employees' individual claims and California Private Attorney General Actions initiated against the Company.

Liquidity and Capital Resources

As of December 31, 2023, we had cash and cash equivalents of $175.7 million and an accumulated deficit of $1,119.6 million. We had restricted cash of $14.9 million as of December 31, 2023, consisting of cash deposited with a financial institution as collateral for our letters of credit, facility leases and credit cards. Since our inception, we have generated negative cash flows from operations and have primarily financed our operations through equity and convertible debt financings. In July 2019, we received net proceeds of $315.5 million upon completion of our IPO on July 2, 2019. In June 2020, we received net proceeds of $143.3 million from the issuance of our 3.00% Convertible Senior Notes due 2025 (the "2025 Notes") and the related capped call transactions. In March 2021, we received net proceeds of $244.5 million from our 1.00% Convertible Senior Notes due 2028 (the "2028 Notes" and together with the 2025 Notes, the "Notes") and the related capped call transactions.

On February 29, 2024, we entered into an exchange agreement with certain holders of our Notes (the "Holders" and such agreement the "Exchange Agreement"). Under the terms of the Exchange Agreement the Holders agreed to exchange $145,751,000 aggregate principal amount of the 2025 Notes and $6,480,000 aggregate principal amount of the 2028 Notes for $135,000,000 aggregate principal amount of our new senior notes due 2029 (the "2029 Notes", and such transaction the "Exchange"). Additionally, in connection with the Exchange, we issued warrants to acquire an aggregate of up to 7,894,737 shares of the Company's common stock to the Holders. The Exchange was consummated on February 29, 2024. The 2029 Notes bear cash interest at a rate of 8.75% per annum payable semi-annually in arrears and bear interest at a rate of 4.25% payable in kind.

We expect that operating losses and negative cash flows from operations could continue in the foreseeable future. We believe our existing cash and cash equivalents as of December 31, 2023 will be sufficient to meet our working capital and capital expenditures needs for at least the next 12 months.

Our primary capital requirements include contractual obligations related to our operating leases, payments on our debt, certain non-cancellable contracts and compensation and benefits payments to support our strategic plans. The remaining 2025 Notes not exchanged will mature on June 15, 2025, unless earlier redeemed or repurchased by the Company or converted and the remaining 2028 Notes not exchanged will mature on March 1, 2028, unless earlier redeemed or repurchased by the Company or converted. Our future capital requirements and the adequacy of available funds will depend on many factors, including, but not limited to, those set forth under the heading "Risk Factors" in this Annual Report, and our ability to grow our revenues and the timing of investments to support growth in our business, such as the build-out of our authentication centers and, to a lesser extent, the opening of new retail stores. We may seek additional equity or debt financing. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, financial condition and results of operations could be adversely affected.

In April 2021, the Company entered into a loan and security agreement ("Revolving Credit Agreement") with a lender, to provide a revolving line of credit of up to $50 million. As of June 30, 2023, $0 had been drawn on the Revolving Credit Agreement, and the credit facility has expired and was not renewed.

Cash Flows

The following table summarizes our cash flows for the periods indicated. Prior year comparisons are included in "Park II, Item 7 - Management's Discussion and Analysis of Financial Condition and Results of Operations" of our Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

	Year Ended December 31,		
	2023	2022	2021
	(In thousands)		
Net cash (used in) provided by:			
Operating activities	$ (61,268)	$ (91,557)	$ (142,151)
Investing activities	(42,128)	(36,922)	(43,437)
Financing activities	226	4,101	252,913
Net (decrease) increase in cash and cash equivalents	$ (103,170)	$ (124,378)	$ 67,325

Net Cash Used in Operating Activities

During 2023, net cash used in operating activities was $61.3 million, which consisted of a net loss of $168.5 million, adjusted by non-cash charges of $136.3 million and cash outflows due to a net change of $29.1 million in our operating assets and liabilities. The net change in our operating assets and liabilities was primarily the result of cash outflows due to a decrease of $26.5 million in operating lease liabilities, a decrease of $4.4 million in consignor payables, an increase of $7.0 million in accounts receivable, and an increase of $3.1 million in other assets, partially offset by cash inflows due to a decrease of $10.9 million in inventory driven by a decrease in direct purchases of inventory from vendors. Our primary uses of cash in operating activities include operating costs such as operating lease obligations, compensation and benefits, marketing, and other expenditures necessary to support our business growth.

Net Cash Used in Investing Activities

During 2023, net cash used in investing activities was $42.1 million, which consisted of $29.2 million for purchases of property and equipment, net, including leasehold improvements, and $13.0 million for capitalized proprietary software costs.

Net Cash Provided by Financing Activities

During 2023, net cash provided by financing activities was $0.2 million, which primarily consisted of $0.9 million of proceeds from the issuance of common stock related to the Company's employee stock purchase plan, partially offset by $0.7 million of taxes related to restricted stock units vesting.

Non-GAAP Financial Measures

Adjusted EBITDA

Adjusted EBITDA is a key performance measure that our management uses to assess our operating performance. Because Adjusted EBITDA facilitates internal comparisons of our historical operating performance on a more consistent basis, we use this measure as an overall assessment of our performance, to evaluate the effectiveness of our business strategies and for business planning purposes and for incentive and compensation purposes. Adjusted EBITDA may not be comparable to similarly titled metrics of other companies.

Adjusted EBITDA means net loss before interest income, interest expense, other (income) expense net, provision for income taxes, and depreciation and amortization, further adjusted to exclude stock-based compensation, payroll taxes on employee stock transactions, restructuring, CEO separation benefits, CEO transition costs, and certain one-time expenses. Adjusted EBITDA provides a basis for comparison of our business operations between current, past and future periods by excluding items that we believe are not indicative of our core operating performance. Adjusted EBITDA is a non-GAAP measure. Adjusted EBITDA has certain limitations as the measure excludes the impact of certain expenses that are included in our statements of operations that are necessary to run our business and should not be considered as an alternative to net loss or any other measure of financial performance calculated and presented in accordance with GAAP.

In particular, the exclusion of certain expenses in calculating Adjusted EBITDA facilitates operating performance comparisons on a period-to-period basis and, in the case of exclusion of the impact of stock-based compensation and the related employer payroll tax expense on employee stock transactions, excludes an item that we do not consider to be indicative of our core operating performance. Investors should, however, understand that stock-based compensation and the related employer payroll tax expense will be a significant recurring expense in our business and an important part of the compensation provided to our employees. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

The following table provides a reconciliation of net loss to Adjusted EBITDA (in thousands):

	Year Ended December 31,		
	2023	2022	2021
	(In thousands)		
Adjusted EBITDA Reconciliation:			
Net loss	$ (168,472)	$ (196,445)	$ (236,107)
Add (deduct):			
Depreciation and amortization	31,695	27,669	23,531
Interest income	(8,805)	(3,191)	(365)
Interest expense	10,701	10,472	21,531
Provision for income taxes	283	172	56
EBITDA	(134,598)	(161,323)	(191,354)
Stock-based compensation [1]	34,273	46,138	48,802
CEO separation benefits [2]	—	948	—
CEO transition costs [3]	159	1,551	—
Payroll taxes on employee stock transactions	195	451	1,168
Legal fees reimbursement benefit [4]	—	(1,400)	(1,204)
Legal settlements [5]	1,340	456	13,389
Restructuring [6]	43,462	896	2,314
Other expense, net	—	(171)	(23)
Adjusted EBITDA	(55,169)	(112,454)	(126,908)

(1) The stock-based compensation expense for the year ended December 31, 2022 includes a one-time charge of $1.0 million related to the modification of certain equity awards pursuant to the terms of the transition and separation agreement entered into with our founder, Julie Wainwright, in connection with her resignation as Chief Executive Officer ("CEO") on June 6, 2022 (the "Separation Agreement").

(2) The CEO separation benefit charges for the year ended December 31, 2022 consist of base salary, bonus and benefits for the 2022 fiscal year, as well as an additional twelve months of base salary and benefits payable to Julie Wainwright pursuant to the Separation Agreement.

(3) The CEO transition charges for the year ended December 31, 2022 consist of general and administrative fees, including legal and recruiting expenses, as well as retention bonuses for certain executives incurred in connection with our founder's resignation on June 6, 2022. The CEO transition charges for the year ended December 31, 2023 consists of retention bonuses for certain executives incurred in connection with our founder's resignation in 2022.

(4) During the year ended December 31, 2022, we received insurance reimbursement of $1.4 million related to a legal settlement expense. During the year ended December 31, 2021, we received insurance reimbursement of $4.3 million related to legal fees for a certain matter, of which $3.1 million were applied to legal expenses for the year ended December 31, 2021.

(5) The legal settlement charges for the year ended December 31, 2023 reflect legal settlement expenses arising from the settlement of two former employees' individual claims and California Private Attorney General Actions initiated against the Company on behalf of such former employees and those similarly situated. The legal settlement charges for the year ended December 31, 2021 reflect legal settlement expenses arising from the settlement of a putative shareholder class action and derivative case.

(6) Restructuring for the year ended December 31, 2023 consists of impairment of right-of-use assets and property and equipment, employee severance charges, gain on lease terminations, and other charges, including legal and transportation expenses. Restructuring for the year ended December 31, 2022 consists of employee severance payments and benefits. Restructuring for the year ended December 31, 2021 consist of the costs to transition operations from the Brisbane warehouse to our new Phoenix warehouse.

Material Contractual and Other Obligations

Our material contractual and other obligations as of December 31, 2023 consist of:

- *Operating Leases.* As of December 31, 2023, our cash requirements related to our operating leases on our authentication centers, retail stores, and corporate offices that are included in our balance sheet were $146.7 million, of which $27.0 million is expected to be paid within the next 12 months.

- *Convertible Senior Notes.* As of December 31, 2023, our cash requirements related to our Convertible Senior Notes that are included on our balance sheet and the related periodic interest payments were $480.7 million, of which $8.1 million is expected to be paid within the next 12 months. Our 2025 Notes will mature on June 15, 2025, unless earlier redeemed or repurchased by the Company or converted and our 2028 Notes will mature on March 1, 2028, unless earlier redeemed or repurchased by the Company or converted. On February 29, 2024, we entered in an exchange agreement with certain holders of our Notes (see Note 16 – Subsequent Events for further information).

- *Non-cancellable purchase commitments.* Our cash requirements related to certain other non-cancellable purchase commitments associated primarily with software services and hosting arrangements, were approximately $21.5 million, of which approximately $7.9 million is expected to be paid within the next 12 months.

Critical Accounting Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with United States generally accepted accounting principles. The preparation of these financial statements requires our management to make judgments and estimates that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenue generated, and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these judgments and estimates under different assumptions or conditions and any such differences may be material.

For the year ended December 31, 2023, we have not identified critical accounting estimates that involve a significant level of estimation uncertainty and would have a material impact on our results. Refer to our significant accounting policies are more fully described in Note 2—Summary of Significant Accounting Policies.

Recent Accounting Pronouncements

See Note 2, "Summary of Significant Accounting Policies" to our financial statements included elsewhere in this Annual Report on Form 10-K for recently issued accounting pronouncements not yet adopted as of the date of this Annual Report on Form 10-K.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information otherwise requested under this item.

Item 8. Financial Statements and Supplementary Data.

Please refer to the Financial Statements and Notes to Financial Statements in this Form 10-K which is incorporated herein by reference.

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

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer ("CEO") and interim Chief Financial Officer, who acts as our principal financial officer ("Interim CFO"), evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of December 31, 2023. Based on this evaluation, our CEO and Interim CFO concluded that, as of December 31, 2023, our disclosure controls and procedures were effective at the reasonable assurance level in ensuring that (a) the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and (b) such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Management's Annual Report on Internal Control Over Financial Reporting

Management, including our CEO and Interim CFO, who acts as our principal financial officer, is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of our financial statements for external purposes in accordance with U.S. GAAP.

Under the supervision and with the participation of our management, including our CEO and Interim CFO, we have conducted an evaluation of the effectiveness of our internal control over financial reporting based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on evaluation under these criteria, management determined that our internal control over financial reporting was effective as of December 31, 2023.

KPMG LLP, our independent registered public accounting firm, has audited management's assertion on the effectiveness of our internal control over financial reporting as of December 31, 2023, as stated in their report which is included in Part IV —Financial Statements and Supplementary Data, of this Annual Report on Form 10-K.

Changes in Internal Control Over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the year ended December 31, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and our Interim Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include 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.

Item 9B. Other Information.

Rule 10b5-1 Trading Plans

On November 27, 2023, James Miller, a member of the Company's Board of Directors, adopted a new trading plan for the sale of securities that is intended to satisfy the affirmative defense conditions of Rule 10b5-1 of the Securities Exchange Act of 1934, as amended (the "Miller Plan"). The Miller Plan provides for the sale of up to a maximum of 74,586 shares of the Company's common stock that he has received or will receive following the vesting of restricted stock units. The first possible trade date under the Miller Plan is March 5, 2024, and the end date of the Miller Plan is November 27, 2024, subject to certain conditions.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Information required by this Item is incorporated herein by reference to our fiscal year 2024 proxy statement to be filed with the SEC within 120 days of the fiscal year ended December 31, 2023 (the "Proxy Statement").

Item 11. Executive Compensation.

The information required by this Item is incorporated herein by reference to our Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by this Item is incorporated herein by reference to our Proxy Statement.

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

The information required by this Item is incorporated herein by reference to our Proxy Statement.

Item 14. Principal Accounting Fees and Services.

Our independent registered public accounting firm is KPMG LLP, San Francisco, CA, Auditor ID: 185.

The information required by this Item is incorporated herein by reference to our Proxy Statement.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) Please refer to the Financial Statements, Notes to Financial Statements and the Exhibit Index in this Form 10-K which is incorporated herein by reference.

(b) Please refer to the Exhibit Index in this Form 10-K which is incorporated herein by reference.

Item 16. Form 10-K Summary

None.

Exhibit Index

Exhibit Number	Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
3.1	Form of Amended and Restated Certificate of Incorporation of The RealReal, Inc., as currently in effect.	S-1	333-231891	3.2	June 17, 2019	
3.2	Form of Amended and Restated Bylaws of The RealReal, Inc. as currently in effect.	S-1	333-231891	3.4	June 6, 2019	
4.1	Form of Common Stock Certificate.	S-1	333-231891	4.1	June 17, 2019	
4.2	Seventh Amended and Restated Investor Rights Agreement, dated March 22, 2019 among The RealReal, Inc. and certain holders of its capital stock.	S-1	333-231891	4.7	May 31, 2019	
4.3	Indenture dated June 15, 2020, between The RealReal, Inc. and U.S. Bank National Association as Trustee, including form of 3.00% Convertible Senior Note due 2025.	8-K	001-38953	4.1	June 16, 2020	
4.4	Description of Securities.	10-Q	001-38953	4.2	August 7, 2020	
4.5	Indenture dated March 8, 2021, between The RealReal, Inc. and U.S. Bank National Association as Trustee, including form of 1.00% Convertible Senior Note due 2028.	8-K	001-38953	4.1	March 8, 2021	
4.6	Form of 1.00% Convertible Senior Note due 2028 (included in Exhibit 4.1).	8-K	001-38953	4.1	March 8, 2021	
10.1+	The RealReal, Inc. 2011 Equity Incentive Plan and related form agreements.	S-1	333-231891	10.1	May 31, 2019	
10.2#	Loan and Security Agreement dated as of September 19, 2013 by and between The RealReal, Inc. and Square 1 Bank.	S-1	333-231891	10.3	May 31, 2019	
10.3#	First Amendment to Loan and Security Agreement dated as of March 13, 2014 by and between The RealReal, Inc. and Square 1 Bank.	S-1	333-231891	10.4	May 31, 2019	
10.4#	Second Amendment to Loan and Security Agreement dated as of August 5, 2014 by and between The RealReal, Inc. and Square 1 Bank.	S-1	333-231891	10.5	May 31, 2019	
10.5#	Third Amendment to Loan and Security Agreement dated as of September 25, 2014 by and between The RealReal, Inc. and Square 1 Bank.	S-1	333-231891	10.6	May 31, 2019	
10.6#	Fourth Amendment to Loan and Security Agreement dated as of December 28, 2015 by and between The RealReal, Inc. and Pacific Western Bank.	S-1	333-231891	10.7	May 31, 2019	

Exhibit Number	Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.7#	Fifth Amendment to Loan and Security Agreement dated as of July 18, 2016 by and between The RealReal, Inc. and Pacific Western Bank.	S-1	333-231891	10.8	May 31, 2019	
10.8#	Sixth Amendment to Loan and Security Agreement dated as of September 16, 2016 by and between The RealReal, Inc. and Pacific Western Bank.	S-1	333-231891	10.9	May 31, 2019	
10.9#	Seventh Amendment to Loan and Security Agreement dated as of March 28, 2017 by and between The RealReal, Inc. and Pacific Western Bank.	S-1	333-231891	10.10	May 31, 2019	
10.10#	Eighth Amendment to Loan and Security Agreement dated as of July 27, 2017 by and between The RealReal, Inc. and Pacific Western Bank.	S-1	333-231891	10.11	May 31, 2019	
10.11#	Ninth Amendment to Loan and Security Agreement dated as of March 5, 2018 by and between The RealReal, Inc. and Pacific Western Bank.	S-1	333-231891	10.12	May 31, 2019	
10.12#	Tenth Amendment to Loan and Security Agreement dated as of July 25, 2018 by and between The RealReal, Inc. and Pacific Western Bank.	S-1	333-231891	10.13	May 31, 2019	
10.13#	Eleventh Amendment to Loan and Security Agreement dated as of August 9, 2018 by and between The RealReal, Inc. and Pacific Western Bank.	S-1	333-231891	10.14	May 31, 2019	
10.14#	Twelfth Amendment to Loan and Security Agreement dated as of December 19, 2018 by and between The RealReal, Inc. and Pacific Western Bank.	S-1	333-231891	10.15	May 31, 2019	
10.15#	Lease Agreement dated as of March 18, 2014 by and between The RealReal, Inc. and 35 Enterprise Avenue, L.L.C.	S-1	333-231891	10.16	May 31, 2019	
10.16#	Lease Modification Agreement dated as of March 8, 2018 by and between The RealReal, Inc. and 35 Enterprise Avenue, L.L.C.	S-1	333-231891	10.17	May 31, 2019	
10.17#	Lease Agreement dated as of June 5, 2018 by and between The RealReal, Inc. and Hartz Enterprise LLC.	S-1	333-231891	10.19	May 31, 2019	
10.18#	Lease Agreement dated as of September 14, 2018 by and between The RealReal, Inc. and Prologis Perth Amboy Associates, LLC.	S-1	333-231891	10.20	May 31, 2019	
10.19+	The RealReal, Inc. 2019 Equity Incentive Plan.	S-1	333-231891	10.21	June 17, 2019	

Exhibit Number	Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.20+	The RealReal, Inc. Employee Stock Purchase Plan.	S-1	333-231891	10.22	June 17, 2019	
10.21+	The RealReal, Inc. 2019 Equity Incentive Plan Stock Option Agreement and related form agreements.	10-Q	001-38953	10.1	August 14, 2019	
10.22+	The RealReal, Inc. Employee Stock Purchase Plan, as amended and restated on February 19, 2020.	10-K	001-38953	10.25	March 11, 2020	
10.23+	The RealReal, Inc. 2019 Equity Incentive Plan for Non-Employee Director Deferred Restricted Stock Unit Award Agreement and Deferral Election Form	10-Q	011-38953	10.1	November 7, 2023	
10.24	Form of Base Capped Call Confirmation, dated June 10, 2020 between The RealReal, Inc. and each of the Counterparties.	8-K	001-38953	10.1	June 16, 2020	
10.25	Form of Additional Capped Call Confirmation, dated June 18, 2020 between The RealReal, Inc. and each of the Capped Call Counterparties.	8-K	001-38953	10.1	June 23, 2020	
10.26#	Lease Agreement dated as of November 2, 2020 by and between The RealReal, Inc. and Liberty Property Limited Partnership.	10-Q	001-38953	10.1	November 10, 2020	
10.27	Form of Base Capped Call Confirmation, dated March 8, 2021 between The RealReal, Inc. and each of the Counterparties.	8-K	001-38953	10.1	March 8, 2021	
10.28	Form of Additional Capped Call Confirmation, dated March 12, 2021 between The RealReal, Inc. and each of the Capped Call Counterparties.	8-K	001-38953	10.1	March 16, 2021	
10.29+	Form of Severance and Change in Control Agreement approved by the Company's board of directors on May 5, 2021.	10-Q	001-38953	10.1	May 10, 2021	
10.30+	Transition and Separation Agreement by and between The RealReal, Inc. and Robert Julian dated September 28, 2023.	8-K	001-38953	10.1	September 29, 2023	
10.31+	Consulting Services Agreement by and between The RealReal, Inc. and Robert Julian dated September 28, 2023	8-K	001-38953	10.20	September 29, 2023	
10.32+	The RealReal, Inc. 2019 Equity Incentive Plan Performance-Based Restricted Stock Unit Award Agreement	10-K	001-38953	10.34	February 28, 2022	
10.33+	The RealReal, Inc. 2019 Equity Incentive Plan Restricted Stock Unit Award	10-Q	001-38953	10.1	August 9, 2022	

Exhibit Number	Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.34+	Offer Letter dated January 24, 2023 between the Company and John E. Koryl	8-K	001-38953	10.1	January 25, 2023	
10.35+	Form of Indemnification Agreement entered into by and between The RealReal, Inc. and its directors and executive officers.	10-K	100-38953	10.35	February 28, 2023	
10.37+	Form of Stand-Alone Performance-Based Restricted Stock Unit Award Agreement, by and between the Company and John Koryl.	S-8	333-270281	99.1	March 3, 2023	
10.38+	Form of Stand-Alone Restricted Stock Unit Award Agreement, by and between the Company and John Koryl.	S-8	333-270281	99.2	March 3, 2023	
10.39+	Form of Stand-Alone Restricted Stock Unit Award Agreement, by and between the Company and Luke Friang.	S-8	333-270281	99.3	March 3, 2023	
10.40+	Offer Letter by and between The RealReal, Inc. and Ajay Gopal dated February 19, 2024.	8-K	100-38953	10.1	February 21, 2024	
10.41*	Form of Exchange Agreement by and between The RealReal Inc. and the Noteholder, as defined therein, dated February 29, 2024.					X
10.42	Indenture by and between The RealReal, Inc., the Guarantors party thereto and Glas Trust Company LLC dated February 29, 2024.					X
10.43	Warrant Agency Agreement by and between The RealReal, Inc., Computershare, In., and Computershare Trust Company, N.A. dated February 29, 2024.					X
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm					X
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.					X
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.					X
32.1	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
32.2	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
97	The RealReal, Inc. Clawback Policy					X

Exhibit Number	Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
101.INS	XBRL Instance Document					X
101.SCH	XBRL Taxonomy Extension Schema Document					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document					X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document					X
104	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101.INS, 101.SCH, 101.CAL, 101.DEF, 101.LAB, and 101.PRE).					

+ Indicates management contract or compensatory plan.

Certain information contained in this agreement has been omitted because it both (i) is not material and (ii) would be competitively harmful if publicly disclosed.

* Certain schedules and exhibits omitted pursuant to Item 601(a)(5) of Regulation S-K promulgated by the SEC. The Company agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.

SIGNATURES

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

The RealReal, Inc.

Date: March 1, 2024

By: /s/ Todd Suko

Todd Suko

Interim Chief Financial Officer, Chief Legal Officer and Secretary

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

Name	Title	Date
/s/ John Koryl **John Koryl**	Chief Executive Officer and Director (Principal Executive Officer)	March 1, 2024
/s/ Todd Suko **Todd Suko**	Interim Chief Financial Officer, Chief Legal Officer and Secretary (Principal Financial Officer)	March 1, 2024
/s/ Steve Lo **Steve Lo**	Senior Vice President, Chief Accounting Officer (Principal Accounting Officer)	March 1, 2024
/s/ Chip Baird **Chip Baird**	Director	March 1, 2024
/s/ Caretha Coleman **Caretha Coleman**	Director	March 1, 2024
/s/ Karen Katz **Karen Katz**	Director	March 1, 2024
/s/ Rob Krolik **Rob Krolik**	Director	March 1, 2024
/s/ Niki Leondakis **Niki Leondakis**	Director	March 1, 2024
/s/ Carol Melton **Carol Melton**	Director	March 1, 2024
/s/ James Miller **James Miller**	Director	March 1, 2024

INDEX TO FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors
The RealReal, Inc.:

Opinion on the Financial Statements

We have audited the accompanying balance sheets of The RealReal, Inc. (the Company) as of December 31, 2023 and 2022, the related statements of operations, comprehensive loss, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2023, and the related notes (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2023, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated March 1, 2024 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Basis for Opinion

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

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

Critical Audit Matter

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

Sufficiency of the audit evidence over the IT elements of revenue recognition

As discussed in Note 2 to the financial statements, the Company recognizes consignment revenue by providing a service to sell pre-owned luxury goods on behalf of consignors to buyers through its online marketplace and retail stores. Direct revenue is recognized from the sale of Company-owned inventory on its online marketplace and retail stores. The Company reported $549 million in total revenue for the year ended December 31, 2023.

We identified the evaluation of the sufficiency of audit evidence over the information technology (IT) elements of revenue recognition as a critical audit matter. A high degree of complex auditor judgment was required to evaluate the nature and extent of audit evidence obtained related to consignment and direct revenue due to the complexity and number of IT systems. IT professionals with specialized skills and knowledge were required to understand and assess the Company's internally developed IT systems used in the revenue recognition process.

The following are the primary procedures we performed to address this critical audit matter. We applied auditor judgment to determine the nature and extent of procedures to be performed over the IT elements of revenue recognition. We involved IT professionals with specialized skills and knowledge, who assisted in:

- gaining an understanding of the systems used in the Company's recognition of revenue
- evaluating the design and testing the operating effectiveness of certain internal controls related to the IT applications used in the revenue recognition process. This included general IT controls, IT application controls, data configurations, and interface controls over the transfer of relevant data between systems.

We performed a software-assisted data analysis to test the relationships among certain revenue transactions. On a sample basis, we also tested certain revenue transactions by comparing the recorded amounts to underlying documentation. We evaluated the sufficiency of audit evidence obtained by assessing the results of procedures performed, including the appropriateness of the nature and extent of such evidence.

/s/ KPMG LLP

We have served as the Company's auditor since 2013.

San Francisco, California
March 1, 2024

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors
The RealReal, Inc.:

Opinion on Internal Control Over Financial Reporting

We have audited The RealReal, Inc.'s (the Company) internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the balance sheets of the Company as of December 31, 2023 and 2022, the related statements of operations, comprehensive loss, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2023, and the related notes (collectively, the financial statements), and our report dated March 1, 2024 expressed an unqualified opinion on those financial statements.

Basis for Opinion

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

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

Definition and Limitations of Internal Control Over Financial Reporting

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

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

/s/ KPMG LLP

San Francisco, California
March 1, 2024

THE REALREAL, INC.
Balance Sheets

(In thousands, except share and per share data)

	December 31, 2023	December 31, 2022
Assets		
Current assets		
Cash and cash equivalents	$ 175,709	$ 293,793
Accounts receivable	17,226	12,207
Inventory, net	22,246	42,967
Prepaid expenses and other current assets	20,766	23,291
Total current assets	235,947	372,258
Property and equipment, net	104,087	112,679
Operating lease right-of-use assets	86,348	127,955
Restricted cash	14,914	—
Other assets	5,627	2,749
Total assets	$ 446,923	$ 615,641
Liabilities and Stockholders' Deficit		
Current liabilities		
Accounts payable	$ 8,961	$ 11,902
Accrued consignor payable	77,122	81,543
Operating lease liabilities, current portion	20,094	20,776
Other accrued and current liabilities	82,685	93,292
Total current liabilities	188,862	207,513
Operating lease liabilities, net of current portion	104,856	125,118
Convertible senior notes, net	452,421	449,848
Other noncurrent liabilities	4,083	3,254
Total liabilities	750,222	785,733
Commitments and contingencies (Note 12)		
Stockholders' deficit:		
Common stock, $0.00001 par value; 500,000,000 shares authorized as of December 31, 2023 and December 31, 2022; 104,670,500 and 99,088,172 shares issued and outstanding as of December 31, 2023 and December 31, 2022, respectively	1	1
Additional paid-in capital	816,325	781,060
Accumulated deficit	(1,119,625)	(951,153)
Total stockholders' deficit	(303,299)	(170,092)
Total liabilities and stockholders' deficit	$ 446,923	$ 615,641

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

THE REALREAL, INC.
Statements of Operations

(In thousands, except share and per share data)

	Years Ended December 31,		
	2023	2022	2021
Revenue:			
Consignment revenue	$ 415,572	$ 384,979	$ 302,221
Direct revenue	79,160	158,726	120,844
Shipping services revenue	54,572	59,788	44,627
Total revenue	549,304	603,493	467,692
Cost of revenue:			
Cost of consignment revenue	58,120	56,963	44,985
Cost of direct revenue	74,343	141,661	101,427
Cost of shipping services revenue	40,563	56,178	47,803
Total cost of revenue	173,026	254,802	194,215
Gross profit	376,278	348,691	273,477
Operating expenses:			
Marketing	58,275	62,988	62,749
Operations and technology	257,041	278,628	233,687
Selling, general and administrative	182,453	194,886	176,246
Restructuring	43,462	896	2,314
Legal settlements	1,340	456	13,389
Total operating expenses	542,571	537,854	488,385
Loss from operations	(166,293)	(189,163)	(214,908)
Interest income	8,805	3,191	365
Interest expense	(10,701)	(10,472)	(21,531)
Other income, net	—	171	23
Loss before provision for income taxes	(168,189)	(196,273)	(236,051)
Provision for income taxes	283	172	56
Net loss attributable to common stockholders	$ (168,472)	$ (196,445)	$ (236,107)
Net loss per share attributable to common stockholders, basic and diluted	$ (1.65)	$ (2.05)	$ (2.58)
Shares used to compute net loss per share attributable to common stockholders, basic and diluted	101,806,000	95,921,246	91,409,624

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

THE REALREAL, INC.
Statements of Comprehensive Loss

(In thousands)

	Year Ended December 31,		
	2023	**2022**	**2021**
Net loss	$ (168,472)	$ (196,445)	$ (236,107)
Other comprehensive loss, net of tax:			
Unrealized loss on investments	—	—	(11)
Comprehensive loss	$ (168,472)	$ (196,445)	$ (236,118)

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

THE REALREAL, INC.
Statements of Stockholders' Equity (Deficit)
(In thousands, except share amounts)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance as of December 31, 2020	89,301,664	$ 1	$ 723,302	$ 11	$ (532,021)	$ 191,293
Purchase of capped calls	—	—	(33,666)	—	—	(33,666)
Equity component of convertible senior notes, net of issuance costs of $3,131	—	—	93,031	—	—	93,031
Issuance of common stock upon exercise of options	1,221,365	—	6,009	—	—	6,009
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes	2,237,748	—	(8)	—	—	(8)
Issuance of common stock for exercises under ESPP	199,289	—	2,341	—	—	2,341
Stock-based compensation expense	—	—	50,246	—	—	50,246
Other comprehensive loss	—	—	—	(11)	—	(11)
Net loss	—	—	—	—	(236,107)	(236,107)
Balance as of December 31, 2021	92,960,066	$ 1	$ 841,255	$ —	$ (768,128)	$ 73,128
Cumulative effect adjustment due to adoption of ASU 2020-06	—	—	(112,052)	—	13,420	(98,632)
Issuance of common stock upon exercise of options	1,929,265	—	2,906	—	—	2,906
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes	3,587,964	—	(216)	—	—	(216)
Issuance of common stock for exercises under ESPP	610,877	—	1,400	—	—	1,400
Stock-based compensation expense	—	—	47,767	—	—	47,767
Net loss	—	—	—	—	(196,445)	(196,445)
Balance as of December 31, 2022	99,088,172	$ 1	$ 781,060	$ —	$ (951,153)	$ (170,092)
Issuance of common stock upon exercise of options	8,511	—	19	—	—	19
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes	4,708,141	—	(690)	—	—	(690)
Issuance of common stock for exercises under ESPP	865,676	—	886	—	—	886
Stock-based compensation expense	—	—	35,050	—	—	35,050
Net loss	—	—	—	—	(168,472)	(168,472)
Balance as of December 31, 2023	104,670,500	$ 1	$ 816,325	$ —	$ (1,119,625)	$ (303,299)

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

THE REALREAL, INC.
Statements of Cash Flows
(in thousands)

	Year Ended December 31,		
	2023	2022	2021
Cash flows from operating activities:			
Net loss	$ (168,472)	$ (196,445)	$ (236,107)
Adjustments to reconcile net loss to cash used in operating activities:			
Depreciation and amortization	31,695	27,669	23,531
Stock-based compensation expense	34,273	46,138	48,802
Reduction of operating lease right-of-use assets	16,746	19,602	19,439
Bad debt expense	1,962	1,680	1,034
Accrued interest on convertible notes	—	—	950
Loss on disposal of property and equipment and impairment of capitalized proprietary software	223	702	546
Accretion of debt discounts and issuance costs	2,573	2,368	13,989
Property, plant, equipment, and right-of-use asset impairments	39,739	—	—
Provision for inventory write-downs and shrinkage	9,783	4,077	510
Gain on lease termination	(738)	—	—
Other adjustments	—	—	10
Changes in operating assets and liabilities:			
Accounts receivable	(6,981)	(6,120)	(1,588)
Inventory, net	10,938	23,971	(29,204)
Prepaid expenses and other current assets	2,001	(2,952)	(4,009)
Other assets	(3,050)	(409)	(638)
Operating lease liability	(26,478)	(17,764)	(15,285)
Accounts payable	(425)	4,947	(9,989)
Accrued consignor payable	(4,421)	10,501	13,989
Other accrued and current liabilities	(464)	(9,823)	30,922
Other noncurrent liabilities	(172)	301	947
Net cash used in operating activities	(61,268)	(91,557)	(142,151)
Cash flow from investing activities:			
Proceeds from maturities of short-term investments	—	—	4,000
Capitalized proprietary software development costs	(12,951)	(14,061)	(9,967)
Purchases of property and equipment	(29,177)	(22,861)	(37,470)
Net cash used in investing activities	(42,128)	(36,922)	(43,437)
Cash flow from financing activities:			
Proceeds from issuance of 2028 convertible notes, net of issuance costs	—	—	278,234
Purchase of capped calls in conjunction with the issuance of the 2028 convertible senior notes	—	—	(33,666)
Proceeds from exercise of stock options	19	2,906	6,009
Proceeds from issuance of stock in connection with the Employee Stock Purchase Program	886	1,400	2,341
Taxes paid related to restricted stock vesting	(679)	(205)	(5)
Net cash provided by financing activities	226	4,101	252,913
Net increase (decrease) in cash, cash equivalents, and restricted cash	(103,170)	(124,378)	67,325
Cash, cash equivalents, and restricted cash			
Beginning of period	293,793	418,171	350,846
End of period	$ 190,623	$ 293,793	$ 418,171
Supplemental disclosures of cash flow information			
Cash paid for interest	$ 8,127	$ 8,104	$ 6,584
Cash paid for income taxes	227	256	94
Supplemental disclosures of non-cash investing and financing activities			
Purchases of property and equipment included in accounts payable and other accrued and current liabilities	1,757	13,860	1,922
Purchases of capitalized proprietary software development costs included in accounts payable and other accrued and current liabilities	1,122	1,590	1,647
Stock-based compensation capitalized to proprietary software development costs	777	1,629	1,444
Tax withholding liability for restricted stock	11	11	3

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

THE REALREAL, INC.
Notes to Financial Statements

Note 1. Description of Business and Basis of Presentation

Organization and Description of Business

The RealReal, Inc. (the "Company") is an online marketplace for authenticated, consigned luxury goods across multiple categories, including women's fashion, men's fashion, and jewelry and watches. The Company was incorporated in the state of Delaware on March 29, 2011 and is headquartered in San Francisco, California.

Basis of Presentation

The accompanying financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") and, in the opinion of management, reflect all adjustments necessary to state fairly the Company's financial position, results of operations, comprehensive loss, stockholders' equity (deficit), and cash flows for the periods presented. The Company's functional and reporting currency is the U.S. dollar.

The Company has made a presentation change to reclassify provision for inventory write-downs and shrinkage from inventory, net within operating cash flows in the statements of cash flows. Additionally, the Company has made a presentation change to the Company's statements of operations to reclassify its restructuring expenses from marketing, operations and technology, and sales, general and administrative operating expenses. Changes to reclassify amounts in the prior periods have been made to conform to the current period presentation.

Note 2. Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of expenses during the reporting period. Significant items subject to such estimates and assumptions include those related to revenue recognition, including the returns reserve, standalone selling price related to consignment revenue transactions, valuation of inventory, software development costs, stock-based compensation, incremental borrowing rates related to lease liability, valuation of deferred taxes, and other contingencies. The Company evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors and adjusts those estimates and assumptions when facts and circumstances dictate. Actual results could differ from those estimates.

Net Loss per Share Attributable to Common Stockholders

The Company follows the two-class method when computing net loss per common share when shares are issued that meet the definition of participating securities. The two-class method determines net loss per common share for each class of common stock and participating securities according to dividends declared or accumulated and participation rights in undistributed earnings. The two-class method requires income (loss) available or attributable to common stockholders for the period to be allocated between common stock and participating securities based upon their respective rights to receive dividends as if all income for the period had been distributed.

The Company's convertible senior notes are participating securities as they give the holders the right to receive dividends if dividends or distributions declared to the common stockholders is equal to or greater than the last reported sale price of the Company's common stock on the trading day immediately preceding the ex-dividend date for such dividend or distribution as if the instruments had been converted into shares of common stock. No undistributed earnings were allocated to the participating securities as the contingent event is not satisfied as of the reporting date.

For periods in which the Company reports net losses, diluted net loss per common share attributable to common stockholders is the same as basic net loss per common share attributable to common stockholders, because potentially dilutive common shares and assumed conversion of the convertible senior notes are not assumed to have been issued within the calculation, if their effect is anti-dilutive.

Segments

The Company has one operating segment and one reportable segment as its chief operating decision maker, who is its Chief Executive Officer, reviews financial information on a consolidated basis for purposes of allocating resources and evaluating financial performance. All long-lived assets are located in the United States and substantially all revenue is attributed to consignors and buyers based in the United States.

Revenue Recognition

The Company generates revenue from the sale of pre-owned luxury goods through its online marketplace and retail stores. Revenue is recognized upon transfer of control of promised products or services to customers in an amount that reflects the consideration the Company expects to receive in exchange for those products or services. The Company enters into contracts that include products and services that are capable of being distinct and accounted for as separate performance obligations as described below. The transaction price requires an allocation across consignment services, sales of Company-owned inventory, and shipping services. Estimation is required in the determination of the services' stand-alone selling price (“SSP”).

Consignment Revenue

The Company provides a service to sell pre-owned luxury goods on behalf of consignors to buyers through its online marketplace and retail stores. The Company retains a percentage of the proceeds received as payment for its consignment service, which the Company refers to as its take rate. SSP is estimated using observable stand-alone consignment sales which are conducted without shipping services. The Company reports consignment revenue on a net basis as an agent and not the gross amount collected from the buyer. Title to the consigned goods remains with the consignor until transferred to the buyer upon purchase of the consigned goods and expiration of the allotted return period. The Company does not take title of consigned goods at any time except in certain cases where returned goods become Company-owned inventory.

The Company recognizes consignment revenue upon purchase of the consigned good by the buyer as its performance obligation of providing consignment services to the consignor is satisfied at that point. Consignment revenue is recognized net of estimated returns, cancellations, buyer incentives and adjustments. The Company recognizes a returns reserve based on historical experience, which is recorded in other accrued and current liabilities on the balance sheets (see Note 5). Sales tax assessed by governmental authorities is excluded from revenue.

Certain transactions provide consignors with a material right resulting from the tiered consignor commission plan. Under this plan, the amount an individual consignor receives for future sales of consigned goods may be dependent on previous consignment sales for that consignor within his/her consignment period. Accordingly, in certain consignment transactions, a small portion of the Company’s consignment revenue is allocated to such material right using the portfolio method and recorded as deferred revenue, which is recorded in other accrued and current liabilities on the balance sheets. The impact of the deferral has not been material to the financial statements.

The Company also generates subscription revenue from monthly memberships allowing buyers early access to shop for luxury goods. The buyers receive the early access and other benefits over the term of the subscription period, which represents a single stand-ready performance obligation. Therefore, the subscription fees paid by the buyer are recognized over the monthly subscription period. Subscription revenue was not material in 2023, 2022, and 2021.

Direct Revenue

The Company generates direct revenue from the sale of Company-owned inventory. The Company recognizes direct revenue on a gross basis upon shipment of the purchased good to the buyer as the Company acts as the principal in the transaction. SSP is estimated using observable stand-alone sales of Company-owned inventory which are conducted without shipping services, when available, or a market assessment approach. Direct revenue is recognized net of estimated returns, buyer incentives and adjustments. Sales tax assessed by governmental authorities is excluded from revenue. Cost of direct revenue is also recognized upon shipment to the buyer in an amount equal to that paid to the consignor from the original consignment sale, an amount equal to that paid as a direct purchase from a third party, or the lower of cost of the inventory purchased and its net realizable value.

Shipping Services Revenue

The Company provides a service to ship purchased items to buyers and a service to ship items from buyers back to the Company. The Company determines itself to be the principal in this arrangement. The Company charges a fee to buyers

for this service and has elected to treat shipping and handling activities performed as a separate performance obligation. For shipping services revenue, the Company's SSP is estimated using a market approach considering external and internal data points on the stand-alone sales price of the shipping service. All outbound shipping and handling costs for buyers are accounted for as cost of shipping services and recognized as the shipping activity occurs. The Company also generates shipping services revenue from the shipping fees for consigned products returned by buyers to the Company within policy. The Company recognizes shipping revenue and associated costs over time as the shipping activity occurs, which is generally one to three days after shipment.

Incentives

Incentives, which include platform-wide discounts and buyer incentives, may periodically be offered to buyers. Platform-wide discounts are made available to all buyers on the online marketplace. Buyer incentives apply to specific buyers and consist of coupons or promotions that offer credits in connection with purchases on the Company’s platform, and do not impact the commissions paid to consignors. These are treated as a reduction of consignment revenue and direct revenue. Additionally, the Company periodically offers commission exceptions to the standard consignment rates to consignors to optimize its supply. These are treated as a reduction of consignment revenue at the time of sale. The Company may offer a certain type of buyer incentive in the form of site credits to buyers on current transactions to be applied towards future transactions, which are included in other accrued and current liabilities on the balance sheets.

Contract Liabilities

The Company’s contractual liabilities primarily consist of deferred revenue for material rights primarily related to the tiered consignor commission plan, which are recognized as revenue using a portfolio approach based on the pattern of exercise, and certain buyer incentives. Contract liabilities are recorded in other accrued and current liabilities on the balance sheets and are generally expected to be recognized within one year. Contract liabilities were immaterial as of December 31, 2023 and December 31, 2022.

Cost of Revenue

Cost of consignment revenue consist of credit card fees, packaging, customer service personnel-related costs, website hosting services, and consignor inventory adjustments relating to lost or damaged products. Cost of direct revenue consists of the cost of goods sold, credit card fees, packaging, customer service personnel-related costs, website hosting services, and inventory adjustments. Cost of shipping services revenue consists of the outbound shipping and handling costs to deliver purchased items to buyers, the shipping costs for consigned products returned by buyers to the Company within policy, and an allocation of the credit card fees associated with the shipping fee charged.

Marketing

Marketing expense is comprised of the cost of acquiring new consignors and buyers for our online platform and physical stores, including the cost of television, digital and direct mail advertising. Marketing expense also includes personnel-related costs, including stock-based compensation, of employees engaged in these activities. Advertising costs are expensed as incurred and were $48.4 million, $49.0 million, and $46.2 million in 2023, 2022, and 2021, respectively.

Operations and Technology

Operations and technology expense is comprised of costs associated with the authentication, merchandising and fulfillment of goods sold through our online marketplace and retail stores, as well as general information technology expense. The principal component of operations and technology expense is personnel-related costs, including stock-based compensation, of employees engaged in these activities. Operations and technology expense also includes allocated facility and overhead costs, costs related to our retail stores, facility supplies, inbound consignment shipping costs, and depreciation of hardware and equipment, as well as research and development expense for technology associated with managing and improving our operations. In 2023, 2022, and 2021, the Company capitalized proprietary software developments costs of $13.3 million, $15.6 million, and $12.7 million, respectively. As such, operations and technology expense also includes amortization of capitalized technology development costs, which is taken on straight-line basis over three years once the technology is ready for its intended use.

Selling, General and Administrative

Selling, general and administrative expense is principally comprised of the personnel-related costs for employees involved in sales, finance and administration, and includes stock-based compensation expense. Selling, general and

administrative expense also includes allocated facility and overhead costs and professional services, including accounting and legal advisors.

Stock-based Compensation

The Company incurs stock-based compensation expense from stock options, restricted stock units ("RSUs"), performance based restricted stock units ("PSUs") subject to performance or market conditions, and employee stock purchase plan ("ESPP") purchase rights. Stock-based compensation expense related to employees and nonemployees is measured based on the grant-date fair value of the awards. The Company estimates the fair value of stock options granted and the purchase rights issued under the ESPP using the Black-Scholes option pricing model. The fair value of RSUs is estimated based on the fair market value of the Company's common stock on the date of grant, which is determined based on the closing price of the Company's common stock. Compensation expense is recognized in the statements of operations over the period during which the employee is required to perform services in exchange for the award (the vesting period of the applicable award) using the straight-line method for awards with only a service condition.

To determine the grant-date fair value of the Company's stock-based payment awards for PSUs subject to performance conditions, the quoted stock price on the date of grant is used. The stock-based compensation expense for PSUs with performance conditions is recognized based on the estimated number of shares that the Company expects will vest and is adjusted on a quarterly basis using the estimated achievement of financial performance targets. For PSUs subject to market conditions, the grant-date fair value is determined using the Monte Carlo simulation model which utilizes multiple input variables to estimate the probability that market conditions will be achieved. These variables include the Company's expected stock price volatility over the expected term of the award, the risk-free interest rate for the expected term of the award, and expected dividends. For PSUs with market conditions, the stock-based compensation expense is recognized on a tranche by tranche basis over the requisite service period using the fair value derived from the Monte Carlo simulation model. The compensation expense will be recognized regardless of whether the market condition is ever satisfied, provided the requisite service period is satisfied. For all awards, the Company accounts for forfeitures as they occur.

Cash, Cash Equivalents and Restricted Cash

The Company considers all highly liquid investments purchased with original maturities of three months or less from the purchase date to be cash equivalents. Cash equivalents primarily consist of investments in short-term money market funds.

Restricted cash consists of cash deposited with a financial institution as collateral for the Company's letters of credit for its facility leases and the Company's credit cards. The Company had $14.9 million and $0 in restricted cash as of December 31, 2023 and 2022, respectively.

The following table provides a reconciliation of cash, cash equivalents and restricted cash for the year ended December 31, 2023 that sum to the total of the same amounts shown in the statements of cash flows (in thousands):

	December 31, 2023	December 31, 2022	December 31, 2021
Cash and cash equivalents	$ 175,709	$ 293,793	$ 418,171
Restricted cash	14,914	—	—
Total cash, cash equivalents and restricted cash	$ 190,623	$ 293,793	$ 418,171

Accounts Receivable

Accounts receivables are recorded at the amounts billed to buyers and do not bear interest. Accounts receivables result from credit card transactions, the majority of which are settled within two business days.

Inventory, Net

Inventory consists of finished goods arising from goods returned after the title has transferred from the buyer to the Company as well as finished goods from direct purchases from vendors and consignors. The cost of inventory is an amount equal to that paid to the consignor or vendors. Inventory is valued at the lower of cost and net realizable value using the specific identification method and the Company records provisions, as appropriate, to write down obsolete and excess inventory to estimated net realizable value. After the inventory value is reduced, adjustments are not made to increase it from the estimated net realizable value. Additionally, inventory is recorded net of an allowance for shrinkage which represents the risk of physical loss of inventory. Provisions for inventory shrinkage are estimated based on historical

experience and are adjusted based upon physical inventory counts. Provisions to write down inventory to net realizable value and provisions for inventory shrinkage were $9.8 million and $4.1 million during the year end December 31, 2023 and 2022, respectively.

Return reserves, which reduce revenue and cost of sales, are estimated using historical experience. Liabilities for return allowances are included in other accrued and current liabilities on the balance sheets and were $22.2 million as of December 31, 2023 and 2022. Included in inventory on the Company's balance sheets are assets totaling $5.2 million and $6.1 million as of December 31, 2023 and 2022, respectively, for the rights to recover products from customers associated with its liabilities for return reserves.

Property and Equipment, Net

Property and equipment, net is recorded at cost less accumulated depreciation and amortization. Depreciation and amortization are recorded on a straight-line basis over the estimated useful lives of the respective assets. Repair and maintenance costs are expensed as incurred.

The estimated useful lives of our assets are as follows:

Proprietary software	3 years
Furniture and equipment	3-5 years
Vehicles	5 years
Leasehold improvements	Shorter of lease term or estimated useful life

Software Development Costs

Proprietary software includes the costs of developing the Company's internal proprietary business platform and automation projects. The Company capitalizes qualifying proprietary software development costs that are incurred during the application development stage. Capitalization of costs begins when two criteria are met: (1) the preliminary project stage is completed and (2) it is probable that the software will be completed and used for its intended function. Such costs are capitalized in the period incurred. Capitalization ceases and amortization begins when the software is substantially complete and ready for its intended use, including the completion of all significant testing. Costs related to preliminary project activities and post-implementation operating activities are expensed as incurred.

Impairment of Long-lived Assets

The carrying amounts of long-lived assets, including right-of-use assets, property and equipment, net and capitalized proprietary software, are periodically reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable or that the useful life is shorter than originally estimated. Recoverability of assets to be held and used is measured by comparing the carrying amount of assets to future undiscounted net cash flows the assets are expected to generate over their remaining life.

If the assets are considered to be impaired, the amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired assets. If the useful life is shorter than originally estimated, the Company amortizes the remaining carrying value over the revised shorter useful life.

Leases

Contracts that have been determined to convey the right to use an identified asset are evaluated for classification as an operating or finance lease. For the Company's operating leases, the Company records a lease liability based on the present value of the lease payments at lease inception, using the applicable incremental borrowing rate. The Company estimates the incremental borrowing rate by developing its own synthetic credit rating, corresponding yield curve, and the terms of each lease at the lease commencement date. The corresponding right-of-use asset is recorded based on the corresponding lease liability at lease inception, adjusted for payments made to the lessor at or before the commencement date, initial direct costs incurred and any tenant incentives allowed for under the lease. The Company does not include optional renewal terms or early termination provisions unless the Company is reasonably certain such options would be

exercised at the inception of the lease. Operating lease right-of-use assets, current portion of operating lease liabilities, and operating lease liabilities, net of current portion are included on the Company's balance sheet.

The Company has elected the practical expedients that allows for the combination of lease components and non-lease components and to record short-term leases as lease expense on a straight-line basis on the statements of operations. Variable lease payments are recorded as expense as they are incurred.

The Company has finance leases for vehicles and equipment, and the amounts of finance lease right-of-use assets and finance lease liabilities have been immaterial to date.

Convertible Senior Notes, Net

Prior to the adoption of ASU 2020-06 on January 1, 2022, convertible debt instruments that may be settled in cash or other assets, or partially in cash, upon conversion, were separately accounted for as long-term debt and equity components (or conversion feature). The debt component represented the Company's contractual obligation to pay principal and interest and the equity component represented the Company's option to convert the debt security into equity of the Company or the equivalent amount of cash. Upon issuance, the Company allocated the debt component on the basis of the estimated fair value of a similar liability that does not have an associated convertible feature and the remaining proceeds are allocated to the equity component. The bifurcation of the debt and equity components resulted in a debt discount for the aforementioned notes. The Company uses the effective interest method to amortize the debt discount to interest expense over the amortization period which is the expected life of the debt. Following the adoption of ASU 2020-06, there is no bifurcation of the liability and equity components of the 3.00% Convertible Senior Notes due 2025 (the "2025 Notes") and the 1.00% Convertible Senior Notes due 2028 (the "2028 Notes" and, together with the 2025 Notes, the "Notes"), and the entire principal of the Notes are accounted for as long-term debt.

Capped Call Transactions

In June 2020 and March 2021, in connection with the issuance of its convertible senior notes, the Company entered into Capped Call Transactions (see Note 7). The Capped Call Transactions are expected generally to reduce the potential dilution to the holders of the Company's common stock upon any conversion of the convertible senior notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted convertible senior notes, with such reduction and/or offset subject to a cap based on the cap price. The capped calls are classified in stockholders' equity as a reduction to additional paid-in capital and are not subsequently remeasured as long as the conditions for equity classification continue to be met. The Company monitors the conditions for equity classification, which continue to be met as of December 31, 2023.

Debt Issuance Costs

Debt issuance costs, which consist of direct incremental legal, consulting, banking and accounting fees related to the anticipated debt offering, are amortized to interest expense over the estimated life of the related debt based on the effective interest method. The Company presents debt issuance costs on the balance sheets as a direct deduction from the associated debt. The Company adopted ASU 2020-06 as of January 1, 2022 using the modified retrospective method. Prior to the adoption of ASU 2020-06 on January 1, 2022, a portion of debt issuance costs incurred in connection with the convertible senior notes issued in June 2020 and March 2021 was allocated to the equity component and was recorded as a reduction to additional paid in capital and was not amortized to interest expense over the estimated life of the related debt. Following the adoption of ASU 2020-06, the debt issuance costs previously allocated to the equity component of both series of Notes were reclassified to debt. As such, all of the debt issuance costs are recorded as a direct deduction from the related principal debt amounts on the balance sheet, and are all amortized to interest expense over the estimated remaining life of the related debt.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The effect on deferred tax assets and liabilities of a change in tax rates is recognized in loss in the period of enactment. The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

Concentrations of Credit Risks

Financial instruments that potentially subject the Company to concentrations of credit risk consist of cash and cash equivalents, restricted cash and accounts receivable. At times, such amount may exceed federally-insured limits. The Company is monitoring ongoing events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions or other companies in the financial services industry or the financial services industry generally. The Company reduces credit risk by placing its cash, cash equivalents, restricted cash and investments with major financial institutions with high credit ratings within the United States. The Company has not experienced any realized losses on cash, cash equivalents and restricted cash to date; however, no assurances can be provided.

As of December 31, 2023 and December 31, 2022, there were no customers that represented 10% or more of the Company's accounts receivable balance and there were no customers that individually exceeded 10% of the Company's total revenue for each of the years ended December 31, 2023, 2022, and 2021.

Recently Issued Accounting Pronouncements

In November 2023, the FASB issued ASU 2023-07, Improvements to Reportable Segment Disclosures. This new guidance is designed to improve reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses that are regularly provided to the chief operating decision maker. Additionally, public entities with a single reportable segment must provide all the disclosures required by ASU 2023-07, as well as all existing segment disclosures in accordance with Accounting Standards Codification 280. ASU 2023-07 is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024 on a retrospective basis. Early adoption is permitted. The Company expects the adoption of the standard to result in additional segment footnote disclosures. The Company does not expect the adoption of this guidance to have a material impact on our financial statements.

In December 2023, the FASB issued ASU 2023-09, Improvements to Income Tax Disclosures. This new guidance is designed to enhance the transparency and decision usefulness of income tax disclosures. The amendments of this update are related to the rate reconciliation and income taxes paid, requiring (1) consistent categories and greater disaggregation of information in the rate reconciliation and (2) income taxes paid disaggregated by jurisdiction. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024. Early adoption is permitted. The Company is currently assessing the impact that adopting this new accounting standard will have on its financial statements.

Note 3. Cash and Cash Equivalents

The following tables summarize the estimated value of the Company's cash and cash equivalents (in thousands) and do not include restricted cash. There are no unrealized gains or losses related to the restricted cash balance.

	December 31, 2023			
	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value
Cash and cash equivalents:				
Cash	$ 50,947	$ —	$ —	$ 50,947
Money market funds	124,762	—	—	124,762
Total cash and cash equivalents	$ 175,709	$ —	$ —	$ 175,709

	December 31, 2022			
	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value
Cash and cash equivalents:				
Cash	$ 275,742	$ —	$ —	$ 275,742
Money market funds	18,051	—	—	18,051
Total cash and cash equivalents	$ 293,793	$ —	$ —	$ 293,793

Note 4. Fair Value Measurement

Assets and liabilities recorded at fair value on a recurring basis on the balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their fair values. Fair value is defined as the exchange price that would be received for an asset or an exit price that would be paid to transfer a liability 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 must maximize the use of observable inputs and minimize the use of unobservable inputs. The authoritative guidance on fair value measurements establishes a three-tier fair value hierarchy for disclosure of fair value measurements as follows:

Level 1—Observable inputs such as unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date.

Level 2—Inputs (other than quoted prices included in Level 1) are either directly or indirectly observable for the asset or liability. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

There were no transfers between Level 1, Level 2 or Level 3 of the fair value hierarchy during the periods presented.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

As of December 31, 2023 and December 31, 2022, the Company's cash equivalents solely consisted of money market funds, which amounted to $124.8 million and $18.1 million, respectively. Money market funds are measured at net asset value per share.

Fair Value Measurements of Other Financial Instruments

The following table presents the carrying amounts and estimated fair values of the financial instruments that are not recorded at fair value on the balance sheets (in millions):

	December 31, 2023	
	Net Carrying Amount	Estimated Fair Value
2025 Convertible senior notes	$ 170.6	$ 128.2
2028 Convertible senior notes	$ 281.9	$ 100.0

The principal amounts of the 2025 Notes and the 2028 Notes are $172.5 million and $287.5 million, respectively. The difference between the principal amounts of the convertible senior notes and their respective net carrying amounts are the unamortized debt issuance costs.

As of December 31, 2023, the fair value of the 2025 Notes and 2028 Notes, which differs from their carrying value is determined based on the quoted bid prices of the Notes in an over-the counter market using the latest trading information of the reporting period.

Note 5. Balance Sheet Components

Property and Equipment, Net

Property and equipment, net is recorded at cost less accumulated depreciation and amortization. Depreciation and amortization are recorded on a straight-line basis over the estimated useful lives of the respective assets. Property and equipment, net consists of the following (in thousands):

	December 31, 2023	December 31, 2022
Proprietary software	$ 44,964	$ 39,017
Furniture and equipment	47,389	47,692
Automobiles	2,069	2,119
Leasehold improvements	84,138	86,986
Property and equipment, gross	178,560	175,814
Less: accumulated depreciation and amortization	(74,473)	(63,135)
Property and equipment, net	$ 104,087	$ 112,679

Depreciation and amortization expense on property and equipment was $31.0 million, $26.9 million, and $23.5 million for the years ended December 31, 2023, 2022 and 2021, respectively.

During the year ended December 31, 2023, the Company recorded $8.6 million of impairment of leasehold improvements and disposal of fixed assets related to the closures of several of its office and retail locations as part of the savings plan the Company implemented. The impairment charges are included in restructuring in the statements of operations.

Other Accrued and Current Liabilities

Other accrued and current liabilities consist of the following (in thousands):

	December 31, 2023	December 31, 2022
Returns reserve	$ 22,204	$ 22,233
Accrued compensation	20,086	15,111
Accrued legal	614	484
Accrued sales tax and other taxes	8,118	8,531
Site credit and gift card liability	14,058	13,223
Accrued marketing and outside services	5,012	8,729
Accrued shipping	4,244	5,715
Accrued interest	1,166	1,166
Deferred revenue	2,214	3,549
Accrued property and equipment	1,066	11,417
Other	3,903	3,134
Other accrued and current liabilities	$ 82,685	$ 93,292

Note 6. Debt

Revolving Credit Agreement

In April 2021, the Company entered into a loan and security agreement ("Revolving Credit Agreement") with a lender, to provide a revolving line of credit of up to $50 million. Advances on the line of credit bear interest payable monthly at a variable annual rate equal to the greater of the prime rate plus 0.50% or 4.25%. The credit facility was set to expire in April 2023. In April 2023 the Company signed an amendment with the lender to extend the credit facility through June 2023. As of June 30, 2023, $0 had been drawn on the Revolving Credit Agreement, and the credit facility has expired and was not renewed.

Note 7. Convertible Senior Notes, Net

In June 2020, the Company issued an aggregate principal of $172.5 million of its 2025 Notes, pursuant to an indenture between the Company and U.S. Bank National Association, as trustee, in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). The 2025 Notes include $22.5 million in aggregate principal amount of the 2025 Notes sold to the initial purchasers resulting from the exercise in full of their option to purchase additional Notes. The 2025 Notes will mature on June 15, 2025, unless earlier redeemed or repurchased by the Company or converted.

The Company received net proceeds from the 2025 Notes offering of approximately $165.8 million, after deducting the initial purchasers' discount and commission and offering expenses. The Company used approximately $22.5 million of the net proceeds from the 2025 Notes offering to fund the net cost of entering into the capped call transactions described below. The Company intends to use the remainder of the net proceeds for general corporate purposes.

In March 2021, the Company issued an aggregate principal of $287.5 million of its 2028 Notes, pursuant to an indenture between the Company and U.S. Bank National Association, as trustee, in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act. The 2028 Notes include $37.5 million in aggregate principal amount of the 2028 Notes sold to the initial purchasers resulting from the exercise in full of their option to purchase additional Notes. The 2028 Notes will mature on March 1, 2028, unless earlier redeemed or repurchased by the Company or converted.

The Company received net proceeds from the 2028 Notes offering of approximately $278.1 million, after deducting the initial purchasers' discount and commission and offering expenses. The Company used approximately $33.7 million of the net proceeds from the 2028 Notes offering to fund the net cost of entering into the capped call transactions described below. The Company intends to use the remainder of the net proceeds for general corporate purposes.

The 2025 Notes accrue interest at a rate of 3.00% per annum, payable semi-annually in arrears on June 15 and December 15 of each year, beginning on December 15, 2020. The initial conversion rate applicable to the 2025 Notes is 56.2635 shares of common stock per $1,000 principal amount of 2025 Notes (which is equivalent to an initial conversion price of approximately $17.77 per share of the Company's common stock). The 2028 Notes accrue interest at a rate of 1.00% per annum, payable semi-annually in arrears on March 1 and September 1 of each year, beginning on September 1, 2021. The initial conversion rate applicable to the 2028 Notes is 31.4465 shares of common stock per $1,000 principal amount of 2028 Notes (which is equivalent to an initial conversion price of approximately $31.80 per share of the Company's common stock). The conversion rate is subject to adjustment upon the occurrence of certain specified events but will not be adjusted for accrued and unpaid interest. In addition, upon the occurrence of a corporate event, the Company will, in certain circumstances, increase the conversion rate by a number of additional shares for a holder that elects to convert its Notes in connection with such corporate event.

The 2025 Notes will be redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after June 20, 2023, and the 2028 Notes will be redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after March 5, 2025, in each case if the last reported sale price per share of the Company's common stock exceeds 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately before the date the Company sends the related redemption notice. In addition, calling any Note for redemption will constitute a make-whole fundamental change with respect to that Note, in which case the conversion rate applicable to the conversion of that Note will be increased in certain circumstances if it is converted after it is called for redemption.

Prior to March 15, 2025, in the case of the 2025 Notes, and December 1, 2027, in the case of the 2028 Notes, the applicable Notes will be convertible only under the following circumstances:

- During any calendar quarter (and only during such calendar quarter), if, the last reported sale price per share of the Company's common stock exceeds 130% of the applicable conversion price on each applicable trading day for at least 20 trading days (whether or not consecutive) in the period of the 30 consecutive trading day period ending on, and including, the last trading day of the immediately preceding calendar quarter;
- During the five business day period after any five consecutive trading day period in which, for each day of that period, the trading price per $1,000 principal amount of Notes for such trading day was less

than 98% of the product of the last reported sale price of the Company's common stock and the applicable conversion rate on such trading day;

- Upon the occurrence of specified corporate transactions; or
- If the Company calls any notes for redemption.

On and after March 15, 2025, in the case of the 2025 Notes, and December 1, 2027, in the case of the 2028 Notes, until the close of business on the scheduled trading day immediately preceding the maturity date, holders may convert all or a portion of their Notes, in multiples of $1,000 principal amount, at any time, regardless of the foregoing circumstances. Upon conversion, the Notes will be settled, at the Company's election, in cash, shares of the Company's common stock, or a combination of cash and shares of the Company's common stock. It is the Company's current intent to settle conversions of the 2025 Notes and the 2028 Notes through combination settlement, which involves repayment of the principal portion in cash and any excess of the conversion value over the principal amount in shares of its common stock. The conditions allowing holders of either the 2025 Notes or the 2028 Notes to convert were not met as of December 31, 2023.

The Notes are unsecured and unsubordinated obligations of the Company and will rank senior in right of payment to any of future indebtedness of the Company that is expressly subordinated in right of payment to the Notes; rank equal in right of payment to any existing and future unsecured indebtedness of the Company that is not so subordinated; be effectively subordinated in right of payment to any secured indebtedness of the Company to the extent of the value of the assets securing such indebtedness; and be structurally subordinated to all existing and future indebtedness and other liabilities and obligations incurred by future subsidiaries of the Company.

If bankruptcy, insolvency, or reorganization occurs with respect to the Company (and not solely with respect to a significant subsidiary of the Company), then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any person. If an event of default (other than bankruptcy, insolvency, or reorganization with respect to the Company and not solely with respect to a significant subsidiary of the Company) occurs and is continuing, then, with the exception of certain reporting events of default, the trustee, by notice to the Company, or noteholders of at least 25% of the aggregate principal amount of 2025 Notes or 2028 Notes, as applicable, then outstanding, by notice to us and the trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the 2025 Notes or 2028 Notes, as applicable, the outstanding to become due and payable immediately.

Prior to the adoption of ASU 2020-06 on January 1, 2022 and in accounting for the issuance of the 2025 Notes and the 2028 Notes, the Company separately accounted for the liability and equity components of the Notes. The debt discount was recorded to equity and was amortized to the debt liability over the life of the Notes using the effective interest method. The equity component was not remeasured as long as it continued to meet the conditions for equity classification.

In connection with the issuance of the 2025 and 2028 Notes, the Company incurred approximately $6.7 million and $9.4 million of debt issuance costs, respectively, which primarily consisted of initial purchasers' discounts and legal and other professional fees. Prior to the adoption of ASU 2020-06 on January 1, 2022, the Company allocated these costs to the liability and equity components based on the allocation of the proceeds. The portion of these costs allocated to the equity component was recorded as a reduction to additional paid-in capital. The portion of these costs initially allocated to the liability component was recorded as a reduction in the carrying value of the debt on the balance sheets and was amortized to interest expense using the effective interest method over the expected life of the Notes.

On January 1, 2022, the Company adopted ASU 2020-06 based on a modified retrospective transition method. Upon adoption, the Company recorded a cumulative effect of $13.4 million as a reduction to accumulated deficit and a reduction to additional paid in capital of $112.1 million related to amounts attributable to the value of the conversion options that had previously been recorded in equity. Under such transition, prior period information for both the 2025 and 2028 Notes has not been retrospectively adjusted.

In accounting for the 2025 Notes after the adoption of ASU 2020-06, the 2025 Notes are accounted for as a single liability, and the carrying amount of the Notes is $170.6 million as of December 31, 2023, with principal of $172.5 million, net of unamortized issuance costs of $1.9 million. The 2025 Notes were classified as long term liabilities as of December 31, 2023. The issuance costs related to the 2025 Notes are being amortized to interest expense over the expected life of the 2025 Notes or approximately its five-year term at an effective interest rate of 3.74%. In accounting for the 2028 Notes after the adoption of ASU 2020-06, the 2028 Notes are accounted for as a single liability, and the carrying amount of the Notes is $281.9 million as of December 31, 2023, with principal of $287.5 million, net of unamortized issuance costs of

$5.6 million. The 2028 Notes were classified as long term liabilities as of December 31, 2023. The issuance costs related to the 2028 Notes are being amortized to interest expense over the expected life of the 2028 Notes or approximately its seven-year term at an effective interest rate of 1.45%.

The following tables present the outstanding principal amount, unamortized debt issuance costs, and net carrying amount of the 2025 Notes and the 2028 Notes as of the dates indicated (in thousands):

	2025 Notes	
	December 31, 2023	December 31, 2022
Principal	$ 172,500	$ 172,500
Unamortized debt issuance costs	(1,936)	(3,204)
Net carrying amount	$ 170,564	$ 169,296

	2028 Notes	
	December 31, 2023	December 31, 2022
Principal	$ 287,500	$ 287,500
Unamortized debt issuance costs	(5,643)	(6,948)
Net carrying amount	$ 281,857	$ 280,552

The following tables set forth the amounts recorded in interest expense related to the 2025 Notes as of the dates indicated (in thousands):

	Year Ended December 31,		
	2023	2022	2021
Contractual interest expense	$ 5,175	$ 5,175	$ 5,175
Amortization of debt discount	—	—	3,594
Amortization of debt issuance costs	1,268	1,080	1,082
Total interest and amortization expense	$ 6,443	$ 6,255	$ 9,851

The following tables set forth the amounts recorded in interest expense related to the 2028 Notes as of the dates indicated (in thousands):

	Year Ended December 31,		
	2023	2022	2021
Contractual interest expense	$ 2,875	$ 2,875	$ 2,332
Amortization of debt discount	—	—	8,759
Amortization of debt issuance costs	1,305	1,288	554
Total interest and amortization expense	$ 4,180	$ 4,163	$ 11,645

Future minimum payments under the 2025 Notes and the 2028 Notes as of December 31, 2023, are as follows (in thousands):

	Amount	
Fiscal Year	2025 Notes	2028 Notes
2024	5,175	2,875
2025	175,088	2,875
2026	—	2,875
2027	—	2,875
2028	—	288,937
Total future payments	180,263	300,437
Less amounts representing interest	(7,763)	(12,937)
Total principal amount	$ 172,500	$ 287,500

Capped Call Transactions with Respect to the 2025 Notes and 2028 Notes

In connection with the issuance of the 2025 Notes and 2028 Notes, including the initial purchasers' exercise of the option to purchase additional Notes, the Company entered into capped call transactions with respect to its common stock with certain financial institutions (collectively, the "Counterparties"). The Company paid an aggregate amount of approximately $22.5 million to the Counterparties in connection with the 2025 capped call transactions (the "2025 Capped Calls") and $33.7 million to the Counterparties in connection with the 2028 capped call transactions and (the "2028 Capped Calls" and, together with the 2025 Capped Calls, the "Capped Calls"). The 2025 Capped Calls and 2028 Capped Calls cover approximately 9,705,454 shares and 9,040,869 shares of the Company's common stock at a strike price that corresponds to the initial conversion price of the 2025 Notes and the 2028 Notes, respectively. The 2025 Capped Calls and the 2028 Capped Calls are subject to anti-dilution adjustments that are intended to be substantially identical to those in the 2025 Notes and the 2028 Notes, as applicable, and are exercisable upon conversion of the 2025 Notes or the 2028 Notes, as applicable. The Capped Calls are subject to adjustment upon the occurrence of specified extraordinary events affecting the Company, including merger events, tender offer and announcement events. In addition, the Capped Calls are subject to certain specified additional disruption events that may give rise to a termination of the Capped Calls, including nationalization, insolvency or delisting, changes in law, failures to deliver, insolvency filings and hedging disruptions. The 2025 Capped Calls settle in components commencing on April 16, 2025 with the last component scheduled to expire on June 12, 2025. The 2028 Capped Calls settle in components commencing on December 31, 2027 with the last component scheduled to expire on February 28, 2028.

The cap price of the 2025 Capped Call is initially $27.88 per share, which represents a premium of 100.0% over the closing price of the Company's common stock of $13.94 per share on June 10, 2020, and is subject to certain adjustments under the terms of the capped call transactions. The cap price of the 2028 Capped Call is initially $48.00 per share, which represents a premium of 100.0% over the closing price of the Company's common stock of $24.00 per share on March 3, 2021, and is subject to certain adjustments under the terms of the capped call transactions. The Company expects to receive from the Counterparties a number of shares of the Company's common stock or, at the Company's election (subject to certain conditions), cash, with an aggregate market value (or, in the case of cash settlement, in an amount) approximately equal to the product of such excess times the number of shares of the Company's common stock relating to the 2025 Capped Call and 2028 Capped Call being exercised.

These Capped Call instruments meet the conditions outlined in ASC 815-40 to be classified in stockholders' equity, are not accounted for as derivatives, and are not subsequently remeasured as long as the conditions for equity classification continue to be met. The Company recorded a reduction to additional paid-in capital of approximately $22.5 million and $33.7 million related to the premium payments for the 2025 Capped Call and 2028 Capped Call transactions.

Note 8. Common Stock

The Company had reserved shares of common stock for issuance, on an as-converted basis, as follows:

	December 31, 2023	December 31, 2022
Options issued and outstanding	1,119,676	1,754,776
Outstanding restricted stock units	12,695,176	11,369,021
Shares available for grant under the 2019 equity incentive plan	7,654,656	5,035,545
Shares available for issuance under 2019 ESPP	3,654,915	3,529,709
Total	25,124,423	21,689,051

Note 9. Share-based Compensation Plans

2019 Equity Incentive Plan

In connection with the Company's initial public offering, the Company adopted the 2019 Equity Incentive Plan (the "2019 Plan"). The 2019 Plan allows the Company to grant stock options, stock appreciation rights, restricted stock, restricted stock units and performance awards to participants. Subject to the terms and conditions of the 2019 Plan, the initial number of shares authorized for grants under the 2019 Plan is 8,000,000. These available shares increase annually by

an amount equal to the lesser of 8,000,000 shares, 5% of the number of shares of the Company's common stock outstanding on the immediately preceding December 31, or the number of shares determined by the Company's board of directors.

The Company's board of directors approved an increase of shares available for grant under the 2019 Plan by 4,465,083 shares on May 5, 2021, by 4,648,003 shares on February 23, 2022, and by 4,954,409 shares on February 13, 2023.

Activity under the Company's stock option plan is set forth below:

	Number of Options	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (in thousands)
Balances at December 31, 2022	1,754,776	8.21	4.0	$ 1
Options granted	—	—		
Options exercised	(8,511)	2.28		
Options cancelled	(626,589)	9.04		
Balances at December 31, 2023	1,119,676	7.79	4.2	15
Options vested and exercisable— December 31, 2023	1,119,676	7.79	4.2	15

There were no stock options granted in 2023 and in 2022. There was no aggregate intrinsic value of options exercised for the year ended December 31, 2023. The aggregate intrinsic value of options exercised for the years ended December 31, 2022 and 2021 was $5.3 million and $20.5 million, respectively. The aggregate intrinsic value of options exercised is the difference between the fair value of the underlying common stock on the date of exercise and the exercise price for in-the-money stock options.

In February 2022, the Company granted PSUs with financial performance targets to certain employees of the Company. The number of units issued will depend on the achievement of financial metrics relative to the approved performance targets, and can range from 0% to 150% of the target amount. The PSUs are subject to continuous service with the Company and will vest after approximately three years. The PSUs are measured using the fair value at the date of grant. The compensation expense associated with PSUs is recognized based on the estimated number of shares that the Company expects will vest and may be adjusted based on interim estimates of performance against the performance condition. During the year ended December 31, 2023, the Company has not recognized stock-based compensation expense as attainment of financial performance targets is not considered probable.

In March 2023, the Company granted PSUs under the 2019 Plan subject to the achievement of both market and service conditions to certain employees of the Company. The number of units vested will depend on the achievement of approved market conditions and continuous service with the Company. The PSUs are eligible to vest in three tranches over a five-year performance period. The PSUs are measured using the Monte Carlo simulation to obtain the fair value at the date of grant based on the probability that the market conditions will be met. The compensation expense associated with the PSUs is based on the fair value and is recognized over the requisite service period. The compensation expense will be recognized regardless of whether the market condition is ever satisfied, provided the requisite service period is satisfied.

Inducement Grants

In March 2023, the Company granted stock-based awards outside of the 2019 Plan to the Company's new Chief Executive Officer and the Chief Technology and Product Officer. These awards were granted as inducements material to their commencement of employment and entry into offer letters with the Company, in accordance with Nasdaq Listing Rule 5635(c)(4).

The inducement pool consisted of a total of 3,075,000 shares of the Company's common stock, which includes (a) 1,500,000 shares of PSUs granted to the Chief Executive Officer that are eligible to vest based on market and service conditions in four tranches over a five-year performance period and (b) 1,575,000 shares of RSUs (1,250,000 RSUs to the Chief Executive Officer and 325,000 RSUs to the Chief Technology and Product Officer) generally subject to the same terms and conditions as grants that are made under the 2019 Plan. As of December 31, 2023, the unrecognized expense for the PSUs is $1.3 million and the unrecognized expense for RSUs is $2.0 million.

RSUs

A summary of RSU activity for the year ended December 31, 2023 is as follows:

	Number of Shares	Restricted Stock Units Weighted-Average Grant Date Fair Value	Aggregate Intrinsic Value (in thousands)
Unvested December 31, 2022	11,369,021	$ 8.39	$ 14,178
Granted	10,863,664	1.62	
Vested	(5,098,002)	7.51	
Forfeited	(4,439,507)	5.19	
Unvested December 31, 2023	12,695,176	$ 4.07	$ 25,517

Included in the table above for the year ended December 31, 2023 are approximately 1,998,000 PSUs granted and no PSUs forfeited. The weighted average grant date fair value per share of the PSUs granted in the year ended December 31, 2023 was $1.63.

The total fair value as of the respective vesting dates of RSUs that vested during the year ended December 31, 2023 was $9.5 million.

Employee Stock Purchase Plan

In connection with the Company's initial public offering, the Company adopted the Employee Stock Purchase Plan (the "ESPP"). The Employee Stock Purchase Plan permits employees to purchase shares of common stock during six-month offering periods at a purchase price equal to the lesser of (1) 85% of the fair market value of a share of common stock on the first business day of such offering period and (2) 85% of the fair market value of a share of common stock on the last business day of such offering period. The initial number of shares of common stock that could be issued under the employee stock purchase plan was 1,750,000 shares. These available shares increase by an amount equal to the lesser of 1,750,000 shares, 1% of the number of shares of common stock outstanding on the immediately preceding December 31, or the number of shares determined by the Company's board of directors.

The Company's board of directors approved an increase in the shares available for grant under the ESPP by 893,016 shares on May 5, 2021, by 929,601 shares on February 23, 2022, and by 990,882 shares on February 13, 2023.

During the years ended December 31, 2023, 2022 and 2021, employees purchased 865,676, 610,877, and 199,289 shares, respectively, at an average price of $1.02, $2.29 and $11.74, respectively.

As of December 31, 2023, the Company had an immaterial amount of unrecognized stock-based compensation cost related to purchase rights under the employee stock purchase plan.

Stock-based Compensation

In determining the fair value of the stock-based awards, the Company uses the Black-Scholes option-pricing model and assumptions discussed below.

Fair Value of Common Stock— The fair value of the shares of common stock has historically been determined by the Company's board of directors as there was no public market for the common stock. Subsequent to our IPO, the fair value per share of common stock is the closing price of the Company's common stock as reported on the applicable grant date.

Expected Term —The expected term represents the period that the Company's stock options are expected to be outstanding and is determined using the simplified method (based on the mid-point between the vesting date and the end of the contractual term) as the Company has concluded that its stock option exercise history does not provide a reasonable basis upon which to estimate expected term.

Volatility —Because the Company was privately held and did not have an active trading market for its common stock for a sufficient period of time, the expected volatility was estimated based on the average volatility for comparable publicly-traded companies, over a period equal to the expected term of the stock option grants.

Risk-free Rate —The risk-free rate assumption is based on the U.S. Treasury zero coupon issues in effect at the time of grant for periods corresponding with the expected term of the option.

Dividends —The Company has never paid dividends on its common stock and does not anticipate paying dividends on common stock. Therefore, the Company uses an expected dividend yield of zero.

The following assumptions were used to estimate the fair value of stock options granted in 2019, as there were no stock options granted in 2023, 2022 and 2021:

	Year Ended December 31, 2019
Expected term (in years)	5.0 – 6.1
Expected volatility	44.2% – 47.8%
Average risk-free rate	1.9% – 2.6%
Dividend yield	—

As of December 31, 2023, the Company had approximately $40.3 million of unrecognized stock-based compensation expense related to RSUs and PSUs, which the Company expects to recognize over the remaining weighted-average vesting period of approximately 2.1 years. As of December 31, 2023, the Company had no unrecognized stock-based compensation expense related to options.

Total stock-based compensation expense by function was as follows (in thousands):

	Year Ended December 31,		
	2023	2022	2021
Marketing	$ 1,550	$ 2,209	$ 2,557
Operations and technology	12,534	19,822	21,395
Selling, general and administrative	20,189	24,107	24,850
Total	$ 34,273	$ 46,138	$ 48,802

During the year ended December 31, 2022, the Company recognized compensation expense of $1.0 million within selling, general and administrative associated with the modification of certain outstanding equity awards pursuant to the terms of the transition and separation agreement the Company entered into with its founder, Julie Wainwright, in connection with her resignation as Chief Executive Officer on June 6, 2022.

During the years ended December 31, 2023, 2022 and 2021, the Company capitalized $0.8 million, $1.6 million, and $1.4 million of stock-based compensation expense to proprietary software, respectively.

Note 10. Leases

The Company leases its corporate offices, retail spaces and authentication centers under various noncancelable operating leases with terms ranging from one year to fifteen years.

The Company recorded operating lease costs of $22.8 million and $29.0 million for the years ended December 31, 2023 and 2022, respectively. The Company incurred $5.2 million and $5.6 million of variable lease costs for the years ended December 31, 2023 and 2022, respectively, which is comprised primarily of the Company’s proportionate share of operating expenses, property taxes and insurance.

Due to the office and store closures in the year ended December 31, 2023, the Company reviewed its right-of-use assets for impairment. Impairment losses are measured and recorded for the excess of carrying value over its fair value, estimated based on expected future cash flows using discount rate and other quantitative and qualitative factors. As a result, the Company recorded $31.1 million related to the impairment of certain office and store right-of-use assets during the year ended December 31, 2023. The impairment charges are included in restructuring in the statements of operations.

During the year ended December 31, 2023, the Company entered into agreements to amend certain of its operating leases. The lease for the Company's corporate headquarters in San Francisco, CA was amended to remove one floor of leased space, and the lease for the Company's offices in New York, NY, was amended to remove two floors of leased space. Additionally, the Company terminated the operating leases for retail locations in Austin, TX, Atlanta, GA, and

Miami, FL. The Company treated the lease termination amendments as lease modifications for accounting purposes as of the applicable effective dates of such terminations which resulted in a decrease of $7.7 million to the related lease liabilities, and a decrease of $1.4 million to the related right-of-use assets for the year ended December 31, 2023. The Company recorded a net gain on the lease terminations of $0.7 million during the year ended December 31, 2023. The net gain on lease terminations is included in restructuring in the statement of operations.

Maturities of operating lease liabilities by fiscal year for the Company's operating leases are as follows (in thousands):

Fiscal Year	Amount
2024	26,964
2025	27,787
2026	27,614
2027	23,608
2028	20,866
Thereafter	19,866
Total future minimum payments	$ 146,705
Less: Imputed interest	(21,755)
Present value of operating lease liabilities	$ 124,950

Supplemental cash flow information related to the Company's operating leases are as follows (in thousands):

	Year Ended Year ended December 31,		
	2023	2022	2021
Operating cash flows used for operating leases	$ 34,118	$ 27,097	$ 25,386
Operating lease assets obtained in exchange for operating lease liabilities	$ 6,272	$ 2,245	$ 46,614

The weighted average remaining lease term and discount rate for the Company's operating leases are as follows:

	As of December 31, 2023	As of December 31, 2022
Weighted average remaining lease term	5.5 years	6.2 years
Weighted average discount rate	6.1 %	6.2 %

The Company has leases for certain vehicles and equipment that are classified as finance leases. The finance lease right-of-use asset and finance lease liabilities for these vehicle and equipment leases are immaterial as of December 31, 2023 and 2022.

Note 11. Restructuring

In February 2023, the Company announced a savings plan to reduce its real estate presence and operating expenses through closure of certain retail and office locations (referred to as the "Real Estate Reduction Plan") and workforce reduction. During the year ended December 31, 2023, the Company closed two flagship stores (San Francisco, California and Chicago, Illinois), two neighborhood stores (Atlanta, Georgia and Austin, Texas), and two luxury consignment offices (Miami, Florida and Washington, D.C.), including any co-located logistics hubs, and reduced its office spaces in San Francisco, California.

For the year ended December 31, 2023, the Company recognized $43.5 million in restructuring which consisted of right-of-use asset impairment charge of $31.1 million, leasehold improvements impairment charge of $8.6 million, employee severance of $3.0 million, and other related charges of $1.5 million, partially offset by a $0.7 million gain on lease terminations. The restructuring related charges were recorded on a separate line item in the Company's statement of operations.

Note 12. Commitments and Contingencies

Noncancelable Purchase Commitments

Our contractual commitments primarily consist of software and other services in the ordinary course of business that are noncancellable with varying expiration dates through 2027. As of December 31, 2023, the future minimum payments under the Company's noncancelable purchase commitments were as follows (in thousands):

Year Ending December 31,	Purchase Commitments
2024	$ 7,944
2025	8,344
2026	4,018
2027	1,158
2028	—
Total future minimum payments	$ 21,464

Contingencies

From time to time, the Company is subject to, and it is presently involved in, litigation and other legal proceedings and from time to time, the Company receives inquiries from government agencies. Accounting for contingencies requires the Company to use judgment related to both the likelihood of a loss and the estimate of the amount or range of loss. The Company records a loss contingency when it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. The Company discloses material contingencies when a loss is not probable but reasonably possible.

On November 14, 2018, Chanel, Inc. sued the Company in the U.S. District Court for the Southern District of New York. The Complaint alleged federal and state law claims of trademark infringement, unfair competition, and false advertising. On February 1, 2019, Chanel, Inc. filed its First Amended Complaint that included substantially similar claims against the Company. On March 4, 2019, the Company filed a Motion to Dismiss the First Amended Complaint, which was granted in part and dismissed in part on March 30, 2020. The surviving claims against the Company include trademark infringement under 15 U.S.C. § 1114, false advertising under 15 U.S.C. § 1125, and unfair competition under New York common law. On May 29, 2020, the Company filed its Answer to the Amended Complaint. On November 3, 2020, the Company sought leave to amend its Answer to assert counterclaims against Chanel, Inc. for violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. The motion for leave to amend was granted on February 24, 2021. On February 25, 2021, the Company filed its First Amended Answer, Affirmative Defenses and Counterclaims against Chanel. The Company's Counterclaims allege violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. On March 18, 2021, Chanel moved to dismiss the Company's Counterclaims and moved to strike the Company's unclean hands affirmative defense. Decisions on Chanel's motion to dismiss and motion strike are pending. The parties agreed to a stay in April 2021 to engage in settlement discussions. After several mediation sessions, the parties were unable to reach a resolution, and the stay was lifted in November 2021. Chanel then sought a partial stay of discovery on the Company's counterclaims and unclean hands defense while Chanel's motion to dismiss and strike those claims are pending, and on March 10, 2022, the Court granted Chanel's request. The parties have continued to engage in fact discovery regarding Chanel's counterfeiting and false advertising claims against the Company. Fact discovery was scheduled to be completed by August 15, 2023. However, on July 19, 2023, the Court ordered a stay of the case at the parties' request to enable the parties to attempt mediation again. The parties are working to schedule mediation in the first half of 2024. The final outcome of this litigation, including our liability, if any, with respect to Chanel's claims, is uncertain. An unfavorable outcome in this or similar litigation could adversely affect the Company's business and could lead to other similar lawsuits. The Company is not able to predict or reasonably estimate the ultimate outcome or possible losses relating to this claim.

Beginning on September 10, 2019, purported shareholder class action complaints were filed against the Company, its officers and directors and the underwriters of its IPO in the San Mateo Superior Court, Marin County Superior Court, and the United States District Court for the Northern District of California. On July 27, 2021, the Company reached an agreement in principle to settle the shareholder class action. On November 5, 2021, plaintiff filed the executed stipulation of settlement and motion for preliminary approval of the settlement with the federal court. On March 24, 2022, the court entered an order preliminarily approving the settlement. On July 28, 2022, the court entered an order finally approving the settlement and dismissing the case. The financial terms of the stipulation of settlement provide that the Company will pay $11.0 million within thirty (30) days of the later of preliminary approval of the settlement or plaintiff's counsel providing

payment instructions. The Company paid the settlement amount on March 29, 2022 with available resources and recorded approximately $11.0 million for the year ended December 31, 2021 under our Operating expenses as a Legal settlement. One of the plaintiffs in the Marin County case opted out of the federal settlement and is pursuing the claim in Marin County Superior Court. The stay of the state court case has been lifted, and the opt out plaintiff filed an amended complaint on October 31, 2022 alleging putative class claims under the Securities Act of 1933 (the "Securities Act") on behalf of the two shareholders who opted out of the settlement and those who purchased stock from November 21, 2019 through March 9, 2020, based on purported new revelations. The claims are for alleged violations of Sections 11 and 15 of the Securities Act. On February 23, 2024, plaintiff filed a motion for class certification, which has been set for hearing on May 28, 2024. While the Company intends to defend vigorously against this litigation, there can be no assurance that the Company will be successful in its defense. For this reason, the Company cannot currently estimate the loss or range of possible losses it may experience in connection with this litigation.

Indemnifications

In the ordinary course of business, the Company may provide indemnifications of varying scope and terms to vendors, directors, officers and other parties with respect to certain matters including, but not limited to, losses arising out of the breach of such agreements, intellectual property infringement claims made by third parties and other liabilities relating to or arising from the Company's various services, or its acts or omissions. The Company has not incurred any material costs as a result of such indemnifications and have not accrued any liabilities related to such obligations in its financial statements.

Note 13. Income Taxes

The components of the Company's income tax provision consisted of (in thousands):

	Year Ended December 31,		
	2023	2022	2021
Current:			
Federal	$ —	$ —	$ —
State	283	172	56
Total current tax expense	283	172	56
Deferred:			
Federal	—	—	—
State	—	—	—
Total deferred tax expense	—	—	—
Total provision for income taxes	$ 283	$ 172	$ 56

The reconciliation of the Federal statutory income tax provision for the Company's effective income tax provision (in thousands):

	Year Ended December 31,		
	2023	2022	2021
Tax at federal statutory rate	$ (35,290)	$ (41,209)	$ (49,480)
State taxes, net of federal effect	(9,554)	(11,257)	(13,704)
Stock-based compensation	8,956	419	(2,698)
Non-deductible items	504	524	3,661
Tax credits	(531)	(563)	—
Convertible Notes	—	—	16,782
Adoption of ASU 2020-06	—	(28,045)	—
Provision to return adjustments	9,259	—	—
Valuation allowance	26,501	80,254	42,327
Other	438	49	3,168
Provision for income taxes	$ 283	$ 172	$ 56

The Company's deferred tax assets and liabilities (in thousands):

	December 31,	
	2023	2022
Deferred tax assets:		
Net operating loss carryforwards	$ 232,259	$ 219,872
Fixed assets and intangibles	6,364	3,904
Capitalized research and development [1]	13,835	7,899
Accruals and reserves	12,477	10,867
Stock options	840	2,474
Operating lease liabilities	33,683	39,143
Capped calls	15,065	15,082
Convertible debt	2,329	1,675
Tax credits	2,569	1,416
Gross deferred tax assets	319,421	302,332
Less: valuation allowance	(292,297)	(265,796)
Total deferred tax assets	27,124	36,536
Deferred tax liabilities:		
Operating lease right-of-use assets	(24,416)	(34,330)
Other	(2,708)	(2,206)
Gross deferred tax liabilities	(27,124)	(36,536)
Net deferred tax assets	$ —	$ —

(1) Under the Tax Cuts and Jobs Act of 2017, research and development costs are no longer fully deductible and are required to be capitalized and amortized for U.S. tax purposes effective January 1, 2022. The mandatory capitalization requirement increases our gross deferred tax assets, which are fully offset by the valuation allowance.

In assessing the realizability of deferred tax assets, the Company evaluates all available positive and negative evidence by considering whether it is more likely than not that some portion or all of the deferred tax assets will not be recognized. The ultimate realization of deferred tax assets is dependent upon future taxable income, future reversals of existing taxable temporary difference, taxable income in carryback years and tax-planning strategies. The Company believes it is more likely than not that the deferred tax assets in the U.S. will not be realized; accordingly, a valuation allowance has been established against our U.S. deferred tax assets. The net change in the valuation allowance for the years ended December 31, 2023 and December 31, 2022 was an increase of $26.5 million and an increase of $80.3 million, respectively.

As of December 31, 2023 and 2022, the Company has a net operating loss carryforward of $871.3 million and $827.6 million for federal tax purposes, respectively, and $817.5 million and $770.0 million for state tax purposes, respectively. If not utilized, these losses will expire beginning in 2024 for state tax purposes. However, beginning in tax year 2018 and forward, the Federal law has changed such that net operating losses generated after December 31, 2017 may be carried forward indefinitely. Accordingly, $168.2 million of the federal net operating losses will begin to expire in 2032. However, $703.1 million of the federal net operating losses will not expire.

As of December 31, 2023 and 2022, the Company has a credit carryforward of $4.3 million and $2.0 million for federal tax purposes, respectively, and $1.0 million and $1.0 million for state tax purposes, respectively. If not utilized, these credits will expire beginning in 2041 for federal tax purposes and do not expire for state tax purposes.

The Tax Reform Act of 1986 limits the use of net operating losses and tax credit carryforwards in certain situations where changes occur in the stock ownership of a company. During 2019, the Company analyzed whether any of the reported net operating losses would be limited because of these rules. Based on the analysis the Company believes $3.3 million of the Federal and $2.1 million of California net operating losses will not be available to offset future taxable income because of the limitation. The reported net operating losses have been adjusted based on this analysis.

The Company files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Company is subject to examination by federal, state and local, jurisdictions, where applicable. As of December 31, 2023 and 2022, all years generally remain open to examination. Additionally, net operating loss

carryforwards are subject to examination by the Internal Revenue Service and the California Franchise Tax Board for up to three and four years, respectively, after utilization.

Uncertain Income Tax Positions

The following table reflects the changes to the Company's unrecognized tax benefits (in thousands):

	December 31,	
	2023	2022
Unrecognized tax benefits beginning balance	$ 1,525	$ —
Increases related to current year tax positions	531	563
Increases related to prior year tax positions	622	962
Unrecognized tax benefits ending balance	$ 2,678	$ 1,525

As of December 31, 2023 and 2022, the Company had unrecognized tax benefits of $2.7 million and $1.5 million, respectively, none of which, if recognized, would favorably impact the Company’s effective tax rate. The unrecognized tax benefits relate to federal and state research and development credits. The Company's policy is to include interest and penalties as a component to the statement of operations, however there were no associated interest and penalties during the years ended December 31, 2023 and 2022. The Company estimates that there will be no material changes in its uncertain tax positions in the next 12 months.

Note 14. Net Loss Per Share Attributable to Common Stockholders

A reconciliation of the numerator and denominator used in the calculation of the basic and diluted net loss per share attributable to common stockholders is as follows (in thousands, except share and per share data):

	Year Ended December 31,		
	2023	2022	2021
Numerator			
Net loss attributable to common stockholders	$ (168,472)	$ (196,445)	$ (236,107)
Denominator			
Weighted-average common shares outstanding used to calculate net loss per share attributable to common stockholders, basic and diluted	101,806,000	95,921,246	91,409,624
Net loss per share attributable to common stockholders, basic and diluted	$ (1.65)	$ (2.05)	$ (2.58)

The following securities were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented, because including them would have been anti-dilutive (on an as-converted basis):

	December 31,		
	2023	2022	2021
Options to purchase common stock	1,119,676	1,754,776	4,131,501
Restricted stock units	12,695,176	11,369,021	8,187,586
Estimated shares issuable under the Employee Stock Purchase Plan	367,074	695,782	147,871
Assumed conversion of the Convertible Senior Notes	18,746,323	18,746,323	18,746,323
Total	32,928,249	32,565,902	31,213,281

The Convertible Senior Notes issued in June 2020 and in March 2021 are convertible, based on the applicable conversion rate, into cash, shares of the Company’s common stock or a combination thereof, at the Company’s election. The impact of the assumed conversion to diluted net loss per share is computed on an as-converted basis.

Note 15. Retirement Plan

The Company has a defined-contribution 401(k) retirement plan covering substantially all of its employees. Eligible employees are permitted to contribute up to an amount not to exceed an annual statutory maximum. The Company matches employee contributions at a rate of 25% of vested contributions, up to a maximum of $1,000 per participant per year. The Company's contributions to the 401(k) plan were $0.8 million, $1.6 million, and $1.1 million for the years ended December 31, 2023, 2022, and 2021, respectively.

Note 16. Subsequent Events

On February 29, 2024, the Company entered into an exchange agreement with certain holders of its Notes to exchange (i) $145,751,000 in aggregate principal amount of the 2025 Notes and (ii) $6,480,000 in aggregate principal amount of the 2028 Notes (together, the "Exchanged Notes") for $135,000,000 in aggregate principal amount of new senior notes due 2029 ("2029 Notes"), pursuant to an indenture. The exchange was consummated on February 29, 2024.

The 2029 Notes bear cash interest ("Cash Interest") at a rate of 8.75% per annum payable semi-annually in arrears. In addition, the Notes bear interest at a rate of 4.25% payable in kind ("PIK Interest"). Additionally, the Company issued warrants to acquire an aggregate of up to 7,894,737 shares of the Company's common stock to the holders of the Exchanged Notes.

FORM OF EXCHANGE AGREEMENT

This Exchange Agreement (together with the exhibits and schedules attached hereto, this "Agreement"), dated as of February 29, 2024, is by and among The RealReal, Inc., a Delaware corporation (the "Issuer") and [_____] (the "Noteholder"), as a holder of, as applicable, 3.00% Convertible Senior Notes due 2025 (the "Existing 2025 Notes") and 1.00% Convertible Senior Notes due 2028 (the "Existing 2028 Notes" and together with the Existing 2025 Notes, the "Existing Notes") issued by the Issuer under, as applicable, that certain Indenture, dated as of June 15, 2020, by and between the Issuer and U.S. Bank National Association, as trustee (the "Existing Trustee") and that certain Indenture, dated as of March 8, 2021, by and between the Issuer and the Existing Trustee. The Issuer and the Noteholder are referred to herein collectively as the "Parties."

RECITALS

WHEREAS, it is contemplated that the Noteholder will deliver to the Issuer the aggregate principal amount of the Existing Notes beneficially owned (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) by the Noteholder specified on Schedule I, to be exchanged on the date hereof (such Existing Notes, the "Exchanged Notes," and such exchange, the "Exchange") for (i) certain notes to be issued by the Issuer pursuant to an indenture substantially in the form set forth on Exhibit A (such indenture, the "New Indenture", and such notes, the "New Notes"), (ii) warrants to purchase shares (subject to adjustment in accordance with its terms) of common stock, $0.00001 par value per share, of the Issuer ("Common Stock") in the form attached hereto as Exhibit B (such warrants, the "Warrants" and the shares of Common Stock underlying the Warrants, the "Warrant Shares") and (iii) accrued and unpaid interest on the Exchanged Notes to (but excluding) the date of this Agreement, in each case, as specified on Schedule I;

WHEREAS, the obligations of the Issuer under the New Notes will be secured by liens on the Collateral (as defined in the New Indenture) granted pursuant to (i) a security agreement, dated as of the date hereof (the "Security Agreement") by and between the Issuer and the Notes Collateral Agent and (ii) a patent security agreement, a copyright security agreement and a trademark security agreement, in each case dated as of the date hereof (collectively, the "IP Security Agreements" and together with the Security Agreement, the "Collateral Documents") and entered into between the Issuer and the Notes Collateral Agent; and

WHEREAS, the Parties are entering into this Agreement to provide for the terms and conditions of the Exchange.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties hereby agrees as follows:

Section 1. *Definitions*. Unless otherwise indicated, capitalized terms not defined herein shall have the meanings ascribed to such terms in the New Indenture.

Section 2. *Representations and Warranties of the Noteholder*. The Noteholder hereby represents and warrants to the Issuer that the following statements are true and correct as of the date hereof:

(a) The Noteholder is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and has all necessary corporate or similar power and authority to execute and deliver this Agreement, perform its obligations hereunder and consummate the Exchange. The execution and delivery of this Agreement by the Noteholder and the performance by the Noteholder of its obligations hereunder have been duly authorized by all necessary corporate or similar action. No other votes, written consents, actions or proceedings by or on behalf of the Noteholder are necessary to authorize this Agreement or the performance of its obligations hereunder.

(b) This Agreement has been duly and validly executed and delivered by the Noteholder. This Agreement constitutes the valid and binding obligation of the Noteholder, enforceable against the Noteholder in accordance with its terms, except as may be limited by (i) the effects of bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors generally or (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) The execution, delivery and performance of this Agreement by the Noteholder, and the Noteholder's compliance with the provisions hereof and the consummation of the Exchange will not (with or

without notice or lapse of time, or both): (i) violate, conflict with or result in a breach of or default under any provision of the Noteholder's organizational or governing documents; (ii) violate, conflict with or result in a breach of or default under any law, regulation or governmental or judicial decree, injunction or order applicable to the Noteholder or any of its assets; or (iii) require any consent or approval under, violate, conflict with or result in any breach of, or constitute a default under, or result in termination or give to others any right of termination, amendment, acceleration or cancellation of any contract, agreement, arrangement or understanding that is binding on the Noteholder, except, in the case of clause (ii) and (iii) above, where not reasonably likely to have a material adverse effect on the ability of the Noteholder to perform its obligations under this Agreement or the transactions contemplated hereby.

(d) The aggregate principal amount of Exchanged Notes beneficially owned by the Noteholder, as of the date hereof, together with participant information at The Depository Trust Company ("DTC") with respect to the Exchanged Notes, is set forth on Schedule I hereto. The Noteholder (i) has good, valid and marketable title to the Exchanged Notes, free and clear of any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, equity or other adverse claim thereto (collectively, "Liens") (other than pledges or security interests that the Noteholder may have created in favor of a prime broker under and in accordance with its prime brokerage agreement with such broker, which will be terminated and released prior to or at the Exchange); (ii) has not, in whole or in part, except as described in the preceding clause (i), (A) assigned, transferred, hypothecated, pledged, exchanged or otherwise disposed of any of its Exchanged Notes or its rights, title or interest in or to its Exchanged Notes or (B) given any person or entity (other than its agents or investment manager) any transfer order, power of attorney or other authority of any nature whatsoever with respect to its Exchanged Notes; and (iii) has the sole right to dispose or direct the disposition of the Exchanged Notes. Upon the Noteholder's delivery of its Exchanged Notes to the Issuer pursuant to the Exchange, good, valid and marketable title to the Exchanged Notes shall vest in the Issuer, free and clear of all Liens. The Exchanged Notes are free and clear of any restrictions on transfer, taxes, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands.

(e) The Noteholder is (i) a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act") and an "Accredited Investor" as defined in Rule 501(a)(1), (2), (3), (7) or (8) of Regulation D under the Securities Act or (ii) a non-"U.S. Person" as defined in Rule 902 of Regulation S under the Securities Act. The Noteholder is aware that the issuance of New Notes, Warrants and, when issued, Warrant Shares (unless registered) is being made in reliance on an exemption from registration under the Securities Act.

(f) The Noteholder will acquire the New Notes, Warrants and, when issued, Warrant Shares for its account and not with a view toward, or for sale in connection with, any distribution thereof in violation of securities or "blue sky" law of any state, or with any present intention of distributing or selling the New Notes, Warrants and, when issued, Warrant Shares in violation of the Securities Act. The Noteholder agrees not to reoffer or resell the New Notes, Warrants and, when issued, Warrant Shares except pursuant to an effective registration statement or an exemption from registration under the Securities Act.

(g) The Noteholder acknowledges and agrees for the benefit of the Issuer (including for the benefit of any person acting on behalf of the Issuer in connection with this Agreement and the transactions set forth herein, including, without limitation, Moelis & Company LLC, who is acting as a financial advisor to the Issuer (the "Financial Advisor") or any other advisor to the Issuer) that (i) it is not relying upon, and has not relied upon, any statement, representation or warranty made by the Financial Advisor, any of its Affiliates or any of its or their control persons, officers, directors or employees, in making the exchange of the Exchanged Notes or decision to exchange the Exchanged Notes, (ii) the Financial Advisor is in possession of information about the Issuer (including material non-public information) that may impact the value of the Existing Notes and/or the New Notes, Warrants and, when issued, Warrant Shares and (iii) none of the Financial Advisor, any of its Affiliates or any of its or their control persons, officers, directors or employees shall be liable with respect to any transaction in connection with its exchange of the Exchanged Notes (including the Exchange); *provided, however,* that in no event shall any waivers, discharges, and releases provided herein apply in respect of the Issuer, the Financial Advisor, or any other advisor to the Issuer's fraud or willful misconduct.

(h) The Noteholder acknowledges that the Issuer does not intend to register the New Notes or Warrants, any offer or sale thereof or the Exchange under the Securities Act or the Exchange Act or securities or "blue sky" laws of any state.

(i) The Noteholder acknowledges and agrees for the benefit of the Issuer and the Financial Advisor that (i) the Noteholder has been furnished with all materials it considers relevant to making an investment decision to enter into the Exchange and has had the opportunity to review the Issuer's filings and submissions with the U.S. Securities and Exchange Commission (the "SEC"), including, without limitation, all information filed or furnished pursuant to the Exchange Act, (ii) the Issuer is in possession of information about the Issuer

(including material non-public information) that may impact the value of the Existing Notes and/or the New Notes, Warrants and, when issued, Warrant Shares, and may not be included in the information available to the Noteholder, (iii) notwithstanding any such informational disparity, the Noteholder has had a full opportunity to ask questions of and receive answers from the Issuer or any person or persons acting on behalf of the Issuer concerning the Issuer, its business, operations, financial performance, financial condition and prospects and the terms and conditions of the Exchange, has independently evaluated the risks and merits regarding the transactions contemplated by this Agreement (including, for the avoidance of doubt, with respect to the Exchange and the New Notes, Warrants and, when issued, Warrant Shares) and wishes to enter into this Agreement and consummate the transactions contemplated hereby in accordance with its terms, including the Exchange, (iv) the Noteholder has had a sufficient amount of time to consider whether to participate in the Exchange and neither the Issuer nor any of its representatives has placed any pressure on the Noteholder to respond to the opportunity to participate in the Exchange, (v) neither the Issuer nor any other person acting on behalf of the Issuer, including, without limitation, any financial advisor of any of the foregoing (including the Financial Advisor), is acting as a fiduciary, financial or investment advisor to the Noteholder, or has made or is making any representation or warranty to the Noteholder, whether express or implied, of any kind or character (including, without limitation, as to the accuracy or completeness of any information, the creditworthiness of the Issuer or the transactions contemplated by this Agreement), and (vi) the Noteholder is not relying upon, nor has relied upon, any statement, advice (whether legal, regulatory, tax, credit, accounting, business, financial or other), representation or warranty made by the Issuer or any other person regarding the transactions contemplated by this Agreement or otherwise, except, in the case of clauses (v) and (vi), for the representations and warranties expressly made by the Issuer in Section 3. The Noteholder has such knowledge and experience in financial and business matters as to be capable of independently evaluating the merits and risks of its prospective investment in the New Notes, Warrants and, when issued, Warrant Shares; has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment; acknowledges that investment in the New Notes, Warrants and, when issued, Warrant Shares involves a high degree of risk; has, independently and without reliance upon the Issuer or the Financial Advisor made its own analysis and decision to participate in the Exchange on the terms and conditions set forth in this Agreement; has been furnished with or has had full access to all the information that it considers necessary or appropriate to make an informed investment decision with respect to the Exchange; and was given a meaningful opportunity to negotiate the terms of the Exchange.

(j) The Noteholder acknowledges and agrees for the benefit of the Issuer and the Financial Advisor that the Noteholder has (i) had the opportunity to consult with its respective legal, regulatory, tax, credit, accounting, business and financial advisors to be able to evaluate the risks involved in the Exchange and to make an informed investment decision with respect to the Exchange and (ii) made its own independent assessment, to its satisfaction, concerning any and all legal, regulatory, tax, credit, accounting, business and financial considerations with respect to the Issuer, the Existing Notes and the New Notes, the Warrants and the Warrant Shares in connection with its acquisition of the New Notes, the Warrants and the Warrant Shares contemplated hereby, including, without limitation, whether it will result in any adverse tax consequences to the Noteholder.

(k) The Noteholder is not and will not be a party to any agreement, arrangement or understanding with any individual, corporation, company, association, partnership, limited liability company, joint venture, trust or unincorporated organization, or a government or any agency or political subdivision thereof, which could result in the Noteholder having any obligation or liability for any brokerage fees, commissions, underwriting discounts or other similar fees or expenses relating to the Exchange.

(l) The sole consideration paid, given or otherwise provided to the Issuer for the New Notes and the Warrants consists of the Exchanged Notes delivered to the Issuer pursuant to the terms hereof. The Noteholder expressly acknowledges that upon issuance and delivery, as applicable, of the New Notes, the Warrants, and upon exercise of such Warrants in accordance with their terms, the Warrant Shares underlying such Warrants, in each case, subject to and consistent with the terms herein (including, without limitation, the Issuer satisfying its obligations set forth in Section 4(f)), by the Issuer, the obligations of the Issuer to the Noteholder in respect of the Exchanged Notes shall have been satisfied in full.

(m) The Noteholder is not, nor has been at any time during the consecutive three (3) month period preceding the date hereof, a director, officer or "affiliate" within the meaning of Rule 144 promulgated under the Securities Act (solely for purposes of this clause (m), each an "Affiliate") of the Issuer. A period of at least one (1) year (calculated in the manner provided in Rule 144(d) under the Securities Act) has lapsed since the Exchanged Notes were acquired from the Issuer or from a person known by any of the Noteholder to be an Affiliate of the Issuer.

(n) The Noteholder has not, directly or indirectly, and no person acting on behalf of or pursuant to any understanding with them has, disclosed to a third party (except for its agents and investment manager) any information regarding the Exchange nor engaged in any transactions in the securities of the Issuer (including, without limitation, any Short Sales (as defined below) involving any of the Issuer's securities) from the

time that investment professionals affiliated with the Noteholder (i.e., persons other than compliance personnel) were wall-crossed by either the Issuer or the Financial Advisor regarding the Exchange or this Agreement to the date of this Agreement. The Noteholder covenants that neither it nor any person acting on its behalf or pursuant to any understanding with it shall disclose to a third party (except for its agents and investment manager) any information regarding the Exchange or engage, directly or indirectly, in any transactions in the securities of the Issuer (including Short Sales) prior to the time the Exchange is publicly disclosed by the Issuer. "Short Sales" include all "short sales" as defined in Rule 200 of Regulation SHO promulgated under the Exchange Act, and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, derivatives and similar arrangements (including on a total return basis), and sales and other transactions through non-U.S. broker-dealers or foreign regulated brokers.

(o) The Noteholder expressly acknowledges that it is not participating in the Exchange on the basis of any general solicitation or general advertising within the meaning of Rule 502(c) of the Securities Act, including, but not limited to (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, or (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

Section 3. *Representations and Warranties of the Issuer*. The Issuer hereby represents and warrants to the Noteholder that the following statements are true and correct as of the date hereof:

(a) The Issuer is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and has all necessary corporate or similar power and authority to execute and deliver this Agreement, perform its obligations hereunder and consummate the Exchange. The execution and delivery of this Agreement by the Issuer and the performance of its obligations hereunder have been duly authorized by all necessary corporate or similar action on the part of the Issuer. No other votes, written consents, actions or proceedings by or on behalf of the Issuer are necessary to authorize this Agreement or the performance of its obligations hereunder.

(b) This Agreement has been duly and validly executed and delivered by the Issuer. This Agreement constitutes the valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, except as may be limited by (i) the effects of bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors generally or (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) The execution, delivery or performance of this Agreement by the Issuer, the Issuer's compliance with the provisions hereof and the consummation of the Exchange and the issuance of the Warrant Shares upon exercise of the Warrants will not (with or without notice or lapse of time, or both): (i) violate, conflict with or result in a breach of or default under any provision of the organizational or governing documents of the Issuer; (ii) violate, conflict with or result in a breach of or default under any law, regulation or, with notice, stock exchange rule, or governmental or judicial decree, injunction or order applicable to the Issuer; or (iii) require any consent or approval under, violate, conflict with or result in any breach of, or constitute a default under, or result in termination or give to others any right of termination, amendment, acceleration or cancellation of any contract, agreement, arrangement or understanding that is binding on the Issuer or on any of its properties or assets (including, without limitation, any indentures, credit facilities or agreements under which the Issuer has issued debt securities or has outstanding indebtedness), except, in the case of clause (ii) and (iii) above, where not reasonably likely to have a material adverse effect on the ability of the Issuer to perform its obligations under this Agreement or the transactions contemplated hereby.

(d) The New Notes and Warrants to be issued and, when issued, the Warrant Shares, by the Issuer to the Noteholder under this Agreement pursuant to the New Indenture and Warrant, as applicable will, upon issuance thereof, have been duly authorized for issuance pursuant to this Agreement and the New Indenture and Warrant, as applicable and, upon issuance thereof, will have been duly executed by the Issuer and, when authenticated in the manner to be provided for in the New Indenture and Warrant, as applicable and delivered in exchange for the Exchanged Notes, will constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as may be limited by (i) the effects of bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and will be entitled to the benefits of the New Indenture and Warrant, as applicable.

(e) The New Indenture, the Warrants, the Collateral Documents and each related agreement to be entered into on the date hereof in connection with the issuance of the New Notes, the Warrants and, when issued, the Warrant Shares pursuant to the New Indenture and the Warrants, as applicable, has been duly

authorized by the Issuer and will constitute a valid and binding agreement of the Issuer, enforceable against the Issuer in accordance with its terms, except as may be limited by (i) the effects of bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(f) The Warrant Shares have been duly authorized and reserved by the Issuer for issuance upon exercise of the Warrants and, when issued upon exercise of the Warrants in accordance with the terms of the Warrants, will be validly issued, fully paid and non-assessable, and the issuance of such Warrant Shares will not be subject to any preemptive or similar rights that have not been irrevocably waived or validly excluded.

(g) Assuming the accuracy of the representations and warranties of the Noteholder contained in Section 2 hereof and the Noteholder's compliance with Section 4(a) hereof, the issuance of the New Notes and guarantees thereof (if any), Warrants and, when issued, any un-registered Warrant Shares will be issued pursuant to and in compliance with an applicable exemption or exemptions from registration under the Securities Act.

(h) The execution, delivery and performance by the Issuer of this Agreement, the New Indenture, the Collateral Documents, the consummation of the transactions contemplated hereby (including, for the avoidance of doubt, the consummation of the Exchange) and the issuance of the Warrant Shares upon exercise of the Warrants in accordance with their terms, do not and will not require any registration or filing with, the consent or approval of, notice to, or any other action with respect to (with or without due notice, lapse of time, or both), any governmental authority, other than (i) Current Reports on Form 8-K filed or furnished by the Issuer with respect to the Exchange, (ii) such as have been made or obtained and are in full force and effect, (iii) filings of Uniform Commercial Code financing statements and other registrations or filings in connection with the perfection of security interests granted pursuant to any collateral documents securing the New Notes or otherwise relating to the transactions contemplated herein, (iv) filings with the United States Patent and Trademark Office and the United States Copyright Office, (v) any registration, filings or notices that are required for compliance with any applicable securities or "blue sky" laws of any state and (vi) such registrations, filings, consents, approvals, notices or other actions that, if not obtained or made, would not reasonably be likely to have a material adverse effect on the ability of the Issuer to perform its obligations under this Agreement or the transactions contemplated hereby.

(i) The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and listed on The Nasdaq Global Select Market, and the Issuer has taken no action designed to, or which, to the knowledge of the Issuer, is reasonably likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from The Nasdaq Global Select Market, nor has the Issuer received as of the date of this Agreement any notification or any other relevant evidence which indicates that the SEC or The Nasdaq Global Select Market is contemplating terminating such registration or listing.

(j) There is no action, lawsuit, arbitration, claim or proceeding pending or, to the knowledge of the Issuer, threatened, against the Issuer, except any of the foregoing that is not reasonably likely to have a material adverse effect on the ability of the Issuer to perform its obligations under this Agreement or the transactions contemplated hereby.

(k) As of the date of this Agreement, the reports filed by the Issuer with the SEC since December 31, 2022 do not, (i) when taken as a whole, include an untrue statement of material fact or (2) omit to state a material fact necessary in order to make the statements therein, when taken as a whole and in the light of the circumstances under which they were made, not misleading.

Section 4. *Covenants.*

(a) The Noteholder covenants and agrees that it will not sell any of the New Notes or Warrants or, when issued, Warrant Shares to be received by it pursuant to this Agreement unless such sale has been registered under the Securities Act and applicable state securities laws or an exemption from registration is available for such sale.

(b) Issuer will be responsible for payment of any transfer, documentary, court, stamp or similar taxes ("Transfer Taxes") imposed with respect to the exchange of the Exchanged Notes, except (i) to the extent attributable to the Noteholder instructing the Issuer to register New Notes or Warrants in the name of a person other than the Noteholder, in which case the Noteholder will be responsible for the payment of any Transfer Taxes imposed with respect to the exchange of the Exchanged Notes or (ii) to the extent imposed for any reason other than the transfer of the Exchanged Notes to the Issuer in exchange for the New Notes.

(c) The Issuer shall be entitled to deduct and withhold such amounts as are required to be deducted and withheld under applicable U.S. federal, state, local and foreign tax law (including U.S. federal backup withholding) with respect to the transactions contemplated by this Agreement. To the extent any amounts are so deducted and withheld and paid over to the applicable taxing authority, such amounts shall be treated for all purposes of this Agreement as having been made to the person in respect of whom such deduction and withholding was made.

(d) The Issuer covenants and agrees that, on the date hereof, it shall pay (or cause to be paid) all then-outstanding reasonable and documented fees and expenses of Davis Polk & Wardell LLP in connection with the Exchange and other similar transactions entered into on the date of this Agreement.

(e) The Noteholder covenants and agrees that it shall, upon request, promptly execute and deliver any additional documents reasonably deemed by Issuer to be necessary or desirable to complete the Exchange; *provided* that such additional documents are consistent with the terms hereof and do not include any additional liabilities or obligations of the Noteholder without the Noteholder's prior written consent.

(f) The Issuer covenants and agrees that, upon issuance of the Warrant Shares, it shall promptly apply to cause the aggregate number of Warrant Shares to be approved for listing on The Nasdaq Global Select Market, subject to official notice of issuance.

(g) On or before 9:30 a.m., New York City time, on the business day after the date hereof, the Issuer shall disclose all material terms of this Agreement, the New Indenture, the New Notes, the Warrants and the Issuer's financial information for the year ended December 31, 2023, if any, previously provided to the Noteholder through the distribution of a press release via a widely circulated news or wire service or the filing of a Current Report on Form 8-K with the SEC. The Issuer agrees that none of the information conveyed to the Noteholder in connection with the Exchange or otherwise will constitute material nonpublic information of the Issuer or its securities upon distribution of such press release and/or the filing of such Current Report on Form 8-K.

(h) The Issuer agrees that it shall execute and deliver, or cause to be executed and delivered, such other documents, instruments and agreements, and take such other actions, including giving any further assurances, as the Noteholder may reasonably request in connection with the transactions contemplated hereby.

Section 5. *Settlement; Cancellation of Exchanged Notes*. On the date hereof, the Parties shall consummate the Exchange in the following manner:

(a) the Noteholder shall deliver or cause to be delivered to the Issuer (i) all of the Exchanged Notes set forth on Schedule I hereto opposite the Noteholder's name for acceptance and cancellation via DTC and (ii) a properly completed and executed IRS Form W-9 or W-8, as applicable.

(b) promptly following receipt of all of the Exchanged Notes, the Issuer shall (i) deliver to the Existing Trustee an Authentication, Delivery and Cancellation Order substantially in the form set forth on Exhibit C hereto, (ii) issue to the Noteholder via DTC (A) pursuant to the New Indenture, New Notes equal to the amount set forth on Schedule I hereto opposite the Noteholder's name and (B) the number of Warrants set forth on Schedule I hereto opposite the Noteholder's name, in each case, by delivering, or causing to be delivered, to the Noteholder, through its custodian(s) as specified on Schedule I hereto opposite the Noteholder's name and (iii) transfer to the Noteholder accrued and unpaid interest on the Noteholder's Exchanged Notes to (but excluding) the date of this Agreement pursuant to the Noteholder 's wire instructions previously provided to the Issuer.

Section 6. *Conditions*. The obligations of the Noteholder to exchange its Existing Notes for the New Notes and the Warrants shall be subject to the following conditions:

(a) The Noteholder shall have received executed copies of this Agreement, the New Indenture, the Warrant and the Collateral Documents.

(b) Wachtell, Lipton, Rosen & Katz, counsel to the Issuer, shall have furnished to the Noteholder, as of the date hereof, a customary written opinion concerning certain matters pertaining to the Issuer, in form and substance reasonably satisfactory to the Noteholder.

(c) The Notes Collateral Agent shall have received an appropriately completed copy, duly authorized for filing by the appropriate person in Delaware, of a UCC-1 financing statement naming the Issuer as a debtor and the Notes Collateral Agent as the secured party; and

(d) The Noteholder shall have received such other documents, instruments and agreements as the Noteholder may reasonably request in connection with the transactions contemplated hereby.

Section 7. *Further Assurances*. Subject to the terms and conditions set forth in this Agreement, each of the Parties hereby covenants and agrees to use its reasonable best efforts, as expeditiously as possible and during the term of this Agreement, to perform its respective obligations under this Agreement and take such actions as may be reasonably necessary under this Agreement to consummate the Exchange, including the obtaining of all necessary, proper or advisable consents, approvals or waivers from third parties and the execution and delivery of any additional instruments reasonably necessary to consummate the Exchange contemplated hereby.

Section 8. *Tax Matters*. The Parties agree that (i) the New Notes are treated as debt for U.S. federal income tax purposes that is not governed by the rules set out in Treasury Regulations Section 1.1275-4, and (ii) the Issuer shall be entitled to determine in good faith the "issue price" (within the meaning of Section 108(e)(10) of the Code) of the New Notes in accordance with Section 1273 of the Code, the Treasury Regulations promulgated thereunder and any other applicable law; *provided* that, if the Issuer determines in good faith that each of the New Notes and the Warrants are "traded on an established market" within the meaning of Treasury Regulations Section 1.1273-2(f), then the Issuer shall determine such issue price in accordance with Treasury Regulations Section 1.1273-2(b) and Section 1273(c)(2) of the Code (collectively, the "Tax Determinations"). Except to the extent otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code, the Parties shall not take any position inconsistent with any Tax Determination on any tax return, in any tax proceeding or otherwise.

Section 9. *Survival*.

(a) This Agreement and the obligations of the Parties hereunder will terminate upon the earliest of (A) the mutual written consent of the Parties and (B) the consummation of the Exchange.

(b) Notwithstanding anything herein to the contrary, no termination of this Agreement shall relieve or otherwise limit the liability of any Party for any breach of this Agreement occurring prior to such termination. Notwithstanding Section 9(a), this Section 9(a), Section 2, Section 3 Section 8 and Section 13 shall survive termination of this Agreement.

Section 10. *Effectiveness*. This Agreement shall not become effective and binding on a Party unless and until a counterpart signature page to this Agreement has been executed and delivered by such Party.

Section 11. *Waivers and Amendments*. This Agreement may not be changed, amended, terminated, augmented, rescinded or discharged (other than in accordance with its terms), in whole or in part, except by a writing executed by each of the Parties hereto. Any failure of a Party to comply with any obligation, covenant, agreement or condition in this Agreement may be waived by the Party or Parties entitled to the benefits thereof only by a written instrument signed by the Party or Parties granting such waiver. No delay on the part of any Party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof; nor will any waiver on the part of any party to this Agreement of any right, power or privilege under this Agreement operate as a waiver of any other right, power or privilege under this Agreement, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege under this Agreement.

Section 12. *Release*. The Noteholder hereby waives and releases, to the fullest extent permitted by law, any and all claims and causes of action it has or may have against the Issuer and its Affiliates, officers, directors, employees, agents and representatives based upon, relating to or arising out of nondisclosure of any information in connection with the exchange of the Exchanged Notes pursuant to the terms hereof; *provided, however*, that in no event shall any waivers, discharges and releases provided herein apply in respect of Issuer's fraud or willful misconduct. The Noteholder acknowledges that none of the Issuer or any of its directors, officers, subsidiaries or Affiliates has made or makes any representations or warranties, whether express or implied, of any kind except as expressly set forth in this Agreement.

Section 13. *Miscellaneous.*

(a) *Notices*. Any notices or other communications required or permitted under, or otherwise given in connection with, this Agreement will be in writing and will be deemed to have been duly given (i)when delivered or sent if delivered in person by courier service or messenger or sent by email or (ii)on the next business day if transmitted by international overnight courier, in each case as follows:

If to the Issuer, addressed to:

The RealReal, Inc.
55 Francisco Street Suite 150
San Francisco, CA 94133
Attention: Todd Suko, Chief Legal Officer and Secretary
E-mail: todd.suko@therealreal.com

with a copy to (for informational purposes only):

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Michael S. Benn and Benjamin S. Arfa
E-mail: MSBenn@wlrk.com and BSArfa@wlrk.com

If to the Noteholder, to the address on the signature page to this Agreement.

(b) *Governing Law*. This Agreement will be governed by, and construed in accordance with, the laws of the State of New York, without regard to laws that may be applicable under conflicts of laws principles (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

(c) *Venue*. By execution and delivery of this Agreement, each of the Parties irrevocably and unconditionally agrees that any legal action, suit, or proceeding with respect to any matter under or arising out of or in connection with this Agreement, or for recognition or enforcement of any judgment rendered in any such action, suit, or proceeding, shall be brought in a court of competent jurisdiction located in the City of New York. Each Party irrevocably waives any objection it may have to the venue of any action, suit, or proceeding brought in such court or to the convenience of the forum.

(d) *Personal Jurisdiction*. By execution and delivery of this Agreement, each of the Parties irrevocably and unconditionally submits to the personal jurisdiction of a court of competent jurisdiction located in the City of New York for purposes of any action, suit or proceeding arising out of or relating to this Agreement.

(e) *Waiver of Jury Trial*. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i)NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY OR NOTEHOLDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY OR NOTEHOLDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (iii) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13(e).

(f) *Remedies*. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties will be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of appropriate jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity. Except as otherwise provided in this Agreement, any and all remedies in this Agreement expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

(g) *Severability*. If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

(h) *Assignment*. This Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns. No Party shall assign this Agreement or any rights or obligations hereunder or, in the case of the Noteholder, any of its Exchanged Notes, without the prior written consent of the Issuer (in the case of assignment by the Noteholder) or the Noteholder (in the case of assignment by the Issuer). Any assignment in violation of the foregoing shall be null and void *ab initio*.

(i) *No Third-Party Beneficiaries*. Unless expressly stated or referred to herein, this Agreement shall be solely for the benefit of the Parties and no other person shall be a third-party beneficiary of this Agreement. Notwithstanding anything in this Agreement to the contrary, any internal or outside counsel to the Issuer may rely on any and all of the representations, warranties, covenants and agreements contained in this Agreement solely in connection with the issuance of legal opinions relating to the Exchange.

(j) *Entire Agreement*. This Agreement, together with all exhibits attached hereto, constitutes the entire understanding and agreement among the Parties with regard to the subject matter hereof and supersedes all prior agreements among the Parties with respect thereto.

(k) *Counterparts*. This Agreement may be executed in one or more counterparts (which may include counterparts delivered by any standard form of telecommunication), and by the different Parties in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement. Facsimile copies or "PDF" or similar electronic data format copies of signatures shall constitute original signatures for all purposes of this Agreement and any enforcement hereof.

(l) *Headings*. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

(m) *Interpretation*. This Agreement is the product of negotiations among the Parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof.

[*Signature pages follow*]

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the date first above set forth.

THE REALREAL, INC.

By: _____

Name:

Title:

[*Signature page to Exchange Agreement*]

Accepted and agreed as of the date first written above:

[●]

By ____
Name:
Title:

Notice Information:

[●]

[*Signature page to Exchange Agreement*]

SCHEDULE I

Existing 2025 Notes:

Noteholder	Custodian (DTC Participant)	Beneficiary Bank DTC #	Principal Amount of Exchanged Notes to be Delivered	Principal Amount of New Notes to be Issued	Warrants to be Issued	Amount of Accrued and Unpaid Interest to be Paid

Existing 2028 Notes:

Noteholder	Custodian (DTC Participant)	Beneficiary Bank DTC #	Principal Amount of Exchanged Notes to be Delivered	Principal Amount of New Notes to be Issued	Warrants to be Issued	Amount of Accrued and Unpaid Interest to be Paid

* The Noteholder acknowledges and agrees that, if the Noteholder receives a regularly scheduled interest payment on March 1, 2024 on account of its holdings of the Exchanged Notes, the Noteholder shall promptly return such interest payment to the Company.

Agreement Regarding Confidentiality and Publicity

Except as may be required by applicable law, subpoena, court order, legal process, rule, regulation or governmental or regulatory authority or self-regulatory body (including any stock exchange rule) (collectively, "Law"), the Issuer shall not disclose the name or holdings information of the Noteholder set forth in this Schedule I in any press release, public filing, public announcement or other public communications regarding the transactions contemplated by this Agreement without the Noteholder prior written consent, such consent not to be unreasonably withheld conditioned or delayed (a "Restricted Disclosure"). In the event of a Restricted Disclosure required by Law, the Issuer will, if practical and except as may be restricted by Law, provide the Noteholder with a reasonable opportunity to review such Restricted Disclosure before it is made. For the avoidance of doubt, nothing shall restrict the Issuer from disclosing the aggregate amount of Existing Notes that is subject to this Agreement.

Exhibit 10.41

THE REALREAL, INC.

as Company

and the Guarantors party hereto from time to time

4.25%/8.75% PIK/Cash Senior Secured Notes due 2029

INDENTURE

Dated as of February 29, 2024

---

and

GLAS TRUST COMPANY LLC

as Trustee and Notes Collateral Agent

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EXHIBIT INDEX

INDENTURE, dated as of February 29, 2024, among THE REALREAL, INC., a Delaware corporation (together with its successors and assigns, the "Company"), the Guarantors (as defined below) party hereto from time to time and GLAS TRUST COMPANY LLC, a New Hampshire limited liability company, as Trustee (in such capacity, together with its successors and assigns, the "Trustee") and collateral agent (in such capacity, together with its successors and assigns, the "Notes Collateral Agent").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the holders of (i) $135,000,000 aggregate principal amount of the Company's 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029 issued on the date hereof (the "Initial Notes") and (ii) PIK Notes (each as defined below) issued from time to time (together with the Initial Notes, the "Notes"):

ARTICLE I

DEFINITIONS

SECTION 1.01 Definitions.

"2025 Notes" means the Company's 3.00% Convertible Senior Notes due 2025, issued pursuant to that certain Indenture, dated as of June 15, 2020 (as amended, amended and restated, supplemented or otherwise modified from time to time), by and between the Company and U.S. Bank National Association, as trustee.

"2028 Notes" means the Company's 1.00% Convertible Senior Notes due 2028, issued pursuant to that certain Indenture, dated as of March 8, 2021 (as amended, amended and restated, supplemented or otherwise modified from time to time), by and between the Company and U.S. Bank National Association, as trustee.

"Acquired Indebtedness" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Subsidiary of such specified Person and not incurred in contemplation of such merger, consolidation or amalgamation, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person to the extent such Indebtedness and Lien were not created in contemplation of such acquisition.

Acquired Indebtedness will be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Subsidiary and, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of such assets.

"Additional Refinancing Amount" means, in connection with the Incurrence of any Refinancing Indebtedness, the aggregate principal amount of additional Indebtedness, Disqualified Stock or Preferred Stock Incurred to pay accrued and unpaid interest, premiums (including tender premiums), expenses, defeasance costs and fees in respect thereof.

"Affected Financial Institution" means (a) any EEA Financial Institution, or (b) any UK Financial Institution.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Applicable Premium" means, with respect to any Note on any applicable redemption date, as determined by the Company, the greater of:

(1) 1% of the then outstanding principal amount of the Note; and

(2) the excess of:

(a) the present value at such redemption date of (i) the redemption price of the Note, at March 1, 2025 (such redemption price being set forth in Paragraph 5 of the Note) *plus* (ii) all required interest payments due on the Note through March 1, 2025 (excluding accrued but unpaid interest to the date of redemption), computed using a discount rate equal to the Treasury Rate as of such redemption date *plus* 50 basis points; over

(b) the then outstanding principal amount of the Note.

"Asset Sale" means:

(1) the sale, conveyance, transfer or other disposition (whether in a single transaction or a series of related transactions) of property or assets (including by way of Sale/Leaseback Transactions) outside the ordinary course of business of the Company or any Subsidiary (each referred to in this definition as a "disposition"); or

(2) the issuance or sale of Equity Interests (other than directors' qualifying shares and shares issued to foreign nationals or other third parties to the extent required by applicable law) of any Subsidiary (other than to the Company or a Guarantor (or, with respect to Equity Interests that do not constitute Collateral, another Subsidiary)) (whether in a single transaction or a series of related transactions),

in each case other than:

(a) a disposition of Cash Equivalents or Investment Grade Securities or obsolete, damaged or worn out property or equipment in the ordinary course of business;

(b) the disposition of all or substantially all of the assets of the Company or any Guarantor in a manner permitted pursuant to Section 5.01 or any disposition that constitutes a Change of Control;

(c) any Restricted Payment or Permitted Investment that is permitted to be made, and is made, under Section 4.04;

(d) any disposition of assets of the Company or any Subsidiary or issuance or sale of Equity Interests of any Subsidiary, which assets or Equity Interests so disposed or issued in any single transaction or series of related transactions have a Fair Market Value (as determined in good faith by the Company) of less than $500,000 individually; *provided* that the aggregate Fair Market Value of such dispositions shall not exceed $2 million in the aggregate during any calendar year;

(e) any disposition of property or assets, or the issuance of securities, by the Company or a Subsidiary to the Company or a Subsidiary; *provided* that if transferor is the Company or a Guarantor and the transferee is not the Company or a Guarantor, (i) the Investment arising from such disposition or issuance shall be permitted in accordance with Section 4.04 or (ii) the aggregate Fair Market Value of such dispositions and issuances shall not exceed $1,000,000;

(f) [reserved];

(g) foreclosure or any similar action with respect to any property or other asset of the Company or any of the Subsidiaries;

(h) [reserved];

(i) the lease, assignment or sublease of any real or personal property in the ordinary course of business;

(j) any sale of inventory or other assets in the ordinary course of business;

(k) any grant in the ordinary course of business of any license of patents, industrial designs, trademarks, know-how or any other intellectual property;

(l) any swap of assets, or lease, assignment or sublease of any real or personal property, in exchange for services (including in connection with any outsourcing arrangements) of comparable or greater value or usefulness to the business of the Company and the Subsidiaries as a whole, as determined in good faith by the Company;

(m) a transfer of assets of the type specified in the definition of "Securitization Financing" (or a fractional undivided interest therein), including by a Securitization Subsidiary in a Qualified Securitization Financing;

(n) [reserved];

(o) dispositions in connection with Permitted Liens;

(p) any disposition of Capital Stock of a Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Company or a Subsidiary) from whom such Subsidiary was acquired or from whom such Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(q) [reserved];

(r) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements; and

(s) any surrender, expiration or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bankruptcy Code" means Title 11 of the United States Code, as amended.

"Bankruptcy Law" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

"Board of Directors" means, as to any Person, the board of directors or managers, as applicable, of such Person or any direct or indirect parent of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner of such Person) or any duly authorized committee thereof.

"Business Day" means a day other than a Saturday, Sunday or other day on which banking institutions are authorized or required by law to close in New York City or the place of payment.

"Capital Stock" means:

(1) in the case of a corporation, corporate stock or shares;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Capitalized Lease Obligation" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP (with GAAP calculated, for purposes of this definition, as in effect on December 31, 2023); *provided,* that operating lease liabilities and associated expenses recorded by the Company and the Subsidiaries pursuant to ASU 2016-02, *Leases*, shall not be treated as Indebtedness and shall not be included in Consolidated Interest Expense, Consolidated Interest Income or Fixed Charges, unless the lease liabilities would have been treated as Capitalized Lease Obligations under GAAP as in effect prior to the adoption of ASU 2016-02, *Leases* (in which case such lease liabilities and associated expenses shall be treated as Capitalized Lease Obligations, and the interest component of such Capitalized Lease Obligation shall be included in Consolidated Interest Expense, Consolidated Interest Income and Fixed Charges); *provided, further,* that obligations of the Company or the Subsidiaries, or of a special purpose or other entity not consolidated with the Company and the Subsidiaries, either existing on the Issue Date or created thereafter that (a) initially were not included on the consolidated balance sheet of the Company as capital lease obligations and were subsequently recharacterized as capital lease obligations or, in the case of such a special purpose or other entity becoming consolidated with the Company and the Subsidiaries were required to be characterized as capital lease obligations upon such consideration, in either case, due to a change in accounting treatment or otherwise, or (b) did not exist on the Issue Date and were required to be characterized as capital lease obligations but would not have been required to be treated as capital lease obligations on December 31, 2023 had they existed at that time, shall for all purposes not be treated as Capitalized Lease Obligations or Indebtedness.

"Cash Equivalents" means:

(1) U.S. dollars, pounds sterling, euros, Canadian dollars, the national currency of any member state in the European Union or such other local currencies held by the Company or a Subsidiary from time to time in the ordinary course of business;

(2) securities issued or directly and fully guaranteed or insured by the U.S. government, Canada, Switzerland or any country that is a member of the European Union or any agency or instrumentality thereof in each case maturing not more than two years from the date of acquisition;

(3) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances, in each case with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of $250 million and whose long-term debt is rated "A" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency);

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper issued by a corporation (other than an Affiliate of the Company) rated at least "A-1" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within one year after the date of acquisition;

(6) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof having at least a rating of Aa3 from Moody's or a rating of AA- from S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition;

(7) Indebtedness issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition;

(8) investment funds investing at least 95% of their assets in securities of the types described in clauses (1) through (7) above; and

(9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above and commonly used by corporations for cash management purposes in any jurisdiction outside the United States of America to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction.

"cash management services" means cash management services for collections, treasury management services (including controlled disbursement, overdraft, automated clearing house fund transfer services, return items and interstate depository network services), any demand deposit, payroll, trust or operating account relationships, commercial credit cards, merchant card, purchase or debit cards, non-card e-payables services, and other cash management services, including electronic funds transfer services, lockbox services, stop payment services and wire transfer services.

"CFC" means a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"Change of Control" means the occurrence of any of the following:

(1) the sale, lease or transfer (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all the assets of the Company and its Subsidiaries, taken as a whole, to any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) other than to the Company or any of its Subsidiaries that is a Guarantor;

(2) the Company becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) of the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), in a single transaction or in a related series of transactions, by way of merger, consolidation,

amalgamation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of more than 50% of the total voting power of the Voting Stock of the Company, in each case, other than an acquisition where the holders of the voting stock of the Company as of immediately prior to such acquisition hold 50% or more of the Voting Stock of the ultimate parent of the Company, the Company or the successor thereto immediately after such acquisition (provided no holder of the voting stock of the Company as of immediately prior to such acquisition owns, directly or indirectly, more than 50% of the voting power of the Voting Stock of the Company immediately after such acquisition);

(3) the adoption or approval by the stockholders of the Company of a plan or proposal for the liquidation or dissolution of the Company; or

(4) the Company's Capital Stock ceases to be listed or quoted on any of The New York Stock Exchange, NYSE American, the Nasdaq Global Select Market or the Nasdaq Global Market (or any of their respective successors).

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means the property subject or purported to be subject to a Lien in favor of the Notes Collateral Agent, on behalf of itself, the Trustee and the holders of the Notes, under the Security Documents, and any other property, real or personal, tangible or intangible, now existing or hereafter acquired, that is subject to a Lien in favor of the Notes Collateral Agent, on behalf of itself, the Trustee and the holders, to secure the Obligations under the Notes, the Guarantees, this Indenture and the Security Documents.

"Consolidated Depreciation and Amortization Expense" means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of intangible assets and deferred financing fees and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, of such Person and its Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"Consolidated First Lien Leverage Ratio" means, with respect to any Person, at any date, the ratio of (i) the sum of the outstanding principal amount of (A) the Notes, (B) Qualified Securitization Financings and (C) First Lien Priority Indebtedness, in each case, of such Person and its Subsidiaries as of such date of calculation (determined on a consolidated basis in accordance with GAAP) to (ii) EBITDA of such Person for the four full fiscal quarters for which internal financial statements are available immediately preceding such date on which such additional Indebtedness is Incurred.

In the event that the Company or any Subsidiary Incurs, repays, repurchases or redeems any Indebtedness or issues, repurchases or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Consolidated First Lien Leverage Ratio is being calculated but concurrently with or prior to the event for which the calculation of the Consolidated First Lien Leverage Ratio is made (the "Consolidated First Lien Leverage Calculation Date"), then the Consolidated First Lien Leverage Ratio shall be calculated giving *pro forma* effect to such Incurrence, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock as if the same had occurred at the beginning of the applicable four-quarter period; *provided* that the Company may elect pursuant to an Officer's Certificate delivered to the Trustee (a copy of which the Company shall deliver to the holders), to treat all or any portion of the commitment under any Indebtedness as being Incurred at such time, in which case any subsequent Incurrence of Indebtedness under such commitment shall not be deemed, for purposes of this calculation, to be an Incurrence at such subsequent time.

To the extent the Company elects pursuant to an Officer's Certificate delivered to the Trustee to treat all or any portion of the commitment under any Indebtedness as being Incurred, the Company shall deem all or such portion of such commitment or such Indebtedness, as applicable, as having been Incurred and to be outstanding for purposes of calculating the Consolidated First Lien Leverage Ratio for

any period in which the Company makes any such election and for any subsequent period until such commitments or such Indebtedness, as applicable, are no longer outstanding or until the Company elects to withdraw such election.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business that the Company or any Subsidiary has made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Consolidated First Lien Leverage Calculation Date (each, for purposes of this definition, a "pro forma event") shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and discontinued operations (and the change of any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period; *provided* that, notwithstanding any classification of any Person, business, assets or operations as discontinued operations because a definitive agreement for the sale, transfer or other disposition in respect thereof has been entered into, the Company shall not make such computations on a *pro forma* basis for any such classification for any period until such sale, transfer or other disposition has been consummated. If since the beginning of such period any Person that subsequently became a Subsidiary or was merged with or into the Company or any Subsidiary since the beginning of such period shall have consummated any *pro forma* event that would have required adjustment pursuant to this definition, then the Consolidated Secured Net Leverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such *pro forma* event had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to any *pro forma* event, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Company.

If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Consolidated First Lien Leverage Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligation has a remaining term in excess of 12 months). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a Eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

For purposes of this definition, any amount in a currency other than U.S. dollars will be converted to U.S. dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

"Consolidated Interest Expense" means, with respect to any Person for any period, the sum, without duplication, of:

(1) consolidated interest expense of such Person and its Subsidiaries for such period, to the extent such expense was deducted in computing Consolidated Net Income (including the interest component of Capitalized Lease Obligations and net payments and receipts (if any) pursuant to interest rate Hedging Obligations, amortization of deferred financing fees and original issue discount, debt issuance costs, commissions, fees and expenses, expensing of any bridge, commitment or other financing fees and non-cash interest expense attributable to movement in mark to market valuation of Hedging Obligations or other derivatives (in each case permitted hereunder) under GAAP); *plus*

(2) consolidated capitalized interest of such Person and its Subsidiaries for such period, whether paid or accrued; *plus*

(3) commissions, discounts, yield and other fees and charges Incurred in connection with any Securitization Financing which are payable to Persons other than the Company and the Subsidiaries; *minus*

(4) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"Consolidated Net Income" means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Subsidiaries for such period, on a consolidated basis; *provided*, *however*, that:

(1) any net after-tax extraordinary, nonrecurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses or charges, any severance expenses, relocation expenses, restructuring expenses, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternate uses and fees, expenses or charges relating to facilities closing costs, acquisition integration costs, expenses or charges related to any issuance of Equity Interests, the issuance of the Warrants, the entry into any capped call or call spread or issuance of other warrants, Investment, acquisition, disposition, recapitalization or issuance, repayment, refinancing, amendment or modification of Indebtedness (in each case, whether or not successful), and any fees, expenses, charges or change in control payments related to the Transactions (including any costs relating to auditing prior periods, any transition-related expenses, and transaction expenses incurred before, on or after the Issue Date), in each case, shall be excluded;

(2) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person and such Subsidiaries and including, without limitation, the effects of adjustments to (A) Capitalized Lease Obligations or (B) any other deferrals of income) in amounts required or permitted by GAAP, resulting from the application of purchase accounting or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded;

(3) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period;

(4) any net after-tax income or loss from disposed, abandoned, transferred, closed or discontinued operations or fixed assets and any net after-tax gains or losses on disposal of disposed, abandoned, transferred, closed or discontinued operations or fixed assets shall be excluded; *provided*, that notwithstanding any classification of any Person, business, assets or operations as discontinued operations because a definitive agreement for the sale, transfer or other disposition in respect thereof has been entered into, such Person shall not exclude any such net after-tax income or loss or any such net after-tax gains or losses attributable thereto until such sale, transfer or other disposition has been consummated;

(5) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by management of the Company) shall be excluded;

(6) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to the early extinguishment of indebtedness, Hedging Obligations or other derivative instruments shall be excluded;

(7) (a) the Net Income for such period of any Person that is not a Subsidiary of such Person, or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or to the extent converted into cash) to the referent Person or a Subsidiary thereof in respect of such period and (b) the Net Income for such period shall include any dividend, distribution or other payment in cash (or to the extent converted into cash) received by the referent Person or a Subsidiary thereof from any Person in excess of, but without duplication of, the amounts included in subclause (a);

(8) [reserved];

(9) [reserved];

(10) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles and other fair value adjustments arising pursuant to GAAP shall be excluded;

(11) any non-cash expense realized or resulting from stock option plans or employee benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded;

(12) any (a) non-cash compensation charges, (b) costs and expenses after the Issue Date related to employment of terminated employees, or (c) costs or expenses realized in connection with or resulting from stock appreciation or similar rights, stock options or other rights existing on the Issue Date of officers, directors and employees, in each case of such Person or any Subsidiary, shall be excluded;

(13) accruals and reserves that are established or adjusted within 12 months after the Issue Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded;

(14) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded;

(15) (a) any currency translation gains and losses related to currency remeasurements of Indebtedness, and any net loss or gain resulting from hedging transactions for currency exchange risk, shall be excluded and (b) other long-term and/or non-current assets and liabilities (in each case as determined in accordance with GAAP), and any net loss or gain resulting from hedging transactions relating thereto (and in any case of this clause (b), including intercompany obligations and obligations with respect to pensions and other retirement benefits, and environment-related liabilities), shall in each case be excluded;

(16) (a) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded and (b) amounts in respect of which such Person has determined that there exists reasonable evidence that such amounts will in fact be reimbursed by insurance in respect of lost revenues or earnings in respect of liability or casualty events or business interruption shall be included (with a deduction for amounts actually received up to such estimated amount, to the extent included in Consolidated Net Income in a future period);

(17) non-cash charges for deferred tax asset valuation allowances shall be excluded; and

(18) facilities opening costs or project start-up costs (*provided*, that the aggregate exclusion for such costs shall not exceed $2.5 million in any four full fiscal quarter period).

"Consolidated Non-Cash Charges" means, with respect to any Person for any period, the non-cash expenses (other than Consolidated Depreciation and Amortization Expense) of such Person and its Subsidiaries reducing Consolidated Net Income of such Person for such period on a consolidated basis and otherwise determined in accordance with GAAP, *provided* that if any such non-cash expenses represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA in such future period to the extent paid, but excluding from this proviso, for the avoidance of doubt, amortization of a prepaid cash item that was paid in a prior period.

"Consolidated Taxes" means, with respect to any Person for any period, the provision for taxes based on income, profits or capital, including, without limitation, state, franchise and similar taxes, foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations).

"Consolidated Total Indebtedness" means, as of any date of determination, an amount equal to the sum (without duplication) of (1) the aggregate principal amount of all outstanding Indebtedness of the Company and the Subsidiaries (excluding any undrawn letters of credit) consisting of bankers' acceptances and Indebtedness for borrowed money or evidenced by bonds, notes or debentures, plus (2) the aggregate amount of all outstanding Disqualified Stock of the Company and the Subsidiaries and all Preferred Stock of Subsidiaries, with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences, in each case determined on a consolidated basis in accordance with GAAP.

"Contingent Obligations" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation; or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"Corporate Trust Office" means the designated office of the Trustee in the United States of America at which at any time its corporate trust business shall be administered, or such other address as the Trustee may designate from time to time by notice to the holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the holders and the Company).

"Custodian" means any receiver, trustee, assignee, liquidator, custodian, monitor or similar official under any Bankruptcy Law.

"DDA" means each checking, savings or other demand deposit account maintained by the Company or any Guarantor.

"Default" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"Derivative Instrument" with respect to a Person, means any contract, instrument or other right to receive payment or delivery of cash or other assets to which such Person or any Affiliate of such Person that is acting in concert with such Person in connection with such Person's investment in the Notes (other than a Screened Affiliate) is a party (whether or not requiring further performance by such Person), the value and/or cash flows of which (or any material portion thereof) are materially affected by the value and/or performance of the Notes and/or the creditworthiness of the Company and/or any one or more of the Guarantors (the "Performance References").

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person which, by its terms (or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event:

(1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale),

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock of such Person or any of its Subsidiaries, or

(3) is redeemable at the option of the holder thereof, in whole or in part (other than solely as a result of a change of control or asset sale), in each case prior to 91 days after the earlier of the maturity date of the Notes or the date the Notes are no longer outstanding; *provided*, *however*, that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; *provided*, *further*, *however*, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by such Person in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; *provided*, *further*, that any class of Capital Stock of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock shall not be deemed to be Disqualified Stock.

"Domestic Subsidiary" means a Subsidiary that is not a Foreign Subsidiary.

"EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Subsidiaries for such period *plus*, without duplication, to the extent the same was deducted in calculating Consolidated Net Income:

(1) Consolidated Taxes; *plus*

(2) Fixed Charges and costs of surety bonds in connection with financing activities; *plus*

(3) Consolidated Depreciation and Amortization Expense; *plus*

(4) Consolidated Non-Cash Charges; *plus*

(5) any expenses or charges (other than Consolidated Depreciation and Amortization Expense) related to any issuance of Equity Interests, the issuance of the Warrants, Investment, acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Indenture (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the Transactions and any Indebtedness Incurred under Section 4.03(b)(i) or Section 4.03(b)(xvii), (ii) any amendment or other modification of the Notes or other Indebtedness and (iii) commissions, discounts, yield and

other fees and charges (including any interest expense) related to any Qualified Securitization Financing; *plus*

(6) [reserved]; *plus*

(7) the amount of loss or discount on sale of assets to a Securitization Subsidiary in connection with a Qualified Securitization Financing; *plus*

(8) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Company or any Guarantor or net cash proceeds of an issuance of Equity Interests of the Company (other than Disqualified Stock); *plus*

(9) with respect to any joint venture that is not a Subsidiary and solely to the extent relating to any net income referred to in clause (7) of the definition of "Consolidated Net Income," an amount equal to the proportion of those items described in clauses (1) and (2) above relating to such joint venture corresponding to the Company's and the Subsidiaries' proportionate share of such joint venture's Consolidated Net Income (determined as if such joint venture were a Subsidiary); *plus*

(10) [reserved]; *plus*

(11) [reserved]; *plus*

(12) any costs or expenses related to environmental remediation, pension obligations or other post-employment benefit obligations; and

less, without duplication, to the extent the same increased Consolidated Net Income,

(13) non-cash items increasing Consolidated Net Income for such period (excluding the recognition of deferred revenue or any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that reduced EBITDA in any prior period and any items for which cash was received in a prior period); and

(14) any cash payments made during such period related to pension obligations or other post-employment benefit obligations.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Equity Interests" means Capital Stock and all warrants (excluding the Warrants), options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock and any capped call, call spread or warrant related thereto).

"Equity Offering" means any public or private sale after the Issue Date of common Capital Stock or Preferred Stock of the Company or any direct or indirect parent of the Company, as applicable (other than Disqualified Stock), other than:

(1) public offerings with respect to the Company's or such direct or indirect parent's common stock registered on Form S-4 or Form S-8; and

(2) issuances to any Subsidiary of the Company.

"Excess Proceeds Threshold Amount" means $5 million.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Exchange Agreement" means, collectively, the exchange agreements, each dated as of February 29, 2024, by and among the Company and the other parties thereto (as amended, amended and restated, supplemented or otherwise modified from time to time).

"Excluded Accounts" means, collectively (a) DDAs that are established solely for the purpose of, and are used exclusively for, funding payroll, payroll taxes, any other taxes required to be collected, remitted or withheld (including federal and state withholding taxes (including the employer's share thereof)) and other compensation and benefits to employees, (b) DDAs, commodity accounts and securities accounts the balances of which are comprised solely of cash, cash equivalents or other assets that the Company or any Subsidiary thereof holds in trust or as an escrow fiduciary for another Person which is not the Company or a Guarantor and (c) DDAs and securities accounts with an individual daily balance not exceeding $350,000; provided that the aggregate balance or value of all DDAs and all securities accounts excluded pursuant to this clause (c) does not exceed $2,000,000 in the aggregate at any time.

"Excluded Assets" has the meaning set forth in the Security Agreement.

"Excluded Subsidiary" means (a) each Subsidiary that is not a Wholly Owned Subsidiary (for so long as such Subsidiary remains a non-Wholly Owned Subsidiary), (b) each Subsidiary that is prohibited from guaranteeing the Notes by any requirement of law or that would require consent, approval, license or authorization of a governmental authority to guarantee the Notes (unless such consent, approval, license or authorization has been received), (c) each Subsidiary that is prohibited by any applicable contractual requirement from guaranteeing the Notes on the Issue Date or at the time such Subsidiary becomes a Subsidiary (to the extent not incurred in connection with becoming a Subsidiary and in each case for so long as such restriction or any replacement or renewal thereof is in effect), (d) (x) any Foreign Subsidiary and (y) any Domestic Subsidiary (i) that is a Subsidiary of a Foreign Subsidiary that is a CFC or (ii) that is a FSHCO, (e) any Securitization Subsidiary, (f) any Subsidiary that is not a Material Subsidiary and that taken together with all other Subsidiaries being excluded pursuant to this clause (f), as of the last day of the fiscal quarter of the Company most recently ended, did not have revenue in excess of 5.0% of the total revenues (including third party revenues but excluding intercompany revenues) of the Company and its Subsidiaries on a consolidated basis as of such date, (g) any Subsidiary of the Company if the provision of Collateral or a guarantee of the Guaranteed Obligations by such Subsidiary could reasonably be expected to result in material and adverse tax consequences to the Company or any Subsidiary, as determined in good faith by the Company and (h) any Subsidiary of the Company with respect to which the Company reasonably agrees in writing that the cost or other consequences (including tax consequences) of providing a guarantee is likely to be excessive in relation to the value to be afforded to the holders of the Notes thereby and which does not guarantee any First Lien Priority Indebtedness or Junior Lien Priority Indebtedness of the Company or any Guarantor or any Indebtedness incurred in reliance on Section 4.03(b)(i); *provided*, that, for the avoidance of doubt, at the option of the Company, any Excluded Subsidiary incorporated or organized under the laws of Canada, the United Kingdom or the United States (or, in each case, any state, territory, province or other political subdivision thereof) may issue a Guarantee and become a Guarantor (and shall thereafter, until such Guarantee is released in accordance with this Indenture, cease to constitute an "Excluded Subsidiary" hereunder) (any such

Subsidiary, an "Elective Guarantor"); *provided*, *further* that any such Elective Guarantor incorporated or organized under the laws of Canada or the United Kingdom shall have entered into customary local law Security Documents on substantially the same substantive terms as in the Security Agreement.

"Fair Market Value" means, with respect to any asset or property, the price which could be negotiated in an arm's-length transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction, determined in good faith by the Company, which determination shall be conclusive for all purposes under the Indenture.

"First Lien Priority Indebtedness" means Indebtedness of the Company and/or the Guarantors that is secured by Liens on the Collateral ranking *pari passu* in priority with the Liens securing the Notes Obligations; *provided* that an authorized representative of the holders of such Indebtedness shall have executed a joinder to the applicable Security Documents.

"Fixed Charges" means, with respect to any Person for any period, the sum, without duplication, of: (1) Consolidated Interest Expense (excluding amortization or write-off of deferred financing costs) of such Person for such period, and (2) all cash dividend payments (excluding items eliminated in consolidation) on any series of Preferred Stock or Disqualified Stock of such Person and its Subsidiaries.

"Foreign Subsidiary" means a Subsidiary not organized or existing under the laws of the United States of America or any state thereof or the District of Columbia.

"FSHCO" means any Domestic Subsidiary that owns no material assets other than the Equity Interests of one or more Foreign Subsidiaries that are CFCs and/or of one or more FSHCOs.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the Issue Date. For the purposes of this Indenture, the term "consolidated" with respect to any Person shall mean such Person consolidated with its Subsidiaries.

"Grantors" means the Company and the Guarantors that execute the applicable Security Documents.

"guarantee" means a guarantee by any Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations. The amount of any guarantee shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith.

"Guarantee" means any guarantee of the obligations of the Company under this Indenture and the Notes by any Guarantor in accordance with the provisions of this Indenture.

"Guarantor" means any Subsidiary of the Company that Incurs a Guarantee after the Issue Date; provided that upon the release or discharge of such Person from its Guarantee in accordance with this Indenture, such Person shall cease to be a Guarantor automatically and without the need for any further action by any Person. On the Issue Date, the Company has no Subsidiaries and there are no Guarantors.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under:

(1) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements; and

(2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices.

"holder" or "noteholder" or "holders of the Notes" means the Person in whose name a Note is registered on the Registrar's books.

"Incur" means issue, assume, guarantee, incur or otherwise become liable for; *provided*, *however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary. "Incurred" and "Incurrence" have meanings correlative thereto.

"Indebtedness" means, with respect to any Person (without duplication):

(1) the principal of any indebtedness of such Person, whether or not contingent, (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof except to the extent such reimbursement agreement relates to a trade payable and such obligation is satisfied within 30 days of Incurrence), (c) representing the deferred and unpaid purchase price of any property (except any such balance that constitutes (i) a trade payable or similar obligation to a trade creditor Incurred in the ordinary course of business that is not overdue by more than 90 days (or, if overdue by more than 90 days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person), (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and (iii) liabilities accrued in the ordinary course of business), which purchase price is due more than 12 months after the date of placing the property in service or taking delivery and title thereto, (d) in respect of Capitalized Lease Obligations or Securitization Financings, or (e) representing net obligations of such Person in respect of any Hedging Obligations (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time), if and to the extent that any of the foregoing indebtedness would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, the obligations referred to in clause (1) of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(3) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); *provided*, *however*, that the amount of such Indebtedness will be the lesser of: (a) the Fair Market Value (as determined in good faith by the Company) of such asset at such date of determination, and (b) the amount of such Indebtedness of such other Person;

provided, *however*, that, notwithstanding the foregoing, Indebtedness shall be deemed not to include (1) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money; (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) [reserved]; (5) trade and other ordinary course payables, accrued expenses and intercompany liabilities arising in the ordinary course of business that are not overdue by more than 90 days; (6) obligations in respect of cash management services; and (7) in the case of the Company and the Subsidiaries (x) all intercompany Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business and (y) intercompany liabilities in connection with cash management, tax and accounting operations of the Company and the Subsidiaries.

Notwithstanding anything in this Indenture to the contrary, (i) Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this Indenture but for the application of this sentence shall not be deemed an Incurrence of Indebtedness under this Indenture; and (ii) the amount of any Indebtedness that is convertible into or exchangeable for Capital Stock of the Company outstanding as of any date shall be deemed to be equal to the principal and premium, if any, in respect of such Indebtedness , notwithstanding the provisions of GAAP (including Accounting Standards Codification Topic 470-20, *Debt—Debt with Conversion and Other Options*) or otherwise.

"Indenture" means this Indenture as amended or supplemented from time to time.

"Independent Financial Advisor" means an accounting, appraisal, investment banking firm or consultant, in each case of nationally recognized standing, that is, in the good faith determination of the Company, qualified to perform the task for which it has been engaged.

"Investment Grade Securities" means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents),

(2) securities that have a rating equal to or higher than Baa3 (or equivalent) by Moody's and BBB- (or equivalent) by S&P, but excluding any debt securities or loans or advances between and among the Company and its Subsidiaries,

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) which fund may also hold material amounts of cash pending investment and/or distribution, and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

"Investments" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and any prepayments and other credits to suppliers made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of such Person in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property.

"Issue Date" means February 29, 2024.

"Junior Lien Priority Indebtedness" means Indebtedness of the Company and/or the Guarantors that is secured by Liens on the Collateral ranking junior in priority to the Liens securing the Notes Obligations and the First Lien Priority Indebtedness ("Junior Liens"); *provided* that (i) the trustee, collateral agent and/or other authorized representative for the holders of such Indebtedness shall execute a Junior Lien Priority Intercreditor Agreement (or a joinder thereto) and (ii) the Company shall designate such Indebtedness as junior priority obligations under the applicable Junior Lien Priority Intercreditor Agreement.

"Junior Lien Priority Intercreditor Agreement" means a senior priority/junior priority intercreditor agreement with (together with other relevant Persons) any collateral agent and/or other authorized representative of any Junior Lien Priority Indebtedness substantially in the form attached hereto as Exhibit D, with immaterial changes thereto, and the Trustee shall sign any such Junior Lien Priority Intercreditor Agreement upon delivery of an Officer's Certificate of the Company and an Opinion of Counsel.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or similar encumbrance of any kind in respect of such asset, whether or not filed, recorded, registered or otherwise perfected under applicable law (including any conditional sale or other title retention agreement or any lease in the nature thereof); *provided* that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

"Liquidity" means, with respect to the Company and its Subsidiaries, as of the close of business at any date, the sum of (a) unused commitments then available to be drawn under any revolving credit facility, delayed draw term loan facility or Qualified Securitization Financing permitted hereunder (after giving effect to any borrowing base or similar limitations), *plus* (b) the amount of cash and Cash Equivalents in excess of any Restricted Cash held by the Company and its Subsidiaries as of such date of determination.

"Long Derivative Instrument" means a Derivative Instrument (i) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with positive changes to the Performance References and/or (ii) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with negative changes to the Performance References.

"Material Intellectual Property" means all or any portion of intellectual property that is material to the business or operations of the Company and the Guarantors (as reasonably determined in good faith by the Company).

"Material Subsidiary" means any Wholly Owned Subsidiary of the Company (other than the Company), in each case, that as of the last day of the fiscal quarter of the Company's most recently ended, had revenue in excess of 2.5% of the total revenues (including third party revenues but excluding intercompany revenues) of the Company and its Subsidiaries on a consolidated basis as of such date.

"Net Income" means, with respect to any Person, the net income (loss) of such Person and its Subsidiaries, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"Net Proceeds" means the aggregate cash proceeds received by the Company or any Subsidiary in respect of any Asset Sale (including, without limitation, any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct costs relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees, and brokerage and sales commissions), and any relocation expenses Incurred as a result thereof, taxes paid or payable as a result thereof, amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required (other than, with respect to any Asset Sale consisting of Collateral, Indebtedness that is secured by Liens on such Collateral that are pari passu or junior to the Liens on such Collateral securing the Notes Obligations) to be paid as a result of such transaction, and any deduction of appropriate amounts to be provided by the Company and the Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Company and the Subsidiaries after such sale or other disposition thereof, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"Net Short" means, with respect to a holder or beneficial owner, as of a date of determination, either (i) the value of its Short Derivative Instruments exceeds the sum of the (x) the value of its notes plus (y) the value of its Long Derivative Instruments as of such date of determination or (ii) it is reasonably expected that such would have been the case were a "Failure to Pay" or "Bankruptcy Credit Event" (each as defined in the 2014 ISDA Credit Derivatives Definitions) to have occurred with respect to the Company or any Guarantor immediately prior to such date of determination.

"Notes" has the meaning ascribed to such term in the recitals. Unless the context otherwise requires, all references to the Notes will include the Initial Notes and any PIK Notes (or any increase in the principal amount of a Global Note), and any references to "principal amount" of the Notes include any increase in the principal amount of the outstanding Notes as a result of a PIK Payment. Unless the context requires otherwise, all references to "Notes" for all purposes of this Indenture shall include any PIK Notes that are actually issued and authenticated.

"Notes Collateral Agent" means the party named as such in the preamble to this Indenture until a successor replaces it and, thereafter, means the successor.

"Notes Obligations" means Obligations in respect of the Notes, this Indenture, the Guarantees and the Security Documents.

"Obligations" means any principal, interest (including, for the avoidance of doubt, cash and any payment-in-kind or other non-cash interest), penalties, fees, expenses (including any interest, fees, expenses (including legal costs and expenses) and other amounts accruing subsequent to the filing of a petition or proceedings in bankruptcy, insolvency, reorganization, arrangement or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest, fees, expenses and other amounts are allowed or allowable claims under applicable state, federal or foreign law), indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities payable under the documentation governing any Indebtedness; *provided* that Obligations with respect to the Notes shall not include fees or indemnifications in favor of third parties other than the Trustee, the Notes Collateral Agent and the holders of the Notes.

"Officer" means, with respect to any Person, the chairman of the Board of Directors, chief executive officer, chief financial officer, president, any executive vice president, any senior vice president or vice president, the treasurer, any assistant treasurer, any controller, the secretary or any assistant secretary of such Person, or any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Indenture.

"Officer's Certificate" means, with respect to any Person, a certificate signed on behalf of such Person by an Officer of such Person which meets the requirements set forth in this Indenture.

"Opinion of Counsel" means, with respect to any Person, a written opinion from legal counsel, who is acceptable to the Trustee. The counsel may be an employee of or counsel to such Person.

"Permitted Exceptions" means liens, encumbrances and other matters expressly set forth as an exception to the title policies, if any, obtained to insure the Lien of each mortgage with respect to each of the real properties required to be mortgaged pursuant to Section 10.01(c).

"Permitted Investments" means:

(1) (a) any Investment in the Company or any Guarantor and (b) any Investment by a Subsidiary that is not a Guarantor in a Subsidiary that is not a Guarantor;

(2) any Investment in Cash Equivalents or Investment Grade Securities;

(3) [reserved];

(4) any Investment received in connection with an Asset Sale made pursuant to Section 4.06 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on, or made pursuant to binding commitments existing on, the Issue Date or an Investment consisting of any extension, modification or renewal of any Investment existing on the Issue Date; *provided* that the amount of any such Investment may be increased (x) as required by the terms of such Investment as in existence on the Issue Date or (y) as otherwise permitted under this Indenture;

(6) loans and advances to officers, directors, employees or consultants of the Company or any of its Subsidiaries (i) in respect of payroll payments and expenses in the ordinary course of business and (ii) in connection with such Person's purchase of Equity Interests of the Company solely to the extent that the amount of such loans and advances shall be contributed to the Company in cash as common equity;

(7) any Investment acquired by the Company or any Subsidiary (a) in exchange for any other Investment or accounts receivable held by the Company or such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable, (b) as a result of a foreclosure by the Company or any Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default or (c) as a result of a Bail-In Action with respect to any contractual counterparty of the Company or any Subsidiary;

(8) Hedging Obligations permitted under Section 4.03(b)(x);

(9) [reserved];

(10) additional Investments by the Company or any Subsidiary having an aggregate Fair Market Value (as determined in good faith by the Company), taken together with all other Investments made pursuant to this clause (10) that are at that time outstanding, not to exceed the sum of (x) $2.5 million plus (y) an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received in respect of any such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided*, *however*, that if any Investment pursuant to this clause (10) is made in any Person that is not the Company or a Guarantor at the date of the making of such Investment and such Person becomes the Company or a Guarantor after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1)(a) above and shall cease to have been made pursuant to this clause (10) for so long as such Person continues to be the Company or a Guarantor;

(11) loans and advances to officers, directors or employees for business-related travel expenses, moving expenses and other similar expenses, in each case Incurred in the ordinary course of business or consistent with past practice or to fund such Person's purchase of Equity Interests of the Company;

(12) Investments the consideration for which is in the form of Equity Interests of the Company (other than Disqualified Stock);

(13) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 4.07(b) (except transactions described in clauses (i), (ii), (iv), (vi), (vii), (ix)(B), (x) and (xvi) of Section 4.07(b));

(14) guarantees issued in accordance with Section 4.03 or Section 4.11;

(15) Investments consisting of or to finance purchases and acquisitions of inventory, supplies, materials, services or equipment or purchases of contract rights or licenses or leases of intellectual property;

(16) any Investment in a Securitization Subsidiary or any Investment by a Securitization Subsidiary in any other Person in connection with a Qualified Securitization Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Securitization Financing or any related Indebtedness;

(17) any Investment in an entity which is not a Subsidiary to which a Subsidiary sells Securitization Assets pursuant to a Securitization Financing;

(18) Investments of a Subsidiary acquired after the Issue Date or of an entity merged into, amalgamated with, or consolidated with the Company or a Subsidiary in a transaction that is not prohibited by Section 5.01 after the Issue Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(19) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers;

(20) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Company or the Subsidiaries;

(21) [reserved];

(22) [reserved]; and

(23) Guaranteed obligations of the Company or any Guarantor of leases or other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business.

"Permitted Liens" means, with respect to any Person:

(1) Pledges, bonds or deposits and other Liens granted by such Person under workmen's compensation laws, unemployment or employment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds, performance and return of money bonds, or deposits as security for contested taxes or import duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(2) Liens imposed by law, including landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens securing obligations that are not overdue by more than 45 days or that are being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review;

(3) Liens for taxes, assessments or other governmental charges not yet overdue by more than 30 days or that are being contested in good faith by appropriate proceedings, if adequate reserves with respect thereto have been provided in accordance with GAAP;

(4) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit, bankers' acceptances or similar

obligations issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(5) minor survey (or other mapping product) exceptions, minor encumbrances, trackage rights, special assessments, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, servicing agreements, development agreements, site plan agreements, other similar encumbrances and other matters of record incurred in the ordinary course of business and matters set forth as an exception to the policies of title insurance, if any, obtained to insure the Lien of each mortgage with respect to each of the mortgaged properties or zoning or other restrictions as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not Incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(6) (A) [reserved];

(B) Liens on the Collateral securing Indebtedness Incurred pursuant to Section 4.03(b)(i); *provided* that any such Liens on any Collateral must be secured on a pari passu or Junior Lien basis to the Notes and, if such Indebtedness is secured by Collateral on a pari passu basis with the Notes, such Indebtedness must be First Lien Priority Indebtedness, and if such Indebtedness is secured by Collateral on a Junior Lien basis to the Notes, such Indebtedness must be Junior Lien Priority Indebtedness;

(C) Liens securing Obligations in respect of Indebtedness permitted to be Incurred pursuant to clause (iv) (limited to the asset financed by such Indebtedness) or (xiv) (to the extent such guarantees are issued in respect of any Indebtedness permitted to be secured hereunder) of Section 4.03(b);

(D) Liens securing Junior Lien Priority Indebtedness permitted to be Incurred pursuant to clause (xii) of Section 4.03(b);

(7) Liens existing on the Issue Date (other than Liens securing Notes Obligations);

(8) Liens on assets, property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided*, *however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided*, *further*, *however*, that such Liens may not extend to any other property owned by the Company or any Subsidiary (other than pursuant to after-acquired property clauses in effect with respect to such Lien at the time of acquisition on property of the type that would have been subject to such Lien notwithstanding the occurrence of such acquisition);

(9) Liens on assets or property at the time the Company or a Subsidiary acquired the assets or property, including any acquisition by means of a merger, amalgamation or consolidation with or into the Company or any Subsidiary; *provided*, *however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such acquisition; *provided*, *further*, *however*, that the Liens may not extend to any other property owned by the Company or any Subsidiary (other than pursuant to after-acquired property clauses in effect with respect to such Lien at the time of acquisition on property of the type that would have been subject to such Lien notwithstanding the occurrence of such acquisition);

(10) [reserved];

(11) Liens securing Hedging Obligations not incurred in violation of this Indenture;

(12) Liens on inventory or other goods and proceeds of any Person securing such Person's obligations in respect of documentary letters of credit, bank guarantees or bankers'

acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(13) leases, subleases, licenses and sublicenses of real property which do not materially interfere with the ordinary conduct of the business of the Company or any of the Subsidiaries;

(14) Liens arising from UCC financing statement filings (or similar personal property security laws) regarding operating leases or other obligations not constituting Indebtedness;

(15) Liens in favor of the Company or any Guarantor;

(16) Liens on assets of the type specified in the definition of "Securitization Financing" Incurred in connection with a Qualified Securitization Financing;

(17) pledges and deposits and other Liens made in the ordinary course of business to secure liability to insurance carriers;

(18) [reserved];

(19) (A) leases, subleases, licenses or sublicenses (other than with respect to intellectual property) granted to others in the ordinary course of business and (B) non-exclusive license or sublicenses of intellectual property;

(20) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clauses (6), (7), (8), (9), (11), (15), (16) and (36) of this definition; *provided*, *however*, that (x) such new Lien shall be limited to all or part of the same property (including any after acquired property to the extent it would have been subject to the original Lien) that secured the original Lien (plus improvements on and accessions to such property, proceeds and products thereof, customary security deposits and any other assets pursuant to the after-acquired property clauses to the extent such assets secured (or would have secured) the Indebtedness being refinanced, refunded, extended, renewed or replaced), and (y) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount (or accreted value, if applicable) or, if greater, committed amount of the applicable Indebtedness described under clauses (6), (7), (8), (9), (11), (15), (16) and (36) at the time the original Lien became a Permitted Lien under this Indenture and, in the case of any Lien on Collateral, shall not have a greater priority level with respect to the Liens securing the Notes Obligations than the Liens securing the Indebtedness so refinanced, refunded, extended, renewed or replaced, (B) unpaid accrued interest and premiums (including tender premiums), and (C) an amount necessary to pay any underwriting discounts, defeasance costs, commissions, fees and expenses related to such refinancing, refunding, extension, renewal or replacement; *provided*, *further*, *however*, that in the case of any Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clauses (6)(B), (6)(C) or (6)(D), the principal amount of any Indebtedness Incurred for such refinancing, refunding, extension or renewal shall be deemed secured by a Lien under clause (6)(B), (6)(C) or (6)(D) and not this clause (20) for purposes of determining the principal amount of Indebtedness outstanding under clauses (6)(B), (6)(C) or (6)(D);

(21) [reserved];

(22) judgment and attachment Liens not giving rise to an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(23) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale or purchase of goods entered into in the ordinary course of business;

(24) Liens incurred to secure cash management services or to implement cash pooling arrangements in the ordinary course of business;

(25) [reserved];

(26) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement securing obligations of such joint venture or pursuant to any joint venture or similar agreement;

(27) any amounts held by a trustee in the funds and accounts under an indenture securing any revenue bonds issued for the benefit of the Company or any Subsidiary, under any indenture issued in escrow pursuant to customary escrow arrangements pending the release thereof, or under any indenture pursuant to customary discharge, redemption or defeasance provisions;

(28) Liens (i) arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository or financial institution, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business or (iii) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(29) Liens (i) in favor of credit card companies pursuant to agreements therewith and (ii) in favor of customers;

(30) Liens disclosed by the title commitments or title policies delivered pursuant to this Indenture and/or the Security Documents and any replacement, extension or renewal of any such Lien; *provided* that such replacement, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal; *provided*, *further*, that the Indebtedness and other obligations secured by such replacement, extension or renewal Lien are permitted under this Indenture or, in the event no title commitment or title policy is required to be delivered pursuant to this Indenture and/or the Security Documents, restrictions, easements, rights of way, restrictive covenants, licenses, servitudes, watercourse, right of way, right of access or user or other similar rights in land granted to or reserved by other Persons which do not, either individually or in the aggregate, materially impair the value, use, development, management, ownership or operation of the property subject thereto and do not materially adversely affect the marketability of such property or the Liens under the relevant Security Documents;

(31) Liens that are contractual rights of set-off relating to purchase orders and other agreements entered into with customers, suppliers or service providers of the Company or any Subsidiary in the ordinary course of business;

(32) in the case of real property that constitutes a leasehold or subleasehold interest, (x) any Lien to which the fee simple interest (or any superior leasehold interest) is or may become subject and any subordination of such leasehold or subleasehold interest to any such Lien in accordance with the terms and provisions of the applicable leasehold or subleasehold documents, and (y) any right of first refusal, right of first negotiation or right of first offer which is granted to the lessor or sublessor;

(33) agreements to subordinate any interest of the Company or any Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Company or any such Subsidiary pursuant to an agreement entered into in the ordinary course of business;

(34) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;

(35) Liens securing insurance premium financing arrangements; *provided* that such Liens are limited to the applicable unearned insurance premiums; and

(36) Liens on the Collateral securing the Notes Obligations (including, for the avoidance of doubt, the Initial Notes and any PIK Notes (or any increase in the principal amount of a Global Note)) and the related Guarantees.

"Person" means any individual, corporation, partnership, limited liability company, unlimited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Preferred Stock" means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution, or winding up.

"Qualified Securitization Financing" means any Securitization Financing that meets the following conditions:

(1) the Board of Directors of the Company shall have determined in good faith that such Qualified Securitization Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Company and (if applicable) the applicable Securitization Subsidiary;

(2) all sales of Securitization Assets and related assets by the Company or the applicable Subsidiary (other than a Securitization Subsidiary) either to the applicable Securitization Subsidiary or directly to the applicable third-party financing providers (as the case may be) are made at Fair Market Value (as determined in good faith by the Company); and

(3) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Company) and may include Standard Securitization Undertakings.

The grant of a security interest in any Securitization Assets of the Company or any Subsidiary (other than a Securitization Subsidiary) to secure the Indebtedness in respect of the Notes or any Refinancing Indebtedness with respect to the Notes shall not be deemed a Qualified Securitization Financing.

"Regulated Bank" means a (i) a commercial bank with a consolidated combined capital and surplus of at least $5,000,000,000 that is (a) a U.S. depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation, (b) a corporation organized under section 25A of the U.S. Federal Reserve Act of 1913, (c) a branch, agency or commercial lending company of a foreign bank operating pursuant to approval by and under the supervision of the Board of Governors under 12 CFR part 211, (d) a non-U.S. branch of a foreign bank managed and controlled by a U.S. branch referred to in clause (c) or (e) any other U.S. or non-U.S. depository institution or any branch, agency or similar office thereof supervised by a bank regulatory authority in any jurisdiction or (ii) any Affiliate of a Person set forth in clause (i) above to the extent that (a) all of the Equity Interest of such Affiliate is directly or indirectly owned by either (x) such Person set forth in clause (i) above or (y) a parent entity that also owns, directly or indirectly, all of the Equity Interest of such Person set forth in clause (i) and (b) such Affiliate is a securities broker or dealer registered with the SEC under Section 15 of the Exchange Act.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means:

(1) any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the

Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person's knowledge of and familiarity with the particular subject, and

(2) who shall have direct responsibility for the administration of this Indenture.

"Restricted Cash" means cash and Cash Equivalents held by the Company and the Subsidiaries that would appear as "restricted" on a consolidated balance sheet of the Company or any of the Subsidiaries (including such cash and Cash Equivalents subject to a Lien securing any Indebtedness (other than the Notes Obligations and First Lien Priority Indebtedness) unless such Lien is expressly junior to the Lien thereon securing the Notes Obligations (including, without limitation, any such Lien securing Junior Lien Priority Indebtedness)).

"Restricted Investment" means an Investment other than a Permitted Investment.

"Sale/Leaseback Transaction" means an arrangement relating to property now owned or hereafter acquired by the Company or a Subsidiary whereby the Company or such Subsidiary transfers such property to a Person and the Company or a Subsidiary leases it from such Person, other than leases between any of the Company and a Subsidiary or between Subsidiaries.

"Screened Affiliate" means any Affiliate of a holder or beneficial holder of notes, as applicable, (i) that makes investment decisions independently from such holder or beneficial holder and any other Affiliate of such holder or beneficial holder that is not a Screened Affiliate, (ii) that has in place customary information screens between it and such holder or beneficial holder and any other Affiliate of such holder or beneficial holder that is not a Screened Affiliate and such screens prohibit the sharing of information with respect to the Company or their Subsidiaries, (iii) whose investment policies are not directed by such holder or beneficial holder or any other Affiliate of such holder or beneficial holder that is acting in concert with such holder or beneficial holder in connection with its investment in the notes, and (iv) whose investment decisions are not influenced by the investment decisions of such holder or beneficial holder or any other Affiliate of such holder or beneficial holder that is acting in concert with such holder or beneficial holder in connection with its investment in the notes.

"SEC" means the Securities and Exchange Commission.

"Secured Indebtedness" means any Consolidated Total Indebtedness secured by a Lien.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Securitization Assets" means any of the following assets (or interests therein) from time to time originated, acquired or otherwise owned by the Company or any Subsidiary or in which the Company or any Subsidiary has any rights or interests, in each case, without regard to where such assets or interests are located: (1) accounts receivable (including any bills of exchange) and (2) any other assets and property to the extent customarily included in accounts receivable securitization transactions or factoring transactions of the relevant type in the applicable jurisdictions (as determined by the Company in good faith).

"Securitization Fees" means distributions or payments made directly or by means of discounts with respect to any participation interests issued or sold in connection with, and all other fees paid to a Person that is not a Subsidiary in connection with, any Securitization Financing.

"Securitization Financing" means any transaction or series of transactions that may be entered into by the Company or any of its Subsidiaries pursuant to which the Company or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Subsidiary and/or (b) any other Person, or may grant a security interest in, any Securitization Assets (whether now existing or arising in the future) of the Company or any of its Subsidiaries, and any assets related thereto including, without limitation, all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and other assets which are

customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions or factoring transactions involving Securitization Assets and any Hedging Obligations entered into by the Company or any such Subsidiary in connection with such Securitization Assets.

"Securitization Repurchase Obligation" means any obligation of a seller of Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a Securitization Asset or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"Securitization Subsidiary" means a Wholly Owned Subsidiary (or another Person formed for the purposes of engaging in Qualified Securitization Financing with the Company in which the Company or any of its Subsidiaries makes an Investment and to which the Company or any of its Subsidiaries transfers Securitization Assets and related assets) which engages in no activities other than in connection with the financing of Securitization Assets of the Company and its Subsidiaries, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors or the Company (as provided below) as a Securitization Subsidiary and:

(a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Company or any other Subsidiary (excluding guarantees of obligations (other than the principal of and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Company or any other Subsidiary in any way other than pursuant to Standard Securitization Undertakings, or (iii) subjects any property or asset of the Company or any other Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(b) with which neither the Company nor any Subsidiary has any material contract, agreement, arrangement or understanding other than on terms which the Company reasonably believes to be no less favorable to the Company or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Company (other than pursuant to Standard Securitization Undertakings); and

(c) to which neither the Company nor any Subsidiary has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results (other than pursuant to Standard Securitization Undertakings).

Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by filing with the Trustee a certified copy of the resolution of the Board of Directors of the Company giving effect to such designation and an Officer's Certificate stating that such designation complied with the foregoing conditions.

"Security Agreement" means the Security Agreement dated as of the Issue Date among the Notes Collateral Agent, the Company and the Guarantors, as amended, amended and restated, supplemented or otherwise modified from time to time.

"Security Documents" means any Junior Lien Priority Intercreditor Agreement, each joinder or amendment thereto, and all security agreements (including the Security Agreement), pledge agreements, control agreements, collateral assignments, mortgages, deeds of trust, security deeds, deeds to secure debt, collateral agency agreements, debentures or other instruments, pledges, grants or transfers for security or agreements related thereto executed and delivered by the Company or any Guarantor creating or perfecting (or purporting to create or perfect) a Lien upon Collateral (including, without limitation, financing statements under the UCC) in favor of the Notes Collateral Agent on behalf of the Trustee and the holders of the Notes to secure the Notes and the Guarantees, in each case, as amended, modified,

restated, supplemented or replaced, in whole or in part, from time to time, in accordance with its terms and this Indenture.

"Senior Representative" means, with respect to any Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

"Short Derivative Instrument" means a Derivative Instrument (i) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with positive changes to the Performance References and/or (ii) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with negative changes to the Performance References.

"Significant Subsidiary" means any Subsidiary that would be a "Significant Subsidiary" within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC (or any successor provisions).

"Springing Maturity Date" means any date, if any, on or after December 1, 2027 on which (a) the aggregate principal amount of the 2028 Notes then outstanding is greater than $20 million and (b) the Springing Maturity Date Threshold Amount is less than $75 million.

"Springing Maturity Date Threshold Amount" means, with respect to the Company and its Subsidiaries, at any date, the difference (determined as of the close of business on such date) between (a) the amount of cash and Cash Equivalents in excess of any Restricted Cash held by the Company and its Subsidiaries as of such date of determination and (b) the aggregate principal amount of 2028 Notes outstanding as of such date of determination.

"Standard Securitization Undertakings" means representations, warranties, covenants, indemnities and guarantees of performance entered into by the Company or any of its Subsidiaries which the Company has determined in good faith to be customary in a Securitization Financing including, without limitation, those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

"Subordinated Indebtedness" means (a) with respect to the Company, any Indebtedness of the Company which is by its terms subordinated in right of payment to the Notes, (b) with respect to any Guarantor, any Indebtedness of such Guarantor which is by its terms subordinated in right of payment to its Guarantee, (c) any Junior Lien Priority Indebtedness, (d) the 2025 Notes, (e) the 2028 Notes and (f) any other unsecured Indebtedness for borrowed money.

"Subsidiary" means, with respect to any Person, (1) any corporation, association or other business entity (other than a partnership, joint venture or limited liability company) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, and (2) any partnership, joint venture or limited liability company of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (y) such Person or any Subsidiary of such Person is a controlling general partner or

otherwise controls such entity. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Company.

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as in effect on the date of this Indenture.

"Transactions" means (a) the issuance of Notes in exchange for 2025 Notes and 2028 Notes pursuant to the Exchange Agreement, (b) the issuance of the Warrants and (c) any follow-on transactions after the Issue Date similar to the foregoing.

"Treasury Rate" means, the weekly average for each Business Day during the most recent week that has ended at least two Business Days prior to the applicable redemption date of the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the Federal Reserve Statistical Release H.15 (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such redemption date to March 1, 2025; *provided*, *however*, that if the period from such redemption date to March 1, as applicable, is less than one year, the weekly average yield on actively traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"Trustee" means the party named as such in the Preamble to this Indenture until a successor replaces it and, thereafter, means the successor.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Uniform Commercial Code" or "UCC" means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items.

"U.S. Government Obligations" means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged, or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in each case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Warrants" means 7,894,737 warrants issued pursuant to that certain Warrant Agency Agreement, dated as of the date hereof, between the Company and Computershare, Inc. and its affiliate Computershare Trust Company, N.A..

"Weighted Average Life to Maturity" means, when applied to any Indebtedness or Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment, by (2) the sum of all such payments.

"Wholly Owned Subsidiary" of any Person means a Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares or shares required pursuant to applicable law) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02 Other Definitions.

Term	**Section**
$	1.03(j)
Action	10.02(d)
Affiliate Transaction	4.07(a)
Agent Members	Appendix A
Asset Sale Offer	4.06(b)
Authentication Order	2.03
Cash Interest	Appendix A
Change of Control Offer	4.08(b)
Clearstream	Appendix A
Company	Preamble
Consolidated First Lien Leverage Calculation Date	Def'n of "Consolidated First Lien Leverage Ratio"
covenant defeasance option	8.01(b)
Definitive Note	Appendix A
Depository	Appendix A
Directing Holder	6.01
Elective Guarantor	Def'n of "Excluded Subsidiary"
Euroclear	Appendix A

Event of Default	6.01
Excess Proceeds	4.06(b)
Global Notes	Appendix A
Global Notes Legend	Appendix A
Guaranteed Obligations	12.01(a)
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Offer Period	4.06(d)
Original Currency	1.03(l)
Other Applicable Indebtedness	4.06(b)
Paying Agent	2.04(a)
Permitted Jurisdictions	5.01(a)
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PIK Interest	2.14
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Position Representation	6.01
Priming Debt	9.02(a)(8)
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QIB	Appendix A
Record Date	Appendix A
Refinancing Indebtedness	4.03(b)(xv)
Registrar	2.04(a)
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Regulation S Global Notes	Appendix A
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Regulation S Permanent Global Note	Appendix A
Regulation S Temporary Global Note	Appendix A
Restricted Notes Legend	Appendix A
Restricted Payments	4.04(a)
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Rule 144A	Appendix A
Rule 144A Global Notes	Appendix A
Rule 144A Notes	Appendix A

Rule 501	Appendix A
Signature Law	13.19
Successor Company	5.01(a)(i)
Successor Guarantor	5.01(b)(i)
Title Company	10.01(c)(2)
Title Policy	10.01(c)(2)
Transfer Restricted Definitive Notes	Appendix A
Transfer Restricted Global Notes	Appendix A
Transfer Restricted Notes	Appendix A
Trustee	Preamble
U.S.A. Patriot Act	13.17
U.S. dollars	1.03(j)
Unrestricted Definitive Notes	Appendix A
Unrestricted Global Notes	Appendix A
Verification Covenant	6.01

SECTION 1.03 Rules of Construction. Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) "or" is not exclusive;

(d) "including" means including without limitation;

(e) words in the singular include the plural and words in the plural include the singular;

(f) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;

(g) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP;

(h) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater;

(i) unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP;

(j) "$" and "U.S. dollars" each refer to United States dollars, or such other money of the United States of America that at the time of payment is legal tender for payment of public and private debts;

(k) [reserved];

(l) if for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in any currency (the "Original Currency") in another currency (the "Other Currency"), the parties hereby agree, to the fullest extent permitted by applicable law, that the rate of exchange used shall be that at which, on the relevant date, as determined by the Company in good faith, the Company could purchase the Original Currency with the Other Currency after any premium and costs of exchange on the Business Day preceding that on which final judgment is given; and

(m) for the purposes of this Indenture, unless the context requires otherwise, all references to "Notes" for all purposes of this Indenture shall include any PIK Notes that are actually issued and authenticated, and references to "principal amount" of the Notes include any increase in the principal amount of the outstanding Notes as a result of a PIK Payment.

(n) for the avoidance of doubt, when used with respect to the Notes, any reference to the "premium" shall include a reference to the redemption price over par set forth in Paragraph 5 of the Note ("Redemption Premium") or the Applicable Premium, as applicable.

ARTICLE II

THE NOTES

SECTION 1.01 Amount of Notes. The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture on the Issue Date is $135,000,000.

The Company shall from time to time issue PIK Notes and/or increase the principal amount of a Global Note as a result of a PIK Payment in accordance with the applicable provisions of this Indenture. The Initial Notes and PIK Notes will, at the Company's option, be treated as a single class of securities for all purposes under this Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase; *provided* that if the PIK Notes are not fungible with the Initial Notes for U.S. federal income tax purposes, the PIK Notes will have a separate CUSIP number and/or ISIN, if applicable.

SECTION 1.02 Form and Dating. Provisions relating to the Notes are set forth in Appendix A, which is hereby incorporated in and expressly made a part of this Indenture. The (i) Initial Notes and the Trustee's certificate of authentication, (ii) [reserved] and (iii) any PIK Notes and the related Trustee's certificate of authentication shall each be substantially in the form of Exhibit A hereto, which is hereby incorporated in and expressly made a part of this Indenture. The Notes may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company or any Guarantor is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the Company). Each Note shall be dated the date of its authentication. The Notes shall be issuable only in registered form without interest coupons and in minimum denominations of $1.00 and any integral multiples of $1.00 in excess thereof.

SECTION 1.03 Execution and Authentication. The Trustee shall authenticate and make available for delivery upon a written order of the Company signed by one Officer of the Company (an "Authentication Order") (a) Initial Notes for original issue on the date hereof in an aggregate principal amount of $135,000,000 and (b) subject to the terms of this Indenture, any PIK Notes in an aggregate principal amount to be determined at the time of issuance and specified therein. Such Authentication Order shall specify the amount of separate Notes to be authenticated, the principal amount of each of the Notes to be authenticated, the date on which the original issue of Notes is to be authenticated, whether the Notes are to be Initial Notes or PIK Notes, as applicable, the registered holder of each of the Notes and delivery instructions. Notwithstanding anything to the contrary in this Indenture or Appendix A, any issuance of PIK Notes, as applicable, after the Issue Date shall be in a principal amount of at least $1.00 and integral multiples of $1.00 in excess thereof.

One Officer shall sign the Notes for the Company by manual or PDF signature.

If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent as described immediately below) manually signs the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee may appoint one or more authenticating agents reasonably acceptable to the Company to authenticate the Notes. Any such appointment shall be evidenced by an instrument signed by a Responsible Officer, a copy of which shall be furnished to the Company. Unless limited by the terms of such appointment, an authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

SECTION 1.04 Registrar, Paying Agent and Notes Collateral Agent.

(a) The Company shall maintain (i) an office or agency where Notes may be presented for registration of transfer or for exchange (the "Registrar") and (ii) an office or agency where Notes may be presented for payment (the "Paying Agent"). The Registrar shall keep a register of the Notes, of payments of principal and interest thereon, and of their transfer and exchange. The Company may have one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrars. The term "Paying Agent" includes the Paying Agent and any additional paying agents. The Company initially appoints the Trustee as Registrar, Paying Agent, the Notes Custodian and the Notes Collateral Agent with respect to the Global Notes.

(b) The Company may enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee in writing of the name and address of any such agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07. The Company or any of its wholly owned Domestic Subsidiaries may act as Paying Agent or Registrar.

(c) The Company may remove any Registrar, Paying Agent or Notes Collateral Agent upon written notice to such Registrar, Paying Agent or Notes Collateral Agent and to the Trustee; provided, however, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor Registrar, Paying Agent or Notes Collateral Agent, as the case may be, as evidenced by an appropriate agreement entered into by the Company and such successor Registrar, Paying Agent or Notes Collateral Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar, Paying Agent or Notes Collateral Agent until the appointment of a successor in accordance with clause (i) above. The Registrar, Paying Agent or Notes Collateral Agent may resign at any time upon written notice to the Company and the Trustee; provided, however, that the Trustee may resign as Paying Agent, Registrar or Notes Collateral Agent only if the Trustee also resigns as Trustee in accordance with Section 7.08.

SECTION 1.01 Paying Agent to Hold Money and PIK Notes in Trust. Prior to 10:00 a.m., New York City time, on each due date of the principal of and interest on any Note, with respect to a payment of Cash Interest (as defined in the Note), the Company shall deposit with the Trustee or each Paying Agent (or if the Company or any of its wholly owned Domestic Subsidiaries is acting as Paying Agent, segregate and hold in trust for the benefit of the Persons entitled thereto) a sum sufficient to pay such principal and interest when so becoming due and, with respect to a payment of PIK Interest as provided for in Section 2.14, increase the principal amount of the Notes to pay any PIK Interest pursuant to an Authentication Order delivered to the Trustee specifying the increase in the Global Note, or in the limited circumstances where the Notes are no longer held in global form, issue PIK Notes to pay any PIK Interest pursuant to an Authentication Order with respect to the PIK Interest to be issued on the applicable Interest Payment Date, when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that a Paying Agent shall hold in trust for the benefit of holders or the Trustee

all money held by a Paying Agent for the payment of principal of and interest on the Notes, and shall notify the Trustee in writing of any default by the Company in making any such payment. If the Company or any of its wholly owned Domestic Subsidiaries acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it in trust for the benefit of the Persons entitled thereto. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.05, a Paying Agent shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee shall serve as Paying Agent for the Notes.

SECTION 1.02 Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of holders. If the Trustee is not the Registrar, the Company shall furnish, or cause the Registrar to furnish, to the Trustee, in writing at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of holders.

SECTION 1.03 Transfer and Exchange. The Notes shall be issued in registered form and shall be transferable only upon the surrender of a Note for registration of transfer and in compliance with Appendix A. When a Note is presented to the Registrar with a request to register a transfer, the Registrar shall register the transfer as requested if certain requirements by the Registrar and the Trustee (including, among other things, the furnishing of appropriate endorsements and transfer documents) therefor are met. The transferor shall also provide or cause to be provided to the Registrar all information necessary to allow the Registrar to comply with any applicable tax reporting obligations, including without limitation, any cost basis reporting obligations under Section 6045 of the Code. The Registrar may rely on information provided to it in connection with any transfer or exchange and shall have no responsibility whatsoever to verify or ensure the accuracy of such information. When Notes are presented to the Registrar with a request to exchange them for an equal principal amount of Notes of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Notes at the Registrar's request. The Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges in connection with any transfer or exchange pursuant to this Section 2.07. The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of any Notes selected for redemption (except, in the case of Notes to be redeemed in part, the portion thereof not to be redeemed) or of any Notes for a period of 15 days before the sending of a notice of redemption of Notes to be redeemed.

Prior to the due presentation for registration of transfer of any Note, the Company, the Guarantors, the Trustee, the Paying Agent and the Registrar may deem and treat the Person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest, if any, on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Company, the Guarantors, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

Any holder of a beneficial interest in a Global Note shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in such Global Note may be effected only through a book-entry system maintained by (a) the holder of such Global Note (or its agent) or (b) any holder of a beneficial interest in such Global Note, and that ownership of a beneficial interest in such Global Note shall be required to be reflected in a book entry.

All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depository participants or

beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

None of the Trustee, Registrar or Paying Agent shall have any responsibility for any actions taken or not taken by the Depository.

SECTION 1.04 Replacement Notes. If a mutilated Note is surrendered to the Registrar or if the holder of a Note claims that the Note has been lost, stolen or destroyed, the Company shall issue and the Trustee shall authenticate a replacement Note if the Company is satisfied that the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the holder (a) satisfies the Company and the Trustee within a reasonable time after such holder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Company and the Trustee prior to the Note being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "protected purchaser") and (c) satisfies any other reasonable requirements of the Company and the Trustee. Such holder shall furnish an indemnity bond sufficient in the judgment of the Trustee, with respect to the Trustee, and the Company, with respect to the Company, to protect the Company, the Trustee, the Paying Agent and the Registrar, as applicable, from any loss or liability that any of them may suffer if a Note is replaced and subsequently presented or claimed for payment. The Company and the Trustee may charge the holder for their expenses in replacing a Note (including without limitation, attorneys' fees and disbursements in replacing such Note). In the event any such mutilated, lost, stolen or destroyed Note has become or is about to become due and payable, the Company in its discretion may pay such Note instead of issuing a new Note in replacement thereof.

Every replacement Note is an additional obligation of the Company.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, stolen or destroyed Notes.

SECTION 1.05 Outstanding Notes. Notes outstanding at any time are all Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.09 as not outstanding. Subject to Section 13.06, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.08 (other than a mutilated Note surrendered for replacement), it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Note is held by a protected purchaser. A mutilated Note ceases to be outstanding upon surrender of such Note and replacement thereof pursuant to Section 2.08.

If a Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and unpaid interest payable on that date with respect to the Notes (or portion thereof) to be redeemed or maturing, as the case may be, and no Paying Agent is prohibited from paying such money to the holders on that date pursuant to the terms of this Indenture, then on and after that date such Notes (or portion thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 1.010 Cancellation. The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and each Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment or cancellation and shall dispose of canceled Notes in accordance with its customary procedures. The Company may not issue new Notes to replace Notes that have been redeemed, paid or delivered to the Trustee for cancellation. The Trustee shall not authenticate Notes in place of canceled Notes other than pursuant to the terms of this Indenture.

SECTION 1.011 Defaulted Interest. If the Company defaults in a payment of interest on the Notes, the Company shall pay the defaulted interest then borne by the Notes (*plus* interest on such defaulted interest to the extent lawful) in any lawful manner. The Company may pay the defaulted interest to the Persons who are holders on a subsequent special record date. The Company shall fix or cause to be fixed any such special record date and payment date to the reasonable satisfaction of the Trustee and shall promptly delivered or cause to be delivered to each affected holder a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

SECTION 1.012 CUSIP Numbers, ISINs, Etc. The Company in issuing the Notes may use CUSIP numbers, ISINs and "Common Code" numbers (if then generally in use), and the Trustee shall use any such CUSIP numbers, ISINs and "Common Code" numbers in notices of redemption as a convenience to holders; *provided*, *however*, that any such notice may state that no representation is made as to the correctness of such numbers, either as printed on the Notes or as contained in any notice of a redemption, that reliance may be placed only on the other identification numbers printed on the Notes and that any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall advise the Trustee in writing of any change in any such CUSIP numbers, ISINs and "Common Code" numbers.

SECTION 1.013 Calculation of Principal Amount of Notes. The aggregate principal amount of the Notes, at any date of determination, shall be the principal amount of the Notes at such date of determination. With respect to any matter requiring consent, waiver, approval or other action of the holders of a specified percentage of the principal amount of all the Notes, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of Notes, the holders of which have so consented, by (b) the aggregate principal amount, as of such date of determination, of the Notes then outstanding, in each case, as determined in accordance with the preceding sentence, and Section 13.06 of this Indenture. Any calculation of the Applicable Premium made pursuant to this Section 2.13 shall be made by the Company and delivered to the Trustee pursuant to an Officer's Certificate.

SECTION 1.014 Issuance of PIK Notes; PIK Interest. The Notes shall bear interest at a rate of 4.25% payable in kind ("PIK Interest"), by, in the case of Global Note, increasing the principal amount of one or more outstanding Global Notes registered in the name of, or held by, the Depository or its nominee, or if, and in the limited circumstances where, the Notes are no longer held in global form, by issuing Notes ("PIK Notes") (rounded up to the nearest $ 1.00) under this Indenture, having the same terms and conditions as the Notes (in each case, a "PIK Payment").

PIK Interest will be payable on each Interest Payment Date (x) with respect to Notes represented by one or more Global Notes registered in the name of, or held by, the Depository or its nominee on the relevant Record Date, by increasing the principal amount of the outstanding Global Notes on such Interest Payment Date by an amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest $1.00) and upon receipt of an Authentication Order, the Trustee will cause such Global Notes to be increased and (y) with respect to Definitive Notes, by issuing PIK Notes in certificated form on such Interest Payment Date in an aggregate principal amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest $1.00), and the Trustee will, at the request of the Company, authenticate and deliver such PIK Notes for issuance to the holders in certificated form for original issuance to the holders on the relevant Record Date, as evidenced by the records of such holders. Following an increase in the principal amount of the outstanding Global Notes as a result of a PIK Payment, the Global Notes will bear interest on such increased principal amount from and after the date of such PIK Payment. Any PIK Notes issued in certificated form will be dated as of the applicable Interest Payment Date and will bear interest from and after such date. All Notes issued pursuant to a PIK Payment will mature on the Stated Maturity (including the Springing Maturity Date, if earlier) and will be governed by, and subject to the terms, provisions and conditions of this Indenture and shall have the same rights and benefits as the Notes issued on the Issue Date. Any PIK Notes issued in certificated form will be issued with the description "PIK" on the face of such PIK Note, and references to the "principal" or "principal amount" of the PIK Notes shall include any increase in the principal amount of the outstanding Notes as a result of any PIK Payment.

The calculation of PIK Interest will be made by the Company or on behalf of the Company by such Person as the Company shall designate, and such calculation and the correctness thereof shall not be a duty or obligation of the Trustee . The Company shall notify the Trustee in writing not later than the Record Date for the applicable Interest Payment Date of the amount of PIK Interest payable on such Interest Payment Date. Notwithstanding anything in this Indenture to the contrary, the payment of accrued interest (including interest that would be PIK Interest when paid) in connection with any redemption of Notes as described in Paragraph 5 of the Notes *(Redemption)*, Section 3.01, Section 4.06 and Section 4.08 shall be made solely in cash. PIK Interest on the Notes will be paid in denominations of $1.00 and integral multiples of $1.00 in excess thereof.

ARTICLE III

REDEMPTION

SECTION 1.01 Redemption. The Notes may be redeemed, in whole or from time to time in part, subject to the conditions and at the redemption prices set forth in Paragraph 5 of the form of Note set forth in Exhibit A hereto, which is hereby incorporated by reference and made a part of this Indenture, plus accrued and unpaid interest to, but excluding, the applicable redemption date (subject to the right of holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date).

SECTION 1.02 Applicability of Article. Redemption of Notes at the election of the Company or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article III.

SECTION 1.03 Notices to Trustee. If the Company elects to redeem Notes pursuant to the optional redemption provisions of Paragraph 5 of the Note, the Company shall notify the Trustee in an Officer's Certificate of (i) the Sections of this Indenture and the Notes pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Notes to be redeemed and (iv) the redemption price. The Company shall give notice to the Trustee provided for in this paragraph at least 10 days (or such shorter period as is acceptable to the Trustee) but not more than 60 days before a redemption date if the redemption is a redemption pursuant to Paragraph 5 of the Note. The Company may also include a request in such Officer's Certificate that the Trustee give the notice of redemption in the Company's name and at its expense and setting forth the information to be stated in such notice as provided in Section 3.05. Any such notice may be cancelled or delayed if written notice from the Company of such cancellation or delay is actually received by the Trustee on the Business Day immediately prior to notice of such redemption being mailed to any holder or otherwise delivered in accordance with the applicable procedures of the Depository and shall thereby (i) be void and of no effect and the Company shall have no obligation to redeem the Notes called for redemption, or (ii) the redemption date shall automatically be delayed until the new redemption date specified in such notice, as applicable. The Company shall deliver to the Trustee such documentation and records as shall enable the Trustee to select the Notes to be redeemed pursuant to Section 3.04.

SECTION 1.04 Selection of Notes to Be Redeemed. In the case of any partial redemption, selection of the Notes for redemption will be made (i) in the case of Global Notes, in accordance with the applicable procedures of the Depositary or (ii) in the case of Definitive Notes, by the Trustee on a pro rata basis to the extent practicable or by lot or by such other method as the Trustee shall deem fair and appropriate; *provided* that no Notes of $1.00 (and integral multiples of $1.00 in excess thereof) or less shall be redeemed in part. Selection of Notes for redemption shall be made from outstanding Notes not previously called for redemption. Portions of the principal of Notes that have denominations larger than $1.00 may be selected for redemption. Notes and portions of them selected shall be in amounts of $1.00 or integral multiples of $1.00 in excess thereof. Provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption. The Trustee shall notify the Company promptly of the Notes or portions of Notes to be redeemed.

SECTION 1.05 Notice of Optional Redemption.

(a) At least 10 but not more than 60 days before a redemption date pursuant to Paragraph 5 of the Note, the Company shall mail or cause to be mailed by first-class mail, or delivered electronically in accordance with the Depository's procedures if held by the Depository, a notice of redemption to each holder whose Notes are to be redeemed at its registered address (with a copy to the Trustee), except that redemption notices may be mailed or otherwise delivered more than 60 days prior to the applicable redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Article VIII.

Any such notice shall identify the Notes to be redeemed and shall state:

(i) the redemption date;

(ii) the redemption price and the amount of accrued interest to, but excluding, the redemption date;

(iii) the name and address of the Paying Agent;

(iv) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price, plus accrued and unpaid interest;

(v) if fewer than all the outstanding Notes are to be redeemed, the certificate numbers and principal amounts of the particular Notes to be redeemed, the aggregate principal amount of Notes to be redeemed and the aggregate principal amount of Notes to be outstanding after such partial redemption;

(vi) that, unless the Company defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Notes (or portion thereof) called for redemption ceases to accrue on and after the redemption date;

(vii) the CUSIP number, ISIN and/or "Common Code" number, if any, printed on the Notes being redeemed;

(viii) that no representation is made as to the correctness or accuracy of the CUSIP number or ISIN and/or "Common Code" number, if any, listed in such notice or printed on the Notes;

(ix) if the redemption is subject to the satisfaction of one or more conditions precedent; and

(x) at the Company's option, that the payment of the redemption price and performance of the Company's obligations with respect to such redemption may be performed by another Person.

(b) At the Company's request, the Trustee shall deliver the notice of redemption in the Company's name and at the Company's expense. In such event, the Company shall notify the Trustee of such request at least five (5) Business Days (or such shorter period as is acceptable to the Trustee) prior to the date such notice is to be provided to holders. Such notice shall be in writing and may be sent to the Trustee as a .pdf attachment via electronic mail. Such notice may not be canceled once delivered to holders of Notes.

(c) Notice of any redemption may, at the Company's discretion, be given prior to the completion of a transaction (including an Asset Sale, an Equity Offering, an incurrence of Indebtedness, a Change of Control or other transaction) and any redemption notice may, at the Company's discretion, be subject to the satisfaction (or waiver by the Company) of one or more conditions precedent, including, but not limited to, completion of a related transaction. If such redemption is so subject to satisfaction of one or more conditions precedent, such notice of such redemption shall describe each such condition, and if

applicable, shall state that, in the Company's discretion, the applicable redemption date may be delayed until such time (including more than 60 days after the date the notice of redemption was mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied (or waived by the Company), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Company) by such redemption date, or by such redemption date as so delayed. In addition, the Company may provide in such notice that payment of the redemption price and performance of the Company's obligations with respect to such redemption may be performed by another Person. If any such condition precedent has not been satisfied (or waived by the Company), the Company shall provide written notice to the Trustee and the holders no later than the close of business on the Business Day prior to the applicable redemption date (or such other date as may be required pursuant to the applicable procedures of the Depository). Upon the Company providing such written notice to the Trustee and mailing or causing to be mailed by first-class mail, or delivering electronically in accordance with the Depository's procedures if held by the Depository, such written notice to the holders, the notice of redemption shall be rescinded or delayed, and the redemption of the Notes shall be rescinded or delayed, in each case as provided in such notice.

SECTION 1.06 Effect of Notice of Redemption. Once notice of redemption is mailed or otherwise delivered in accordance with Section 3.05, Notes called for redemption become due and payable on the applicable redemption date and at the redemption price stated in the notice, except as provided in Section 3.05(c). Upon surrender to the Paying Agent (in the case of Definitive Notes), such Notes shall be paid at the redemption price stated in the notice, *plus* accrued and unpaid interest to, but excluding, the applicable redemption date; *provided*, *however*, that if the applicable redemption date is after a regular Record Date and on or prior to the next Interest Payment Date, the accrued interest shall be payable to the holder of the redeemed Notes registered on the relevant Record Date. Failure to give notice or any defect in the notice to any holder shall not affect the validity of the notice to any other holder.

SECTION 1.07 Deposit of Redemption Price. With respect to any Notes, prior to 10:00 a.m., New York City time, on the applicable redemption date, the Company shall irrevocably deposit with the Trustee or Paying Agent (or, if the Company or any of its wholly owned domestically organized Subsidiaries is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued and unpaid interest on all Notes or portions thereof to be redeemed on that date other than Notes or portions of Notes called for redemption that have been delivered by the Company to the Trustee for cancellation. On and after the applicable redemption date, interest shall cease to accrue on Notes (or portion thereof) called for redemption so long as the Company has deposited with the Paying Agent or Trustee funds sufficient to pay the redemption price of the Notes (or portion thereof) to be redeemed, *plus* accrued and unpaid interest to, but excluding, the applicable redemption date, on, the Notes (or portions thereof) to be redeemed.

SECTION 1.08 Notes Redeemed in Part. If any Note is to be redeemed in part only, the notice of redemption relating to such Note shall state the portion of the principal amount thereof to be redeemed. Upon surrender and cancellation of any Definitive Note that is redeemed in part, the Company shall execute and the Trustee shall authenticate for the holder (at the Company's expense) a new Definitive Note equal in principal amount to the unredeemed portion of the Note surrendered and cancelled. If any Global Note is redeemed in part, the records of the Trustee shall be revised to reflect such decrease in the principal amount of such Global Note.

SECTION 1.09 Mandatory Redemption. Without limiting the obligations of the Company set forth in Sections 4.06 and 4.08 or the application of the Springing Maturity Date, the Company is not required to make any mandatory redemption or sinking fund payments with respect to the Notes.

ARTICLE IV COVENANTS

SECTION 1.01 Payment of Notes. The Company shall promptly pay the principal of and unpaid interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. An installment of principal of or interest shall be considered paid on the date due (subject to Section 13.08) if on such date (i) the Trustee or the Paying Agent has received, as of 10:00 a.m., New York City time,

money sufficient to pay all principal and Cash Interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the holders on that date pursuant to the terms of this Indenture and (ii) the Trustee has received delivery of an Authentication Order on or prior to the date the payment is due of any PIK Notes to be authenticated and delivered, or of an Authentication Order as provided in Section 2.14 for any increased principal amount of the applicable Global Notes in amount equal to all PIK Interest then due. In no event shall the Trustee or any Paying Agent (other than the Company acting as its own Paying Agent) be required to advance any funds for payment on the Notes. For the avoidance of doubt, the Trustee and each Paying Agent (other than the Company acting as its own Paying Agent) shall only be obligated to pay amounts actually receive by it in respect of such payments.

The Company shall pay interest on overdue principal at the rate specified therefor in the Notes, and it shall pay interest on overdue installments of interest at the same rate borne by the Notes to the extent lawful.

SECTION 1.02 Reports and Other Information.

(a) The Company shall furnish to the Trustee the following:

(i) within 15 days after the date by which the annual report on Form 10-K of the Company for each fiscal year is required to be filed pursuant to the SEC's rules and regulations (after giving effect to any extension thereof), the annual report on Form 10-K (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form), except to the extent permitted to be excluded by the SEC;

(ii) within 15 days after the date by which the quarterly report on Form 10-Q of the Company for each of the first three fiscal quarters of each fiscal year is required to be filed pursuant to the SEC's rules and regulations (after giving effect to any extension thereof), the quarterly report on Form 10-Q (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form), except to the extent permitted to be excluded by the SEC;

(iii) promptly after the same becomes publicly available, copies of all such other current reports on Form 8-K (or any successor or comparable form), except to the extent permitted to be excluded by the SEC; and

(iv) subject to the foregoing, any other information, documents and other reports which the Company is required to file with the SEC pursuant to Section 13 and 15(d) of the Exchange Act.

provided, *however*, that the Company shall not be so obligated to file or furnish, as applicable, such reports with the SEC if the SEC does not permit such filing, in which event the Company will make available such information to the Trustee and the holders, in each case, within 15 days after the time the Company would be required to file or furnish, as applicable such information with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act as provided above (after giving effect to any extension thereof); *provided*, *further*, that such reports will not be required to contain the separate financial information for the Company or the Guarantors contemplated by Rule 3-10 or Rule 3-16 under Regulation S-X promulgated by the SEC (or any successor provision); *provided, however*, that textual disclosure of assets, revenue, EBITDA and liabilities of Subsidiaries that are not Guarantors (if any) shall be included. Substantially concurrently with furnishing the foregoing information to the Trustee, the Company shall use its commercially reasonable efforts to make available to the holders, bona fide prospective investors in the Notes (which prospective investors may be limited to "qualified institutional buyers" within the meaning of Rule 144A of the Securities Act, institutional "accredited investors" as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act or non-U.S. Persons (as defined in Regulation S under the Securities Act) that certify their status as such to the satisfaction of the Company) and securities analysts (solely to the extent providing analysis of an investment in the Notes) the foregoing information, by posting such information to its website, with the SEC via the EDGAR filing system (or any successor thereto) or on IntraLinks or any comparable online data system or website, it

being understood that the Trustee shall have no responsibility to determine if such information has been posted on any website. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall have no liability or responsibility for the filing, timeliness or content of any such report.

(b) The Company may condition the delivery of any information pursuant to this Section 4.02 (other than the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act) on the agreement of such Persons to (i) treat all such information as confidential, (ii) not use such information for any purpose other than their investment or potential investment in the Notes and (iii) not publicly disclose any such information. The Company may deny access to any competitively sensitive information and reports otherwise to be provided pursuant to this covenant to any Person that is a competitor of the Company or its Subsidiaries to the extent that the Company determines in good faith that the provision of such information and reports to such Person would be competitively harmful to the Company and its Subsidiaries.

(c) In addition, the Company shall, for so long as any Notes remain outstanding during any period when it is not subject to Section 13 or 15(d) of the Exchange Act, or otherwise permitted to furnish the SEC with certain information pursuant to Rule 12g3-2(b) of the Exchange Act, furnish to the holders of the Notes and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(d) The Company will furnish to the Notes Collateral Agent, on a quarterly basis, written notice of any change in the (i) legal name of the Company or any Guarantor, (ii) jurisdiction of organization or formation of the Company or any Guarantor, (iii) identity or corporate structure of the Company or any Guarantor and (iv) location of the registered office or chief executive office of the Company or any Guarantor.

(e) Notwithstanding the foregoing, the Company will be deemed to have furnished the reports referred to in this Section 4.02 to the Trustee and the holders if the Company has filed such reports with, or furnished such reports to, as the case may be, the SEC via the EDGAR filing system (or any successor thereto) and such reports are publicly available, it being understood that the Trustee shall have no responsibility to determine if such information has been posted on any website.

(f) Delivery of such reports, information and documents to the Trustee or the Notes Collateral Agent pursuant to this Section 4.02 is for informational purposes only, and the Trustee's or the Notes Collateral Agent's receipt thereof shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants under this Indenture, the Notes, the Guarantees or the Security Documents (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

SECTION 1.03 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) (i) The Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock; and (ii) the Company shall not permit any of the Subsidiaries (other than any Guarantor) to issue any shares of Preferred Stock.

(b) The limitations set forth in Section 4.03(a) shall not apply to:

(i) Indebtedness of the Company and the Guarantors in respect of a revolving credit facility or delayed draw term loan facility (which delayed draw term loan facility is provided by a bona fide commercial bank), which (A) when aggregated with the principal amount or liquidation preference of all other Indebtedness then outstanding and Incurred pursuant to this clause (i) and

all other Indebtedness then outstanding and Incurred pursuant to clause (xvii) below, together with any Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xv) below, does not exceed $25 million at any time outstanding (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount) and (B) shall be on market terms (as determined in good faith by the Company);

(ii) the Incurrence by the Company and the Guarantors of Indebtedness represented by the Initial Notes, any PIK Notes, and, in each case, the Guarantees thereof;

(iii) Indebtedness (or commitments to Incur Indebtedness), Preferred Stock and Disqualified Stock existing on the Issue Date (including the 2025 Notes and 2028 Notes, but excluding Indebtedness described in clause (ii) of this Section 4.03(b));

(iv) Capitalized Lease Obligations Incurred by the Company or any Subsidiary in an aggregate principal amount then outstanding and Incurred pursuant to this clause (iv), together with any Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xv) below, does not exceed $10 million at any one time outstanding (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(v) Indebtedness Incurred by the Company or any Subsidiary constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental law or permits or licenses from governmental authorities, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims;

(vi) Indebtedness arising from agreements of the Company or any Subsidiary providing for indemnification, adjustment of acquisition or purchase price or similar obligations (including earn-outs), in each case, Incurred or assumed in connection with the Transactions, any Investments or any acquisition or disposition of any business, assets or a Subsidiary not prohibited by this Indenture, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(vii) Indebtedness of the Company to a Subsidiary; *provided* that (except in respect of intercompany current liabilities Incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of the Company and its Subsidiaries) any such Indebtedness owed to a Subsidiary that is not a Guarantor is subordinated in right of payment to the obligations of the Company under the Notes; *provided*, *further*, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Subsidiary ceasing to be a Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Company or another Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien but not the transfer thereof upon foreclosure) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (vii);

(viii) shares of Preferred Stock of a Subsidiary issued to the Company or another Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Subsidiary that holds such shares of Preferred Stock of another Subsidiary ceasing to be a Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Company or another Subsidiary) shall be deemed, in each case, to be an issuance of shares of Preferred Stock not permitted by this clause (viii);

(ix) Indebtedness of a Subsidiary to the Company or another Subsidiary; *provided* that if a Guarantor Incurs such Indebtedness to a Subsidiary that is not a Guarantor (except in respect of intercompany current liabilities Incurred in the ordinary course of business in

connection with the cash management, tax and accounting operations of the Company and its Subsidiaries), such Indebtedness is subordinated in right of payment to the Guarantee of such Guarantor; *provided*, *further*, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Subsidiary holding such Indebtedness ceasing to be a Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Company or another Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien but not the transfer thereof upon foreclosure) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (ix);

(x) Hedging Obligations that are not Incurred for speculative purposes but (A) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Indenture to be outstanding; (B) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (C) for the purpose of fixing or hedging commodity price risk with respect to any commodity purchases or sales and, in each case, extensions or replacements thereof;

(xi) obligations (including reimbursement obligations with respect to letters of credit, bank guarantees, warehouse receipts and similar instruments) in respect of performance, bid, appeal and surety bonds and statutory obligations, completion guarantees and similar obligations provided by the Company or any Subsidiary in the ordinary course of business or consistent with past practice or industry practice;

(xii) Indebtedness or Disqualified Stock of the Company or Indebtedness, Disqualified Stock or Preferred Stock of any Guarantor Incurred to finance the repayment, redemption, repurchase, defeasance, or other acquisition or retirement of, or conversion or exchange for, 2025 Notes or 2028 Notes; *provided* that (x) any Secured Indebtedness Incurred pursuant to this clause (xii) must be Junior Lien Priority Indebtedness, (y) any Indebtedness Incurred pursuant to this clause (xii) must have, at the time it is Incurred, a Weighted Average Life to Maturity that is no shorter than the remaining Weighted Average Life to Maturity of the Notes then outstanding and a final scheduled maturity date equal to or later than the date which is 91 days after the last maturity date of the Notes then outstanding and (z) any such Junior Lien Priority Indebtedness, when aggregated with the principal amount of all other Junior Lien Priority Indebtedness then outstanding and Incurred pursuant to this clause (xii), in each case together with any Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xv) below, does not exceed an amount equal to $125 million (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(xiii) [reserved];

(xiv)any guarantee by (A) the Company or any Guarantor of Indebtedness or other obligations of the Company or any Guarantor or (B) any Subsidiary that is not a Guarantor of Indebtedness or other obligations of any other Subsidiary that is not a Guarantor, in each case, (x) so long as the Incurrence of such Indebtedness Incurred by the Company or such Subsidiary is permitted under the terms of this Indenture (y) provided that if such Indebtedness is by its express terms subordinated in right of payment to the Notes or the Guarantee of such Subsidiary, as applicable, any such guarantee with respect to such Indebtedness shall be subordinated in right of payment to the Notes or such Guarantee, as applicable, substantially to the same extent as such Indebtedness is subordinated to the Notes or the Guarantee, as applicable;

(xv) the Incurrence by the Company or any of the Subsidiaries of Indebtedness or Disqualified Stock, or by any Subsidiary of Preferred Stock, that serves to refund, refinance or defease any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued as permitted under clauses (i), (ii), (iii), (iv), (xii), (xv) and (xvii) of this Section 4.03(b) up to the outstanding principal amount (or, if applicable, the liquidation preference, face amount, or the like) or, if greater, committed amount (only to the extent the committed amount could have been Incurred on the date of initial Incurrence and was deemed Incurred at such time for the purposes of this Section 4.03) of such Indebtedness or Disqualified Stock or Preferred Stock, in each case at the

time such Indebtedness was Incurred or Disqualified Stock or Preferred Stock was issued pursuant to clauses (i), (ii), (iii), (iv), (xii), (xv) and (xvii) of this Section 4.03(b), plus any Additional Refinancing Amount (subject to the following proviso, "Refinancing Indebtedness"), prior to its respective maturity; *provided*, *however*, that such Refinancing Indebtedness:

(1) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded, refinanced or defeased and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness, Disqualified Stock and Preferred Stock being refunded or refinanced that were due on or after the date that is one year following the last maturity date of any Notes then outstanding were instead due on such date (*provided* that this subclause (1) will not apply to any refunding or refinancing of any Secured Indebtedness or Indebtedness of non-Guarantors);

(2) has a final scheduled maturity date equal to or later than the final maturity date of the Indebtedness, Disqualified Stock or Preferred Stock being refunded, refinanced or defeased;

(3) to the extent such Refinancing Indebtedness refinances (a) Indebtedness junior in right of payment to the Notes Obligations, such Refinancing Indebtedness is junior in right of payment to the Notes Obligations, (b) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness is Disqualified Stock or Preferred Stock, and (c) Indebtedness secured by a Lien on the Collateral that is *pari passu* or junior to the Lien on the Collateral securing the Notes Obligations, such Refinancing Indebtedness is secured by a Lien on the Collateral that is *pari passu* with or junior to the Lien on the Collateral securing the Notes Obligations to the same extent as such Indebtedness being Refinanced, and a Senior Representative of such Refinancing Indebtedness acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of the Security Agreement or a Junior Lien Priority Indebtedness Intercreditor Agreement, as applicable; and

(4) shall not include Indebtedness of a Subsidiary that is not a Guarantor that refinances Indebtedness of the Company or a Guarantor;

(xvi)[reserved];

(xvii) Indebtedness Incurred in a Qualified Securitization Financing that is not recourse to the Company or any Subsidiary other than (if applicable) a Securitization Subsidiary (except for Standard Securitization Undertakings) in an aggregate principal amount that, when aggregated with the principal amount of all other Indebtedness then outstanding and Incurred pursuant to this clause (xvii) and all other Indebtedness then outstanding and Incurred pursuant to clause (i) above, together with any Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xv) above, does not exceed $25 million at any one time outstanding (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(xviii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(xix)Indebtedness of the Company or any Subsidiary supported by a letter of credit or bank guarantee, in a principal amount not in excess of the stated amount of such letter of credit;

(xx) [reserved];

(xxi)Indebtedness of the Company or any Subsidiary consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xxii) Indebtedness consisting of Indebtedness of the Company or a Subsidiary to current or former officers, directors and employees thereof or any direct or indirect parent thereof, their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Company to the extent described in Section 4.04(b)(iv); and

(xxiii) Indebtedness in respect of Obligations of the Company or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; *provided* that such obligations are Incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money or any Hedging Obligations.

Accrual of interest (including, for the avoidance of doubt, PIK Interest), the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness (including, for the avoidance of doubt, PIK Payment), Disqualified Stock or Preferred Stock, as applicable, amortization of original issue discount, the accretion of liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an Incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 4.03. Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; *provided* that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 4.03.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the lower U.S. dollar equivalent), in the case of revolving credit debt. However, if the Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and the refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of the refinancing, the U.S. dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of the refinancing Indebtedness does not exceed the principal amount of the Indebtedness being refinanced.

Notwithstanding any other provision of this Section 4.03, the maximum amount of Indebtedness that the Company and the Subsidiaries may Incur pursuant to this Section 4.03 shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, solely as a result of fluctuations in the exchange rate of currencies.

SECTION 1.04 Limitation on Restricted Payments.

(a) The Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any distribution on account of the Company's or any of the Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving the Company (other than (A) dividends or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Company and (B) dividends or distributions by a Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a

Subsidiary that is not a Wholly Owned Subsidiary, the Company or a Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(ii) purchase or otherwise acquire or retire for value any Equity Interests of the Company;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or scheduled maturity, any Subordinated Indebtedness of the Company or any Guarantor (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness (other than the 2025 Notes and 2028 Notes) in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement and (B) Indebtedness permitted under clauses (vii) and (ix) of Section 4.03(b)); or

(iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "Restricted Payments").

(b) The provisions of Section 4.04(a) shall not prohibit (collectively, "Permitted Payments"):

(i) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration thereof, if at the date of declaration or the giving of notice of such irrevocable redemption, as applicable, such payment would have complied with the provisions of this Indenture;

(ii) the repayment, redemption, repurchase, defeasance, or other acquisition or retirement of the 2025 Notes:

(A) made by the conversion into or exchange for Equity Interests (other than Disqualified Stock) of the Company,

(B) made by the conversion into or exchange for, or out of the proceeds of the sale of, new Indebtedness of the Company or a Subsidiary Incurred in accordance with Section 4.03(b)(xii), and/or

(C) made by purchases in cash, whether by tender offer, open-market purchase, negotiated transaction or otherwise;

(iii) the repayment, redemption, repurchase, defeasance, or other acquisition or retirement of the 2028 Notes:

(A) made by the conversion into or exchange for Equity Interests (other than Disqualified Stock) of the Company,

(B) made by the conversion into or exchange for, or out of the proceeds of the sale of, new Indebtedness of the Company or a Subsidiary Incurred in accordance with Section 4.03(b)(xii), and/or

(C) made by purchases in cash, whether by tender offer, open-market purchase, negotiated transaction or otherwise, in an aggregate principal amount not to exceed the sum of (1) $30 million, *plus* (2) the aggregate amount of net proceeds received by the Company and its Subsidiaries in any Equity Offering (other than an Equity Offering of Disqualified Stock), *plus* (3) an unlimited additional amount, provided that, in the case of this clause (C)(3), (x) the Consolidated First Lien Leverage Ratio of the

Company for the most recently ended four fiscal quarters for which financial statements are available, determined on a *pro forma* basis, would not exceed 1.75:1.00 and (y) no Default or Event of Default shall have occurred and be continuing;

(iv) a Restricted Payment to pay for the repurchase, retirement or other acquisition for value of Equity Interests of the Company (x) held by any future, present or former employee, director, officer or consultant of the Company or any other Subsidiary upon such Person's death, disability, retirement or termination of employment and (y) pursuant to and accordance with any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; *provided*, *however*, that the aggregate Restricted Payments made under this clause (iv) do not exceed $2.5 million in any calendar year, with unused amounts in any calendar year in an amount not to exceed $2.5 million being permitted to be carried over to the next succeeding calendar year; *provided*, *further*, *however*, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds received by the Company or any of the Subsidiaries from the sale of Equity Interests (other than Disqualified Stock) of the Company to employees, directors, officers or consultants of the Company and the Subsidiaries, plus

(B) the cash proceeds of key man life insurance policies received by the Company or the Subsidiaries after the Issue Date;

provided that the Company may elect to apply all or any portion of the aggregate increase contemplated by clauses (A) and (B) above in any calendar year;

(v) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Company or any Subsidiary or series of Preferred Stock of any Subsidiary of the Company, in each case, issued or incurred in accordance with Section 4.03;

(vi) the redemption, repurchase, retirement or other acquisition of any Subordinated Indebtedness of the Company or any Guarantor (other than the 2025 Notes or 2028 Notes) in exchange for, or out of the proceeds of, the substantially concurrent sale of, Equity Interests of the Company or contributions to the equity capital of the Company (other than any Disqualified Stock);

(vii) the repayment, redemption, repurchase, defeasance, exchange, or other acquisition or retirement of Subordinated Indebtedness (other than the 2025 Notes or 2028 Notes) made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Company or any Subsidiary, which is Incurred in accordance with Section 4.03, so long as:

(A) the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount (or accreted value, if applicable), *plus* any accrued and unpaid interest, of the Subordinated Indebtedness being so repaid, redeemed, repurchased, defeased, exchanged, acquired or retired for value (*plus* the amount of any premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so repaid, redeemed, repurchased, exchanged, acquired or retired, *plus* any tender premiums, *plus* any defeasance costs, fees and expenses incurred in connection therewith),

(B) such Indebtedness is subordinated as to right of payment to the Notes or the related Guarantee, as the case may be, at least to the same extent as such Subordinated Indebtedness so repaid, redeemed, repurchased, defeased, exchanged, acquired or retired for value, if applicable,

(C) such Indebtedness has a final scheduled maturity date equal to or later than the earlier of (x) the final scheduled maturity date of the Subordinated Indebtedness

being so repaid, redeemed, repurchased, acquired or retired and (y) 91 days following the last maturity date of any Notes then outstanding, and

(D) such Indebtedness has a Weighted Average Life to Maturity at the time Incurred which is not less than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so repaid, redeemed, repurchased, defeased, acquired or retired;

(viii) [reserved];

(ix) [reserved];

(x) [reserved];

(xi) [reserved];

(xii) other Restricted Payments in an aggregate amount, when taken together with all other Restricted Payments made pursuant to this clause (xii) that are at that time outstanding, not to exceed $2.5 million; provided that no Default or Event of Default shall have occurred and be continuing;

(xiii) [reserved];

(xiv)[reserved];

(xv) [reserved]

(xvi)repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(xvii) purchases of Securitization Assets pursuant to a Securitization Repurchase Obligation in connection with a Qualified Securitization Financing and the payment or distribution of Securitization Fees;

(xviii) Restricted Payments by the Company or any Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants (including, for the avoidance of doubt, the Warrants) or upon the conversion or exchange of Capital Stock of any such Person, including net share settlements;

(xix)the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness pursuant to provisions in the documentation governing such Indebtedness similar to those described in Section 4.06 and Section 4.08; *provided* that all Notes tendered by holders of the Notes in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value; and

(xx) payments or distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Company and the Subsidiaries, taken as a whole, that complies with Section 5.01; *provided* that as a result of such consolidation, amalgamation, merger or transfer of assets, the Company shall have made a Change of Control Offer (if required by this Indenture) and that all Notes tendered by holders in connection with such Change of Control Offer have been repurchased, redeemed or acquired for value;

provided, *however*, that any Restricted Payments made with property other than cash shall be calculated using the Fair Market Value (as determined in good faith by the Company) of such property.

SECTION 1.05 Dividend and Other Payment Restrictions Affecting Subsidiaries. The Company shall not, and shall not permit any Material Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of the Company or any Material Subsidiary to:

(a) pay dividends or make any other distributions to the Company or any Subsidiary (1) on its Capital Stock; or (2) with respect to any other interest or participation in, or measured by, its profits; or

(b) make loans or advances to the Company or any Subsidiary that is a direct or indirect parent of such Material Subsidiary;

except in each case for such encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions in effect on the Issue Date and any similar contractual encumbrances effected by any amendments, modifications, restatements, renewals, supplements, refundings, replacements or refinancings of such agreements or instruments;

(2) this Indenture, the Notes, the Guarantees or the Security Documents;

(3) applicable law or any applicable rule, regulation or order;

(4) any agreement or other instrument of a Person acquired by the Company or any Subsidiary which was in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries (including after-acquired property), so acquired;

(5) contracts or agreements for the sale of assets, including any restriction with respect to a Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Capital Stock or assets of such Subsidiary;

(6) Secured Indebtedness otherwise permitted to be Incurred pursuant to Section 4.03 and Section 4.12 that limits the right of the debtor to dispose of the assets securing such Indebtedness;

(7) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(8) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(9) purchase money obligations for property acquired and Capitalized Lease Obligations in the ordinary course of business;

(10) customary provisions contained in leases, licenses and other similar agreements entered into in the ordinary course of business;

(11) any encumbrance or restriction that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license, mortgage, security agreement or similar contract, or the assignment or transfer of any such lease, license (including without limitation, licenses of intellectual property) or other contracts;

(12) any encumbrance or restriction of a Securitization Subsidiary effected in connection with a Qualified Securitization Financing; *provided*, *however*, that such restrictions apply only to such Securitization Subsidiary;

(13) other Indebtedness, Disqualified Stock or Preferred Stock so long as such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Company's ability to make anticipated principal or interest payments on the Notes (as determined in good faith by the Company), *provided* that such Indebtedness, Disqualified Stock or Preferred Stock is permitted to be Incurred subsequent to the Issue Date pursuant to Section 4.03;

(14) any Restricted Investment not prohibited by Section 4.04 and any Permitted Investment; or

(15) any encumbrances or restrictions of the type referred to in Section 4.05(a) or (b) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (14) above and this clause (15); *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

For purposes of determining compliance with this Section 4.05, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to the Company or a Subsidiary to other Indebtedness Incurred by the Company or any such Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

SECTION 1.06 Asset Sales.

(a) The Company shall not, and shall not permit any of the Subsidiaries to, cause or make an Asset Sale, unless (x) the Company or any Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value (as determined in good faith by the Company) of the assets sold or otherwise disposed of, (y) at least 75% of the consideration therefor received by the Company or such Subsidiary, as the case may be, is in the form of Cash Equivalents and (z) the aggregate Net Proceeds received for all such Asset Sales caused or made pursuant to this Section 4.06 shall not exceed $25 million; *provided* that in no event shall the Company or any of the Guarantors cause or make an Asset Sale of any Material Intellectual Property to any Person other than the Company or any of the Guarantors; *provided further* that the amount of:

(i) any liabilities (as shown on the Company's or a Subsidiary's most recent balance sheet or in the notes thereto) of the Company or a Subsidiary (other than liabilities that are by their terms subordinated (either in payment or lien priority) to the Notes or any Guarantee) that are assumed by the transferee of any such assets or that are otherwise cancelled or terminated in connection with the transaction with such transferee;

(ii) any notes or other Obligations or other securities or assets received by the Company or such Subsidiary from such transferee that are converted by the Company or such Subsidiary into cash within 180 days of the receipt thereof (to the extent of the cash received);

(iii) Indebtedness of any Subsidiary that is no longer a Subsidiary as a result of such Asset Sale, to the extent that the Company and each other Subsidiary are released from any guarantee of payment of such Indebtedness in connection with the Asset Sale; and

(iv) consideration consisting of Indebtedness of the Company or any Guarantor (other than Subordinated Indebtedness) received after the Issue Date from Persons who are not the Company or any Subsidiary;

shall be deemed to be Cash Equivalents for the purposes of this Section 4.06(a).

(b) Any Net Proceeds received by the Company or any Subsidiary from Asset Sales after the Issue Date in excess of $10 million (for all such Asset Sales) will be deemed to constitute "Excess Proceeds." When the aggregate amount of Excess Proceeds equals or exceeds the Excess Proceeds Threshold Amount, the Company shall make an offer to all holders of the Notes (and, at the option of the Company, to holders of any First Lien Priority Indebtedness that the Company is required to offer to repurchase or otherwise prepay with the proceeds of Asset Sales pursuant to the terms of the documentation governing such First Lien Priority Indebtedness ("Other Applicable Indebtedness")) (an "Asset Sale Offer") to purchase the maximum principal amount of Notes (and such Other Applicable Indebtedness), that is at least $1.00 and an integral multiple of $1.00 in excess thereof that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof (or, in the event the Notes or Other Applicable Indebtedness were issued with significant original issue discount, 100% of the accreted value thereof), *plus* accrued and unpaid interest (or, in respect of such Other Applicable Indebtedness, such lesser price, if any, as may be provided for by the terms of such Other Applicable Indebtedness), to, but excluding, the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture. The Company will commence an Asset Sale Offer with respect to Excess Proceeds within ten (10) Business Days after the date that Excess Proceeds equals or exceeds the Excess Proceeds Threshold Amount by mailing, or delivering electronically if held by the Depository, the notice required pursuant to the terms of this Indenture, with a copy to the Trustee. To the extent that the aggregate amount of Notes (and such Other Applicable Indebtedness) tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for any purpose that is not prohibited by this Indenture. If the aggregate principal amount of Notes (and such Other Applicable Indebtedness) surrendered by holders thereof exceeds the amount of Excess Proceeds, the Notes to be purchased shall be selected in the manner described in Section 4.06(e). Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

(c) The Company will comply, to the extent applicable, with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Company will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in this Indenture by virtue thereof.

(d) Not later than the date upon which written notice of an Asset Sale Offer is delivered to the holders of Notes and the Trustee as provided above, the Company shall deliver to the Trustee an Officer's Certificate as to (i) the amount of the Excess Proceeds, (ii) the allocation of the Net Proceeds from the Asset Sales pursuant to which such Asset Sale Offer is being made and (iii) the compliance of such allocation with the provisions of Section 4.06(b). On such date, the Company shall also irrevocably deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary is acting as the Paying Agent, segregate and hold in trust) an amount equal to the Excess Proceeds to be invested in Cash Equivalents offered for investment by the Trustee or Paying Agent (or its applicable bank), as directed in writing by the Company and to be held for payment in accordance with the provisions of this Section 4.06. Upon the expiration of the period for which the Asset Sale Offer remains open (the "Offer Period"), the Company shall deliver to the Trustee for cancellation the Notes or portions thereof that have been properly tendered to and are to be accepted by the Company. The Trustee (or the Paying Agent, if not the Trustee) shall, on the date of purchase, mail or deliver payment to each tendering holder in the amount of the purchase price. In the event that the Excess Proceeds delivered by the Company to the Trustee are greater than the purchase price of the Notes tendered, the Trustee shall deliver the excess to the Company immediately after the expiration of the Offer Period for application in accordance with this Section 4.06. Any amounts for which an written investment direction is not delivered will remain uninvested, without any liability for interest thereon.

(e) Holders electing to have a Note purchased shall be required to surrender such Note, with an appropriate form duly completed, to the Company at the address specified in the notice at least three Business Days prior to the purchase date. Holders shall be entitled to withdraw their election if the Company receives (with a copy to the Trustee) not later than one Business Day prior to the purchase date, a telegram, telex, facsimile transmission or letter setting forth the name of the holder, the principal amount of the Note which was delivered by the holder for purchase and a statement that such holder is withdrawing his election to have such Note purchased. If at the end of the Offer Period more Notes (and such First Lien Priority Indebtedness) are tendered pursuant to an Asset Sale Offer than the Company is required to purchase, selection of the amount of Notes in respect of which an Asset Sale Offer was made shall be selected (i) in the case of Global Notes, in accordance with the applicable procedures of the Depositary or (ii) in the case of Definitive Notes, by the Company on a pro rata basis to the extent practicable, by lot or by such other method as the Company shall deem fair and appropriate; *provided* that no Notes of $1.00 or less shall be purchased in part. Holders whose Notes are purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered. Selection of such First Lien Priority Indebtedness shall be made pursuant to the terms of such First Lien Priority Indebtedness.

(f) Notices of an Asset Sale Offer shall be mailed by the Company by first class mail, postage prepaid, or delivered electronically if held by the Depository, at least 10 but not more than 60 days before the purchase date to each holder of the Notes at such holder's registered address. If any Note is to be purchased in part only, any notice of purchase that relates to such Note shall state the portion of the principal amount thereof that has been or is to be purchased.

SECTION 1.07 Transactions with Affiliates.

(a) The Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each of the foregoing, an "Affiliate Transaction") involving aggregate consideration in excess of $5 million, unless:

(i) such Affiliate Transaction is (x) otherwise permitted (or required) under this Indenture or (y) on terms that are not materially less favorable to the Company or the relevant Subsidiary than those that could have been obtained in a comparable transaction by the Company or such Subsidiary with an unrelated Person; and

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $10 million, the Company delivers to the Trustee a resolution adopted in good faith by the majority of the Board of Directors of the Company, approving such Affiliate Transaction and an Officer's Certificate stating that such Affiliate Transaction complies with clause (i) above.

(b) The provisions of Section 4.07(a) shall not apply to the following:

(i) transactions between or among the Company and/or any of the Guarantors (or an entity that becomes a Guarantor as a result of such transaction);

(ii) Restricted Payments permitted by Section 4.04 and Permitted Investments;

(iii) the payment of reasonable and customary fees and reimbursement of expenses paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of the Company or any Subsidiary;

(iv) transactions in which the Company or any Subsidiary, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such

transaction is fair to the Company or such Subsidiary from a financial point of view or meets the requirements of clause (i) of Section 4.07(a);

(v) payments or loans (or cancellation of loans) to officers, directors, employees or consultants which are approved by a majority of the Board of Directors of the Company in good faith;

(vi) any agreement as in effect as of the Issue Date or any amendment, modification, supplement, extension or renewal from time to time thereof (so long as any such agreement together with all amendments, modifications, supplements, extensions or renewals thereto, taken as a whole, is not more disadvantageous to the holders of the Notes in any material respect than the original agreement as in effect on the Issue Date, as determined in good faith by the Company) or any transaction contemplated thereby as determined in good faith by the Company;

(vii) [reserved];

(viii) [reserved];

(ix) (A) transactions with customers, clients, suppliers, consignors, purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture, which are fair to the Company and the Subsidiaries in the reasonable determination of the Company, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party or (B) transactions with joint ventures entered into in the ordinary course of business;

(x) any transaction effected as part of a Qualified Securitization Financing;

(xi) the issuance of (A) Equity Interests (other than Disqualified Stock) of the Company or (B) the Warrants to any Person;

(xii) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, management equity plans, stock option and stock ownership plans or similar employee benefit plans approved by the Board of Directors of the Company or the Board of Directors of a Subsidiary, as appropriate, in good faith;

(xiii) [reserved];

(xiv)[reserved];

(xv) transactions permitted by, and complying with, Section 4.06 or Section 5.01, as applicable;

(xvi)transactions between the Company or any Subsidiary and any Person, a director of which is also a director of the Company; *provided*, *however*, that such director abstains from voting as a director of the Company on any matter involving such other Person;

(xvii) [reserved]

(xviii) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(xix)(A) any employment agreements entered into by the Company or any of the Subsidiaries in the ordinary course of business and (B) any employee compensation, benefit plan

or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto;

(xx) transactions undertaken in good faith (as certified by a responsible financial or accounting officer of the Company in an Officer's Certificate) for the purpose of improving the consolidated tax efficiency of the Company and its Subsidiaries and not for the purpose of circumventing any covenant set forth in this Indenture;

(xxi)non-exclusive licenses of intellectual property to or among the Company and any Subsidiary and the Company's Affiliates;

(xxii) any purchase by the Company or its Affiliates of Indebtedness, Disqualified Stock or Preferred Stock of the Company or any of the Subsidiaries; provided that such purchases are on the same terms as such purchases by such Persons who are not the Company's Affiliates; and

(xxiii) written agreements entered into or assumed in connection with mergers or acquisitions of other businesses with Persons who were not Affiliates prior to such transactions (provided that such agreement was not entered into in contemplation of such merger or acquisition), and any amendment thereto, so long as any such amendment is not disadvantageous in any material respect to the holders as determined in good faith by the Company, when taken as a whole, as compared to the applicable agreement as in effect on the date of such acquisition or merger.

SECTION 1.08 Change of Control.

(a) Upon the occurrence of a Change of Control, each holder shall have the right to require the Company to repurchase all or any part of such holder's Notes at a purchase price in cash equal to 101% of the principal amount thereof, *plus* accrued and unpaid interest to, but excluding, the date of repurchase (subject to the right of holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date), in accordance with the terms contemplated in this Section 4.08; *provided*, *however*, that notwithstanding the occurrence of a Change of Control, the Company shall not be obligated to purchase any Notes pursuant to this Section 4.08 in the event that it has previously or concurrently exercised its right to redeem such Notes in accordance with Article III of this Indenture.

(b) Within 30 days following any Change of Control, except to the extent that the Company has exercised its right to redeem the Notes in accordance with Article III of this Indenture, the Company shall mail, or deliver electronically in accordance with the Depository's procedures if held by the Depository, a notice (a "Change of Control Offer") to each holder with a copy to the Trustee stating:

(i) that a Change of Control has occurred and that such holder has the right to require the Company to repurchase such holder's Notes at a repurchase price in cash equal to 101% of the principal amount thereof, *plus* accrued and unpaid interest to, but excluding, the date of repurchase (subject to the right of holders of record on the relevant Record Date to receive interest on the relevant Interest Payment Date);

(ii) the circumstances and relevant facts and financial information regarding such Change of Control;

(iii) the repurchase date (which shall be no earlier than 10 days nor later than 60 days from the date such notice is sent); and

(iv) the instructions determined by the Company, consistent with this Section 4.08, that a holder must follow in order to have its Notes purchased.

(c) Holders electing to have a Note purchased shall be required to surrender the Note, with an appropriate form duly completed, to the Company at the address specified in the notice at least three

Business Days prior to the purchase date. The holders shall be entitled to withdraw their election if the Company (with a copy to the Trustee) receives not later than one Business Day prior to the purchase date a telegram, telex, facsimile transmission or letter setting forth the name of the holder, the principal amount of the Note which was delivered for purchase by the holder and a statement that such holder is withdrawing its election to have such Note purchased. Holders whose Notes are purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(d) On the purchase date, the Company shall pay the purchase price *plus* accrued and unpaid interest to, but excluding, the date of repurchase, to the holders entitled thereto.

(e) A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon such Change of Control (on analogous terms as described in Section 3.05(c)), if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(f) Notwithstanding the foregoing provisions of this Section 4.08, the Company shall not be required to make a Change of Control Offer upon (or in advance of) a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes properly tendered and not withdrawn under such Change of Control Offer.

(g) Notes repurchased by the Company pursuant to a Change of Control Offer will have the status of Notes issued but not outstanding or will be retired and canceled at the option of the Company. Notes purchased by a third party pursuant to the preceding clause (f) will have the status of Notes issued and outstanding.

(h) A Note shall be deemed to have been accepted for purchase at the time the Company, directly or through an agent, mails or delivers payment therefor to the surrendering holder.

(i) Prior to any Change of Control Offer, the Company shall deliver to the Trustee an Officer's Certificate stating that all conditions precedent contained herein to the right of the Company to make such offer have been complied with.

(j) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Section. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.08, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section by virtue thereof.

(k) If holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Company, or any third party making a Change of Control Offer in lieu of the Company as described above, purchases all of the Notes validly tendered and not withdrawn by such holders, the Company or such third party will have the right, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase pursuant to the Change of Control Offer, to redeem all Notes that remain outstanding following such purchase at a price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest to, but excluding, the date of redemption. Any such redemption shall be effected pursuant to Article III.

SECTION 1.015 Compliance Certificate. The Company shall deliver to the Trustee (a) within 120 days after the end of each fiscal year of the Company, beginning with the fiscal year ending on December 31, 2024, an Officer's Certificate stating that in the course of the performance by the signer of his or her duties as an Officer of the Company he or she would normally have knowledge of any Default and whether or not the signer knows of any Default that occurred during such period and is continuing (and if so, such Officer's Certificate shall describe the Default (if any), its status and what action the Company is taking or proposes to take with respect thereto); (b) within 5 Business Days after the end of

each month, beginning with March 31, 2024, an Officer's Certificate stating whether the Company is in compliance with Section 4.16 and (c) if the aggregate outstanding principal amount of the 2028 Notes then outstanding is greater than $20 million, within 5 Business Days after (i) December 1, 2027, (ii) January 1, 2028 and (iii) February 1, 2028, an Officer's Certificate setting forth the aggregate principal amount of 2028 Notes then outstanding and the Company's calculation of the Springing Maturity Date Threshold Amount (in each case as of the close of business of such date) and stating whether the Springing Maturity Date shall have occurred (it being understood, for the avoidance of doubt, that whether or not the Springing Maturity Date occurs shall be determined in accordance with the definition thereof (and that such date may occur on a date after those referred in this clause (c)). Except with respect to receipt of payments of principal and interest on the Notes, the Trustee shall have no duty to review, ascertain or confirm the Company's compliance with or the breach of any representation, warranty or covenant made in this Indenture.

SECTION 1.010 Further Instruments and Acts. Upon request of the Trustee, the Company shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 1.011 Future Guarantors. The Company shall cause each of its Wholly Owned Subsidiaries that is not an Excluded Subsidiary or that guarantees the 2025 Notes, the 2028 Notes, or any Indebtedness in a principal amount in excess of $10,000,000 to execute and deliver to the Trustee a supplemental indenture substantially in the form of Exhibit C hereto pursuant to which such Wholly Owned Subsidiary will guarantee the Guaranteed Obligations and such Security Documents, or amendments or supplements thereto and such other documentation as shall be necessary to provide for valid and perfected Liens on such Subsidiary's assets constituting Collateral to secure such Guarantee pursuant to the terms of the Security Documents.

SECTION 1.012 Liens.

(a) The Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly, create, Incur or suffer to exist any Lien (except Permitted Liens) on any asset or property of the Company or such Subsidiary securing Indebtedness of the Company or a Subsidiary.

(b) [reserved].

(c) [reserved].

(d) With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest (including, for the avoidance of doubt, PIK Interest), the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms (including, for the avoidance of doubt, PIK Payment) or in the form of common stock of the Company, the payment of dividends on Disqualified Stock or Preferred Stock in the form of additional shares of Disqualified Stock or Preferred Stock of the same class, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (3) of the definition of "Indebtedness."

SECTION 1.013 Further Assurances. Subject to the limitations set forth in the Security Documents, the Company and each of the Guarantors will execute, deliver and file, if applicable, any and all further documents, financing statements, agreements and instruments, and take all further action that may be reasonably required under applicable law (including the filing of continuation financing statements and amendments to financing statements), or that the Notes Collateral Agent may (but shall not be obligated to) reasonably request, in order to grant, preserve, protect and perfect the validity and priority of the security interests and Liens created or intended to be created by the Security Documents on the Collateral.

SECTION 1.014 Maintenance of Office or Agency.

(a) The Company shall maintain an office or agency (which may be an office of the Trustee or an Affiliate of the Trustee or the Registrar) where Notes may be surrendered for registration of transfer or for exchange. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made at the Corporate Trust Office of the Trustee as set forth in Section 13.02.

(b) The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

(c) The Company hereby designates the Corporate Trust Office of the Trustee or its agent as such office or agency of the Company in accordance with Section 2.04.

SECTION 1.015 Existence. The Company shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that the foregoing shall not prohibit any transaction permitted under Section 5.01, and the Company shall not be required to preserve, renew and keep in full force and effect any such right, license, permit, privilege, franchise or legal existence if the Company shall determine in good faith the preservation, renewal or keeping in full force and effect thereof is no longer desirable in the conduct of the business of the Company.

SECTION 1.016 Liquidity Covenant. The Company shall not permit Liquidity to be less than $25 million as of the last day of any month that ends following the Issue Date.

SECTION 1.017 Tax Treatment. Each holder of the Notes agrees, by its acquisition or ownership of any Note, that the Notes are treated as debt for U.S. federal income tax purposes that is not governed by the rules set out in Treasury Regulations Section 1.1275-4 (the "Intended Tax Treatment"). Except to the extent otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code, neither the Company nor a holder of the Notes will take any position inconsistent with the Intended Tax Treatment on any tax return, in any tax proceeding or otherwise.

ARTICLE V

SUCCESSOR COMPANY

SECTION 1.01 When Company and Guarantors May Merge or Transfer Assets.

(a) The Company may not, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not the Company is the surviving or continuing Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person unless:

(i) the Company is the surviving or continuing Person or the Person formed by or surviving or continuing following any such consolidation, amalgamation, merger, winding up or conversion (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, partnership or limited liability company or similar entity organized or existing under the laws of the United States, any state thereof or the District of Columbia (the Company or such Person, as the case may be, being herein called the "Successor Company");

(ii) the Successor Company (if other than the Company) expressly assumes all the obligations of the Company under this Indenture, the Notes and the Security Documents pursuant to supplemental indentures or other applicable documents or instruments in form reasonably satisfactory to the Trustee and the Notes Collateral Agent, if applicable;

(iii) immediately after giving effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Company or any of its Subsidiaries as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction) no Default shall have occurred and be continuing;

(iv) [reserved]

(v) if the Company is not the Successor Company, each Guarantor, unless it is the other party to the transactions described above, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under this Indenture and the Notes;

(vi) the Successor Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, amalgamation or transfer and such supplemental indentures (if any) comply with this Indenture (and any supplement to any Security Document if required in connection with such transaction);

(vii) the Successor Company shall promptly cause such amendments, supplements or other instruments to be executed, delivered, filed and recorded, as applicable, in such jurisdictions as may be reasonably required by applicable law to preserve and protect the Liens of the Security Documents on the Collateral owned by or transferred to the Successor Company;

(viii) the Collateral owned by or transferred to the Successor Company, as applicable, shall (a) constitute Collateral under this Indenture and the Security Documents, (b) be subject to the Liens in favor of the Notes Collateral Agent for the benefit of the Trustee and the holders of the Notes and (c) not be subject to any Lien other than Permitted Liens; and

(ix) the property and assets of the Person which is merged, amalgamated or consolidated with or into the Successor Company, as applicable, to the extent (a) not covered in clause (viii) above and (b) of the types which would constitute Collateral under the Security Documents, shall be treated as after-acquired property and the Successor Company shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Liens in the Security Documents in the manner and to the extent required pursuant to this Indenture.

The Successor Company (if other than the Company) will succeed to, and be substituted for, the Company under this Indenture, the Notes and the Security Documents and in such event the Company will automatically be released and discharged from its obligations under this Indenture, the Notes and the Security Documents. Notwithstanding the foregoing clause (iii) of this Section 5.01(a), (A) the Company or any Subsidiary may merge, consolidate or amalgamate with or transfer all or part of its properties and assets to a Subsidiary or, provided that the Company is the Successor Company, the Company, and (B) the Company may merge, consolidate or amalgamate with an Affiliate incorporated solely for the purpose of reincorporating the Company in another state of the United States or the District of Columbia (collectively, "Permitted Jurisdictions") or may convert into a corporation, partnership or limited liability company, so long as the amount of Indebtedness of the Company and the Subsidiaries is not increased thereby. This Section 5.01(a) will not apply to a sale, assignment, transfer, conveyance or other disposition of assets between or among the Company and the Subsidiaries.

(b) Subject to the provisions of Section 12.02(b), no Guarantor shall, and the Company shall not permit any such Guarantor to, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not such Guarantor is the surviving or continuing Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) either (A) such Guarantor is the surviving or continuing Person or the Person formed by or surviving or continuing following any such consolidation, amalgamation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a company, corporation, partnership or limited liability company or similar entity organized or existing under the laws of the United States, any state thereof or the District of Columbia (such Guarantor or such Person, as the case may be, being herein called the "Successor Guarantor") and the Successor Guarantor (if other than such Guarantor) expressly assumes all the obligations of such Guarantor under this Indenture, the Notes, the Guarantee and the Security Documents, as applicable, pursuant to a supplemental indenture or other applicable documents or instruments in form reasonably satisfactory to the Trustee and the Notes Collateral Agent, as applicable, or (B) in respect of any Guarantor, such sale, assignment, transfer, lease, conveyance or other disposition or consolidation, amalgamation or merger is not in violation of Section 4.06;

(ii) the Successor Guarantor (if other than such Guarantor) shall have delivered or caused to be delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation or merger and such supplemental indenture (if any) comply with this Indenture (and any supplement to any Security Document if required in connection with such transaction);

(iii) the Successor Guarantor shall promptly cause such amendments, supplements or other instruments to be executed, delivered, filed and recorded, as applicable, in such jurisdictions as may be reasonably required by applicable law to preserve and protect the Liens of the Security Documents on the Collateral owned by or transferred to the Successor Guarantor;

(iv) the Collateral owned by or transferred to the Successor Guarantor, as applicable, shall (a) constitute Collateral under this Indenture and the Security Documents, (b) be subject to the Liens in favor of the Notes Collateral Agent for the benefit of the Trustee and the holders of the notes and (c) not be subject to any Lien other than Permitted Liens; and

(v) the property and assets of the Person which is merged, amalgamated or consolidated with or into the Successor Guarantor, as applicable, to the extent (a) not covered in clause (iv) above and (b) of the types which would constitute Collateral under the Security Documents, shall be treated as after-acquired property and the Successor Guarantor shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Liens in the Security Documents in the manner and to the extent required pursuant to this Indenture.

Except as otherwise provided in this Indenture, the Successor Guarantor (if other than such Guarantor) will succeed to, and be substituted for, such Guarantor under this Indenture and the Notes or the Guarantee, as applicable, and such Guarantor will automatically be released and discharged from its obligations under this Indenture and the Notes or its Guarantee. Notwithstanding the foregoing, (1) a Guarantor may merge, amalgamate or consolidate with an Affiliate incorporated solely for the purpose of reincorporating such Guarantor in a Permitted Jurisdiction or may convert into a limited liability company, corporation, partnership or similar entity organized or existing under the laws of any Permitted Jurisdiction so long as the amount of Indebtedness of such Guarantor is not increased thereby and (2) a Guarantor may merge, amalgamate or consolidate with the Company or another Guarantor.

(c) In addition, notwithstanding the foregoing, a Guarantor may consolidate, amalgamate or merge with or into or wind up or convert into, liquidate, dissolve, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets to the Company or any Guarantor.

ARTICLE VI

DEFAULTS AND REMEDIES

SECTION 1.01 Events of Default. An "Event of Default" occurs with respect to Notes if:

(a) there is a default in any payment of interest on any Note when due, and such default continues for a period of 30 days;

(b) there is a default in the payment of principal or premium, if any, of any Note when due at its Stated Maturity (including the Springing Maturity Date, if earlier), upon optional redemption, upon required repurchase, upon declaration or otherwise;

(c) [reserved];

(d) there is a failure by the Company or any Subsidiary for 60 days after written notice given by the Trustee or the holders of not less than 25% in principal amount of the Notes then outstanding (with a copy to the Trustee) to comply with its other obligations, covenants or agreements (other than a default referred to in clauses (a) or (b) above or (k) below) contained in the Notes or this Indenture;

(e) there is a failure by the Company or any Significant Subsidiary (or any group of Subsidiaries that together (as of the date of the most recent audited consolidated financial statements of the Company) would constitute a Significant Subsidiary) (i) to pay any Indebtedness for borrowed money (other than Indebtedness owing to the Company or a Subsidiary) within any applicable grace period after final maturity or (ii) to observe or perform any other agreement or condition relating to any such Indebtedness for borrowed money, the effect of which default is to cause, or to permit the holder or holders of such Indebtedness for borrowed money (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with or without the giving of notice, the lapse of time, or both, such Indebtedness for borrowed money to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, in the case of each of subclause (i) and (ii), if the total amount of such Indebtedness for borrowed money exceeds $20 million or its foreign currency equivalent, *provided*, that (A) in connection with any series of convertible or exchangeable securities (1) any conversion or exchange of such securities by a holder thereof into shares of Capital Stock, cash or a combination of cash and shares of Capital Stock, (2) the rights of holders of such securities to convert or exchange into shares of Capital Stock, cash or a combination of cash and shares of Capital Stock and (C) the rights of holders of such securities to require any repurchase by the Company of such securities in cash shall not, in itself, constitute an Event of Default under this clause (e) and (B) subclause (ii) above shall not apply to Secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness;

(f) the Company or any Significant Subsidiary (or any group of Subsidiaries that together (as of the date of the most recent audited consolidated financial statements of the Company) would constitute a Significant Subsidiary) pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case or proceeding;

(ii) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(iii) consents to the appointment of a Custodian of it or for any substantial part of its property; or

(iv) makes a general assignment for the benefit of its creditors or takes any comparable action under any foreign laws relating to insolvency or bankruptcy,

(g) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company or any Significant Subsidiary in an involuntary case or proceeding;

(ii) appoints a Custodian of the Company or any Significant Subsidiary or for any substantial part of its property; or

(iii) orders the winding up or liquidation of the Company or any Significant Subsidiary;

or any similar debtor relief is granted under any foreign laws and, in each case, the order or decree remains unstayed and in effect for 60 days;

(h) there is a failure by the Company or any Significant Subsidiary (or any group of Subsidiaries that together (as of the date of the most recent audited consolidated financial statements of the Company) would constitute a Significant Subsidiary) to pay final, non-appealable judgments aggregating in excess of $20 million or its foreign currency equivalent (net of any amounts which are covered by enforceable insurance policies issued by solvent carriers), which judgments are not bonded, discharged, paid, waived or stayed for a period of 60 days;

(i) the Guarantee of a Significant Subsidiary (or any group of Subsidiaries that together (as of the date of the most recent audited consolidated financial statements of the Company) would constitute a Significant Subsidiary) with respect to the Notes ceases to be in full force and effect (except as contemplated by the terms thereof) or the Company or any Guarantor that qualifies as a Significant Subsidiary (or any group of Subsidiaries that together (as of the date of the most recent audited consolidated financial statements of the Company) would constitute a Significant Subsidiary) denies or disaffirms its obligations under this Indenture or any Guarantee with respect to the Notes (except by reason of a release of such obligations as contemplated by the terms hereof) and, in each case, such Default continues for 10 days;

(j) except as permitted by the terms of this Indenture or the Security Documents, (i) any Lien or security interest on a material portion of Collateral created by any Security Documents ceases to be a valid and perfected Lien or security interest or any default by the Company or any Guarantor in the performance of any of their obligations under any of the Security Documents shall occur which adversely affects the enforceability, validity, perfection or priority of the Lien on a material portion of Collateral securing the Notes Obligations or (ii) repudiation or disaffirmation in writing by the Company or any Guarantor of its obligations under the Security Documents or assertion by the Company or any Guarantor that any security interest with respect to the Collateral granted pursuant to the Security Documents is invalid and unenforceable; or

(k) there is a failure by the Company to comply with its obligations under Section 4.16.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

However, (a) a Default under clause (d) above shall not constitute an Event of Default until the Trustee or the holders of at least 25% in principal amount of outstanding Notes notify the Company, with a copy to the Trustee, of the Default and the Company fails to cure such Default within the time specified in clause (d) hereof after receipt of such notice and (b) any Default or Event of Default arising under clause (k) with respect to the last day of any month (a "Non-Compliant Month") shall be deemed cured if the Company is compliant with Section 4.16 as of the last day of each of the four months ending immediately after the date on which the Officer's Certificate contemplated by Section 4.09(b) relating to such Non-Compliant Month is delivered to the Trustee for distribution to the Holders (unless the Company has received a notice of default from the Trustee or holders of at least 25% in principal amount

of outstanding Notes prior to the last day of such fourth month). The notice delivered pursuant to clause (a) of the immediately preceding sentence must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default." A Notice of Default may not be given with respect to any action taken, and reported publicly or to holders and the Trustee, more than two years prior to such Notice of Default.

Any Notice of Default, notice of acceleration or instruction to the Trustee to provide a Notice of Default or a notice of acceleration or to take any other action (a "Noteholder Direction") provided by any one or more holders (other than any holder that is a Regulated Bank) (each a "Directing Holder") must be accompanied by a separate written representation from each such Directing Holder delivered to the Company and the Trustee that such Directing Holder is not (or, in the case such holder is the Depository or its nominee, that such holder is being instructed solely by beneficial owners that have represented to such holder that they are not) Net Short (a "Position Representation"), which representation, in the case of a Noteholder Direction relating to the delivery of a Notice of Default shall be deemed a continuing representation until the resulting Event of Default is cured or otherwise ceases to exist or the Notes are accelerated. In addition, each Directing Holder is deemed, at the time of providing a Noteholder Direction, to covenant to provide the Company with such other information as the Company may reasonably request from time to time in order to verify the accuracy of such holder's Position Representation within five (5) Business Days of request therefor (a "Verification Covenant"). The Trustee shall have no duty whatsoever to provide this information to the Company or to obtain this information for the Company. In any case in which the holder is the Depository or its nominee, any Position Representation or Verification Covenant required hereunder shall be provided by the beneficial owner of the Notes in lieu of the Depository or its nominee and the Depository shall be entitled to conclusively rely on such Position Representation and Verification Covenant in delivering its direction to the Trustee. In no event shall the Trustee have any liability or obligation to ascertain, monitor or inquire as to whether any holder is Net Short and/or whether such holder has delivered any Position Representation, Verification Covenant, Noteholder Direction, or any related certifications under this Indenture or in connection with the Notes or if any such Position Representation, Verification Covenant, Noteholder Direction, or any related certifications comply with this Indenture, the Notes, or any other document. It is understood and agreed that the Company and the Trustee shall be entitled to conclusively rely on each representation, deemed representation and certification made by, and covenant of, each beneficial owner provided for in this paragraph. Notwithstanding any other provision of this Indenture, the Notes or any other document, the provisions of this paragraph shall apply and survive with respect to each holder and beneficial owner notwithstanding that any such Person may have ceased to be a holder or beneficial owner, this Indenture may have been terminated or the Notes may have been redeemed in full.

If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company determines in good faith that there is a reasonable basis to believe a Directing Holder was, at any relevant time, in breach of its Position Representation and provides to the Trustee an Officer's Certificate stating that the Company has initiated litigation in a court of competent jurisdiction seeking a determination that such Directing Holder was, at such time, in breach of its Position Representation, and seeking to invalidate any Default, Event of Default or acceleration (or notice thereof) that resulted from the applicable Noteholder Direction, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to such Default or Event of Default shall be automatically reinstituted and any remedy stayed pending a final and non-appealable determination of a court of competent jurisdiction on such matter if, without the participation of such holder, the percentage of Notes held by the remaining holders that provided such Noteholder Direction would have been insufficient to validly provide such Noteholder Direction. If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company provides to the Trustee an Officer's Certificate stating that a Directing Holder failed to satisfy its Verification Covenant, the cure period with respect to such Default or Event of Default shall be automatically stayed and the cure period with respect to any Default or Event of Default that resulted from the applicable Noteholder Direction shall be automatically reinstituted and any remedy stayed pending satisfaction of such Verification Covenant. Any breach of the Position Representation shall result in such holder's participation in such Noteholder Direction being disregarded; and, if, without the participation of such holder, the percentage of Notes held by the remaining holders that provided such Noteholder Direction would have been insufficient to validly provide such Noteholder Direction, such Noteholder Direction shall be void *ab initio* (other than any indemnity such Directing Holder may have offered the Trustee), with the effect that such Default or Event of Default shall be

deemed never to have occurred, acceleration voided and the Trustee shall be deemed not to have received such Noteholder Direction or any notice of such Default or Event of Default.

Notwithstanding anything in the preceding two paragraphs to the contrary, any Noteholder Direction delivered to the Trustee during the pendency of an Event of Default as the result of a bankruptcy or similar proceeding shall not require compliance with the foregoing paragraphs.

For the avoidance of doubt, the Trustee shall be entitled to conclusively rely on any Noteholder Direction delivered to it in accordance with this Indenture, and shall have no duty to inquire as to or investigate the accuracy of any Position Representation, enforce compliance with any Verification Covenant, verify any statements in any Officer's Certificate delivered to it, or otherwise make calculations, investigations or determinations with respect to Derivative Instruments, Net Shorts, Long Derivative Instruments, Short Derivative Instruments or otherwise. The Trustee shall have no liability to the Company, any holder or any other Person in connection with any Noteholder Direction or to determine whether or not any holder has delivered, or is required to deliver, any Position Representation, Verification Covenant, Noteholder Direction, or any related certification or that such Position Representation, Verification Covenant, Noteholder Direction, or any related certification conforms with this Indenture or any other agreement. The Company and each holder and subsequent purchaser of the Notes will waive any and all claims, in law and/or in equity, against the Trustee and agree not to commence any legal proceeding against the Trustee in respect of, and agrees that the Trustee will not be liable for any action that the Trustee takes in accordance with the foregoing three paragraphs, or arising out of or in connection with following instructions or taking actions in accordance with a Noteholder Direction.

SECTION 1.02 Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.01(f) or (g) hereof with respect to the Company) occurs and is continuing, the Trustee by notice to the Company or the holders of at least 25% in principal amount of outstanding Notes by notice to the Company (which notice shall, in each case, specify the Event of Default), with a copy to the Trustee, may declare the principal of, premium (as if the Notes have been optionally redeemed on the date of acceleration)(including without limitation the Redemption Premium or the Applicable Premium, as applicable), if any, and accrued but unpaid interest on all the Notes to be due and payable. Upon such a declaration, such principal, premium (including without limitation the Applicable Premium) and interest shall be due and payable immediately. If an Event of Default specified in Section 6.01(f) or (g) with respect to the Company occurs, the principal of, premium (including without limitation the Applicable Premium), if any, and interest on all the Notes will become immediately due and payable without any declaration or other act on the part of the Trustee or any holders. The holders of a majority in principal amount of outstanding Notes may rescind any such acceleration with respect to the Notes and its consequences.

In the event of any Event of Default specified in Section 6.01(e), such Event of Default and all consequences thereof (excluding, however, any resulting payment default) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the holders of the Notes, if within 20 days after such Event of Default arose the Company delivers an Officer's Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged or (y) the holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has been cured, it being understood that in no event shall an acceleration of the principal amount of the Notes as described above be annulled, waived or rescinded upon the happening of any such events.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN THE EVENT THE NOTES ARE ACCELERATED OR OTHERWISE BECOME DUE AND PAYABLE AS A RESULT OF, OR FOLLOWING, AN EVENT OF DEFAULT, THE PREMIUM (INCLUDING WITHOUT LIMITATION THE REDEMPTION PREMIUM OR THE APPLICABLE PREMIUM, AS APPLICABLE) WILL ALSO BE DUE AND PAYABLE (AS IF THE NOTES HAS BEEN OPTIONALLY REDEEMED ON DATE OF ACCELERATION) AND SHALL CONSTITUTE PART OF THE OBLIGATIONS UNDER THE NOTES IN VIEW OF THE IMPRACTICABILITY AND EXTREME DIFFICULTY OF ASCERTAINING ACTUAL DAMAGES AND BY MUTUAL

AGREEMENT OF THE PARTIES AS TO A REASONABLE CALCULATION OF EACH HOLDER'S LOST PROFITS AS A RESULT THEREOF. ANY PREMIUM (INCLUDING, WITHOUT LIMITATION, THE APPLICABLE PREMIUM) PAYABLE ABOVE SHALL BE THE LIQUIDATED DAMAGES SUSTAINED BY EACH HOLDER AS THE RESULT OF THE EARLY REDEMPTION AND THE COMPANY AGREES THAT IT IS REASONABLE UNDER THE CIRCUMSTANCES CURRENTLY EXISTING. THE PREMIUM (INCLUDING, WITHOUT LIMITATION, THE APPLICABLE PREMIUM) SHALL ALSO BE PAYABLE IN THE EVENT THE SECURITIES (AND/OR THIS INDENTURE) ARE SATISFIED OR RELEASED BY FORECLOSURE (WHETHER BY POWER OF JUDICIAL PROCEEDING), DEED IN LIEU OF FORECLOSURE, EXERCISE OF REMEDIES AND/OR SALE OF COLLATERAL, IN EACH CASE, FOLLOWING EVENTS OF DEFAULT OR ANY SALE OF COLLATERAL IN AN INSOLVENCY PROCEEDING, ANY RESTRUCTURING, REORGANIZATION OR COMPROMISE OF THE OBLIGATIONS UNDER THE NOTES OR OTHER OBLIGATIONS UNDER THIS INDENTURE OR ANY OTHER TERMINATION OF THIS INDENTURE OR NOTES AS A RESULT OF ANY SUCH EVENTS.

SECTION 1.03 Other Remedies. If an Event of Default occurs and is continuing, the Trustee may (but shall not be obligated to (unless so directed by the holders of a majority in principal amount of outstanding Notes)) pursue any available remedy at law or in equity to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. To the extent required by law, all available remedies are cumulative.

SECTION 1.04 Waiver of Past Defaults. Provided the Notes are not then due and payable by reason of a declaration of acceleration, the holders of a majority in principal amount of the Notes then outstanding by written notice to the Trustee may waive an existing Default and its consequences except (a) a Default in the payment of the principal of or interest on a Note, (b) a Default arising from the failure to redeem or purchase any Note when required pursuant to the terms of this Indenture or (c) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each holder affected. When a Default is waived, it is deemed cured and the Company, the Trustee and the holders will be restored to their former positions and rights under this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

SECTION 1.05 Control by Majority. The holders of a majority in principal amount of outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or the Notes Collateral Agent or of exercising any trust or power conferred on the Trustee or the Notes Collateral Agent. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, if the Trustee, being advised by counsel, determines that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or expense for which it is not adequately indemnified, or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of any other holder or that would involve the Trustee in personal liability. Prior to taking any action under this Indenture and the Security Documents, the Trustee and the Notes Collateral Agent shall be entitled to indemnification, from holders or otherwise, satisfactory to each of them in their sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 1.06 Limitation on Suits.

(a) Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no holder may pursue any remedy with respect to this Indenture or the Notes unless:

(i) such holder has previously given the Trustee written notice that an Event of Default is continuing,

(ii) holders of at least 25% in principal amount of the outstanding Notes have requested the Trustee and the Notes Collateral Agent, as applicable, to pursue the remedy,

(iii) such holders have offered, and if requested, provided, the Trustee and the Notes Collateral Agent, as applicable, security or indemnity satisfactory to it against any loss, liability or expense,

(iv) the Trustee or the Notes Collateral Agent, as applicable, has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity, and

(v) the holders of a majority in principal amount of the outstanding Notes have not given the Trustee or the Notes Collateral Agent, as applicable, a direction inconsistent with such request within such 60-day period.

(b) A holder may not use this Indenture to prejudice the rights of another holder or to obtain a preference or priority over another holder (it being understood that the Trustee shall have no obligation to ascertain whether or not such actions or forbearances are unduly prejudicial to any other holder).

SECTION 1.018 Rights of the Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any holder to receive payment of principal of and interest on the Notes held by such holder, on or after the respective due dates expressed or provided for in the Notes (including, if applicable, the Springing Maturity Date), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder.

SECTION 1.019 Collection Suit by Trustee. If an Event of Default specified in Section 6.01(a) or (b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or any other obligor on the Notes for the whole amount then due and owing (together with interest on overdue principal and (to the extent lawful) on any unpaid interest at the rate provided for in the Notes) and the amounts provided for in Section 7.07.

SECTION 1.020 Trustee May File Proofs of Claim. The Trustee (x) may file such proofs of claim, statements of interest and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation, expenses disbursements and advances of the Trustee (including counsel, accountants, experts or such other professionals as the Trustee deems necessary, advisable or appropriate)) and the holders allowed in any judicial proceedings relative to the Company, the Guarantors, their creditors or their property, (y) shall be entitled to participate as a member, voting or otherwise, of any official committee of creditors appointed in such matters and, unless prohibited by law or applicable regulations and (z) may vote on behalf of the holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.07. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any holder, or to authorize the Trustee to vote in respect of the claim of any holder in any such proceeding.

SECTION 1.010 Priorities. Subject to the provisions of the Security Documents, any money or property collected by the Trustee pursuant to this Article VI and any other money or property distributable in respect of the Company's or any Guarantor's obligations under this Indenture or the Security Documents after an Event of Default shall be applied in the following order:

FIRST: to the Trustee and the Notes Collateral Agent for amounts due hereunder (including the reasonable compensation and expenses, indemnification, disbursements and

advances of the agents, counsel, accountants and experts of the Trustee or the Notes Collateral Agent, as applicable, in accordance with Section 7.07);

SECOND: to the holders for amounts due and unpaid on the Notes for principal, premium, if any, and accrued and unpaid Cash Interest and uncapitalized PIK Interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest, respectively; and

THIRD: to the Company or, to the extent the Trustee collects any amount for any Guarantor, to such Guarantor.

The Trustee may fix a record date and payment date for any payment to the holders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall send (which may be by mail or in accordance with the Depositary's applicable procedures) to each holder and the Company a notice that states the record date, the payment date and the amount to be paid.

SECTION 1.011 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, or by a suit by a holder pursuant to Section 6.07.

SECTION 1.012 Waiver of Stay or Extension Laws. Neither the Company nor any Guarantor (to the extent it may lawfully do so) shall at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company and the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VII

TRUSTEE

SECTION 1.01 Duties of Trustee.

(a) The Trustee, prior to the occurrence of an Event of Default with respect to the Notes and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee (it being agreed that the permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty); and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee shall be under no duty to make any investigation as to any statement contained in any

such instance, but may accept the same as conclusive evidence of the truth and accuracy of such statement or the correctness of such opinions. However, in the case of certificates or opinions required by any provision hereof to be provided to it, the Trustee shall examine the form of certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise Incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

SECTION 1.02 Rights of Trustee.

(a) The Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be responsible or liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; *provided*, *however*, that the Trustee's conduct does not constitute willful misconduct or gross negligence.

(e) The Trustee may consult with counsel of its own selection and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order,

approval, bond, debenture, note or other paper or document unless requested in writing to do so by the holders of not less than a majority in principal amount of the Notes at the time outstanding, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney, at the expense of the Company and shall Incur no liability of any kind by reason of such inquiry or investigation.

(g) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the holders pursuant to this Indenture, unless such holders shall have offered, and if requested, provided, to the Trustee security or indemnity satisfactory to the Trustee against the losses, expenses and liabilities which might be Incurred by it in compliance with such request or direction.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including as Notes Collateral Agent), and each agent, custodian and other Person employed to act hereunder.

(i) The Trustee shall not be responsible or liable for any action taken or omitted by it in good faith at the direction of the holders of not less than a majority in principal amount of the Notes as to the time, method and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by this Indenture.

(j) Any action taken, or omitted to be taken, by the Trustee in good faith pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent, is the holder of any Note shall be conclusive and binding upon future holders of Notes and upon Notes executed and delivered in exchange therefor or in place thereof.

(k) [Reserved]

(l) The Trustee may request that the Company deliver a certificate setting forth the names, titles and specimen signatures of Officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(m) The Trustee shall not be responsible or liable for punitive, special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of actions.

(n) The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers under this Indenture.

(o) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; quarantine; riots; loss or malfunction of utilities, computer (hardware or software) or communication services; accidents; labor disputes; and acts of civil or military authorities and governmental action.

SECTION 1.03 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent or Registrar may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

SECTION 1.04 Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Guarantees, the Notes or the other Security Documents, shall not be accountable for the Company's use of the proceeds from the Notes, and shall not be responsible for any statement of the Company or any Guarantor in this Indenture or in any document issued in connection with the issuance of the Notes or in the Notes other than the Trustee's certificate of authentication. The Trustee shall not be charged with knowledge of any Default or Event of Default under Sections 6.01(c), (d), (e), (f), (g), (h), (i), (j) or (k), or of the identity of any Significant Subsidiary unless the Trustee shall have received written notice thereof in accordance with Section 13.02 hereof from the Company, any Guarantor or any holder. In accepting the trust hereby created, the Trustee acts solely as Trustee under this Indenture and not in its individual capacity and all persons, including without limitation the holders of Notes and the Company having any claim against the Trustee arising from this Indenture shall look only to the funds and accounts held by the Trustee hereunder for payment except as otherwise expressly provided herein.

Neither the Trustee nor the Notes Collateral Agent shall be responsible for, and each makes no representation as to the existence, genuineness, value or protection of, any Collateral, the legality, effectiveness or sufficiency of any Security Document, or the creation, perfection, priority, sufficiency or protection of any Liens securing the Notes. Neither the Trustee nor the Notes Collateral Agent shall be responsible for filing any financing or continuation statements or financing change statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Lien or security interest on or in the Collateral. By their acceptance of the Notes, the holders of the Notes will be deemed to have authorized the Trustee and the Notes Collateral Agent, as applicable, to enter into and to perform each of the Security Documents.

SECTION 1.05 Notice of Defaults. If a Default occurs and is continuing and is actually known to a Responsible Officer of the Trustee, the Trustee shall mail, or deliver electronically in accordance with the procedures of the Depository if held by the Depository, to each holder of the Notes notice of the Default within 30 days after it is actually known to a Responsible Officer or written notice of it is received by the Trustee. Except in the case of a Default in the payment of principal of, premium (if any) or interest on any Note, the Trustee may withhold notice if and so long as it in good faith determines that withholding notice is in the interests of the noteholders. The Company is required to deliver to the Trustee, within 30 days after the occurrence thereof, written notice of any continuing event which would constitute a Default, its status and what action the Company is taking or proposes to take in respect thereof. For the avoidance of doubt, the Trustee and the Notes Collateral Agent shall have no obligation whatsoever to determine whether or not the Springing Maturity Date has occurred and shall not be deemed to have knowledge of the occurrence of the Springing Maturity Date unless and until notified in writing by the Company (including pursuant to Section 4.09).

SECTION 1.06 [Reserved].

SECTION 1.07 Compensation and Indemnity. The Company shall pay to each of the Trustee and the Notes Collateral Agent from time to time such compensation for the Trustee's acceptance of this Indenture and their services hereunder as mutually agreed to in writing between the Company, the Trustee and the Notes Collateral Agent, as applicable. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee and the Notes Collateral Agent, as applicable, upon request for all reasonable out-of-pocket expenses Incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the agents, counsel, accountants and experts of the Trustee or the Notes Collateral Agent, as applicable. The Company and the Guarantors, jointly and severally, shall indemnify the Trustee and the Notes Collateral Agent, as applicable, or any predecessor Trustee or Notes Collateral Agent, as applicable, and their directors, officers, employees and agents against any and all loss, liability, claim, damage or expense (including reasonable attorneys' fees and expenses and including taxes (other than taxes based upon, measured by or determined by the income of the Trustee or the Notes Collateral Agent, as applicable)) Incurred by or in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture, the Guarantees and the

Security Documents against the Company or any Guarantor (including this Section 7.07) and defending itself against or investigating any claim (whether asserted by the Company, any Guarantor, any holder or any other Person). The obligation to pay such amounts shall survive the payment in full or defeasance of the Notes or the removal or resignation of the Trustee or the Notes Collateral Agent, as applicable. The Trustee and the Notes Collateral Agent, as applicable, shall notify the Company of any claim for which it may seek indemnity promptly upon obtaining actual knowledge thereof; *provided*, *however*, that any failure so to notify the Company shall not relieve the Company or any Guarantor of its indemnity obligations hereunder. The Company may defend the claim and the indemnified party shall provide reasonable cooperation at the Company's expense in the defense. Such indemnified parties may have separate counsel and the Company and such Guarantor, as applicable, shall pay the fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss, liability or expense Incurred by an indemnified party through such party's own willful misconduct or gross negligence, as determined by a final and non-appealable judgment of a court of competent jurisdiction.

To secure the Company's and the Guarantors' payment obligations in this Section 7.07, the Trustee and the Notes Collateral Agent, as applicable, shall have a Lien prior to the Notes Obligations on all money or property held or collected by the Trustee, the Notes Collateral Agent or Paying Agent, as applicable, other than money or property held in trust to pay principal of, premium (if any) and interest on particular Notes.

The Company's and the Guarantors' payment obligations pursuant to this Section 7.07 shall survive the satisfaction or discharge of this Indenture, any rejection or termination of this Indenture under any bankruptcy law or the resignation or removal of the Trustee or the Notes Collateral Agent, as applicable. Without prejudice to any other rights available to the Trustee or the Notes Collateral Agent, as applicable, under applicable law, when the Trustee or the Notes Collateral Agent, as applicable, Incurs expenses after the occurrence of a Default specified in Section 6.01(f) or (g) with respect to the Company, the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

No provision of this Indenture shall require the Trustee or the Notes Collateral Agent to expend or risk its own funds or otherwise Incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not assured to its satisfaction.

SECTION 1.08 Replacement of Trustee.

(a) The Trustee may (in any of its capacities hereunder) resign at any time by so notifying the Company. The holders of a majority in principal amount of the Notes may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Company shall remove the Trustee if:

(i) the Trustee fails to comply with Section 7.10;

(ii) the Trustee is adjudged bankrupt or insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(b) If the Trustee resigns, is removed by the Company or by the holders of a majority in principal amount of the Notes and such holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Company shall promptly appoint a successor Trustee.

(c) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall deliver notice of its succession to the holders. The retiring

Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the Lien provided for in Section 7.07.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the holders of 10% in principal amount of the Notes may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee. The foregoing clause shall apply to the Trustee in any of its other capacities hereunder, *mutatis mutandis.*

(e) If the Trustee fails to comply with Section 7.10, any holder who has been a bona fide holder of a Note for at least six months may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) Notwithstanding the replacement of the Trustee (in any of its capacities hereunder) pursuant to this Section 7.08, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee (in any of its capacities hereunder).

SECTION 1.013 Successor Trustee and Notes Collateral Agent by Merger. If the Trustee or the Notes Collateral Agent, as applicable, consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation or banking association without any further act shall be the successor Trustee or Notes Collateral Agent, as applicable.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have.

In the case of any successor or successors by merger, conversion or consolidation to the Notes Collateral Agent, such successor to the Notes Collateral Agent will succeed to, and be substituted for, the Notes Collateral Agent under this Indenture, the Notes and the Security Documents.

SECTION 1.010 Eligibility; Disqualification. There shall at all times be a Trustee hereunder that is an entity organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trust powers, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus in an amount at least equal to that required under Section 310 of the TIA.

SECTION 1.011 Preferential Collection of Claims Against the Company. The Trustee shall comply with Section 311(a) of the TIA, excluding any creditor relationship listed in Section 311(b) of the TIA. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the TIA to the extent indicated. Notwithstanding the foregoing, this Indenture is not qualified under the TIA and the TIA applies solely as expressly provided in Section 7.10 and this Section 7.11.

ARTICLE VIII

DISCHARGE OF INDENTURE; DEFEASANCE

SECTION 1.01 Discharge of Liability on Notes; Defeasance.

(a) This Indenture and the Company and Guarantors' obligations with respect to all outstanding Notes and all obligations under the Guarantees shall be discharged and shall cease to be of

further effect (except as to surviving rights and immunities of the Trustee and the Notes Collateral Agent and rights of transfer or exchange of Notes, as expressly provided for in this Indenture) as to all outstanding Notes when:

(i) either (A) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust) have been delivered to the Trustee for cancellation or (B) all of the Notes (1) have become due and payable, (2) will become due and payable at their Stated Maturity within one year or (3) if redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company has irrevocably deposited or caused to be deposited with the Trustee funds in an amount sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest on the Notes to, but excluding, the date of deposit together with irrevocable instructions from the Company directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be; *provided* that with respect to any discharge of the notes that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any deficit as of the date of the redemption only required to be deposited with the Trustee on or prior to the date of the redemption;

(ii) the Company and/or the Guarantors have paid all other sums payable under this Indenture; and

(iii) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

The Collateral will automatically be released from the Lien securing the Notes Obligations upon a discharge of this Indenture, the Notes and the Guarantees in accordance with the provisions of this Article VIII.

(b) Subject to Sections 8.01(c) and 8.02, the Company at any time may terminate (i) all of its obligations under the Notes and this Indenture with respect to the holders of the Notes ("legal defeasance option"), and (ii) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09(b), 4.09(c), 4.11, 4.12, 4.13, 4.15 and 4.16, and the operation of Section 5.01 for the benefit of the holders of the Notes, and Sections 6.01(c), 6.01(e), 6.01(f), 6.01(g) (in the case of Sections 6.01(f) and 6.01(g) with respect to Significant Subsidiaries only), 6.01(h), 6.01(i), 6.01(j) and 6.01(k) ("covenant defeasance option"). The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Company exercises its legal defeasance option or its covenant defeasance option, each Guarantor will be released from all of its obligations with respect to its Guarantee.

If the Company exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect thereto. If the Company exercises its covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in Sections 6.01(c), 6.01(d) (with respect to the Company's obligations under Sections 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09(b), 4.09(c), 4.11, 4.12, 4.13 and 4.15), 6.01(e), 6.01(f), 6.01(g) (in the case of Sections 6.01(f) and (g), with respect only to Significant Subsidiaries), 6.01(h), 6.01(i), 6.01(j) or 6.01(k).

If the Company exercises its legal defeasance option or its covenant defeasance option in accordance with the provisions of this Article VIII, the Collateral will automatically be released from the Lien securing the Notes Obligations without the need for any further action by any Person, and the Notes

Collateral Agent shall at the Company's or any Guarantor's reasonable request and expense, execute documents evidencing such release.

Upon satisfaction of the conditions set forth herein (including, without limitation, the delivery of the Officer's Certificate and the Opinion of Counsel mentioned above) and upon the written request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(c) Notwithstanding clauses (a) and (b) above, the Company's obligations in Sections 2.04, 2.05, 2.06, 2.07, 2.08 and 2.09 and Article VII, including, without limitation, Sections 7.07 and 7.08 and in this Article VIII and the rights and immunities of the Trustee and the Notes Collateral Agent under this Indenture or any Security Document shall survive until the Notes have been paid in full. Thereafter, the Company's obligations in Sections 7.07, 7.08, 8.05 and 8.06 and the rights and immunities of the Trustee and the Notes Collateral Agent under this Indenture shall survive such satisfaction and discharge.

SECTION 1.02 Conditions to Defeasance.

(a) The Company may exercise its legal defeasance option or its covenant defeasance option only if:

(i) the Company irrevocably deposits in trust with the Trustee money in U.S. dollars, U.S. Government Obligations or a combination thereof sufficient to pay the principal of and premium (if any) and interest on the Notes when due at maturity or redemption, as the case may be;

(ii) with respect to U.S. Government Obligations or a combination of money and U.S. Government Obligations, the Company delivers to the Trustee a certificate from a nationally recognized firm of independent accountants, a nationally recognized investment bank or a nationally recognized appraisal or valuation firm, expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations *plus* any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal, premium, if any, and interest when due on all the Notes to maturity or redemption, as the case may be; *provided* that upon any defeasance that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any deficit as of the date of the redemption only required to be deposited with the Trustee on or prior to the date of the redemption;

(iii) no Default specified in Section 6.01(f) or (g) with respect to the Company shall have occurred or is continuing on the date of such deposit;

(iv) the deposit does not constitute a default under any other material agreement or instrument binding on the Company;

(v) the Company shall have delivered to the Trustee in the case of the legal defeasance option, an Opinion of Counsel stating that (1) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (2) since the date of this Indenture there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the beneficial owners will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred. Notwithstanding the foregoing, the Opinion of Counsel required by the immediately preceding sentence with respect to a legal defeasance need not be delivered if all of the Notes not theretofore delivered to the Trustee for cancellation (x) have become due and payable or (y) will become due and payable at their Stated Maturity within one year, or if

redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company;

(vi) such exercise does not impair the right of any holder to receive payment of principal of, premium, if any, and interest on such holder's Notes on or after the due dates therefore or to institute suit for the enforcement of any payment on or with respect to such holder's Notes;

(vii) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the beneficial owners will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred; and

(viii) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Notes to be so defeased and discharged as contemplated by this Article VIII have been complied with.

(b) Before or after a deposit, the Company may make arrangements satisfactory to the Trustee for the redemption of such Notes at a future date in accordance with Article III.

SECTION 1.03 Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations (including proceeds thereof) deposited with it pursuant to this Article VIII. The Trustee shall apply the deposited money and the money from U.S. Government Obligations through each Paying Agent and in accordance with this Indenture to the payment of principal of, premium, if any, and interest on the Notes so discharged or defeased.

SECTION 1.04 Repayment to Company. Each of the Trustee and each Paying Agent shall promptly turn over to the Company upon request any money or U.S. Government Obligations held by it as provided in this Article VIII that, in the written opinion of a nationally recognized firm of independent public accountants, a nationally recognized investment bank or a nationally recognized appraisal or valuation firm, delivered to the Trustee (which delivery shall only be required if U.S. Government Obligations have been so deposited), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article VIII.

Subject to any applicable abandoned property law, the Trustee and each Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, holders entitled to the money must look to the Company for payment as general creditors, and the Trustee and each Paying Agent shall have no further liability with respect to such monies.

SECTION 1.05 Indemnity for U.S. Government Obligations. The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 1.06 Reinstatement. If the Trustee or any Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes so discharged or defeased shall be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee or any Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article VIII; *provided*, *however*, that, if the Company has made any payment of principal of, premium, if any, or interest on, any such Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the holders of

such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or any Paying Agent.

ARTICLE IX

AMENDMENTS AND WAIVERS

SECTION 1.01 Without Consent of the Holders.

(a) The Company, the Trustee and the Notes Collateral Agent, as applicable, may amend or supplement this Indenture, the Notes, the Guarantees and/or the Security Documents, and the Company may direct the Trustee and/or Notes Collateral Agent, and the Trustee and/or Notes Collateral Agent, as applicable, shall enter into an amendment, in each case without notice to or the consent of any holder:

(i) to cure any ambiguity, omission, mistake, defect or inconsistency;

(ii) to provide for the assumption by a Successor Company (with respect to the Company) of the obligations of the Company under this Indenture and the Notes in accordance with Article V;

(iii) to provide for the assumption by a Successor Guarantor (with respect to any Guarantor), as the case may be, of the obligations of a Guarantor under this Indenture and its Guarantee in accordance with Article V;

(iv) to provide for uncertificated Notes in addition to or in place of certificated Notes, *provided*, *however*, that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated notes are described in Section 163(f)(2)(B) of the Code;

(v) [reserved]

(vi) to add a Guarantee with respect to the Notes;

(vii) to add Collateral to secure the Notes;

(viii) to release any Guarantor from its Guarantee pursuant to this Indenture when permitted or required by this Indenture;

(ix) to add to the covenants of the Company for the benefit of the holders or to surrender any right or power herein conferred upon the Company or any Guarantor;

(x) [reserved];

(xi) to make any change that would provide any additional rights or benefits to the holders of the Notes or that does not adversely affect the rights of any such holder in any material respect;

(xii) [reserved];

(xiii) to evidence and provide for the acceptance of appointment by a successor Trustee, successor Paying Agent or successor Notes Collateral Agent;

(xiv)to make, complete or confirm any grant of a Lien or security interest in any property or assets as additional Collateral securing the Notes Obligations, including when permitted or required by this Indenture or any of the Security Documents;

(xv) to execute or amend any Security Document and/or any Junior Lien Priority Intercreditor Agreement (or any supplement or joinder to any of the foregoing) under circumstances provided therein;

(xvi)[reserved];

(xvii) to release, terminate and/or discharge Collateral from the Lien securing the Notes Obligations when permitted or required by this Indenture or the Security Documents;

(xviii) to amend the Security Documents to provide for the addition of any creditors to such agreements to the extent a *pari passu* Lien for the benefit of such creditor is permitted by the terms of this Indenture; or

(xix)in the event that PIK Notes are issued in certificated form, to make appropriate changes to this Indenture to reflect an appropriate minimum denomination of certificated PIK Notes and to establish minimum redemption amounts for certificated PIK Notes.

(b) After an amendment under this Section 9.01 becomes effective, the Company shall mail, or otherwise deliver in accordance with the procedures of the Depository, to the holders a notice briefly describing such amendment. The failure to give such notice to all holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.01.

SECTION 1.02 With Consent of the Holders.

(a) This Indenture, the Notes, the Guarantees and/or the Security Documents, as applicable, may be amended, and any past Default or compliance with any provisions of this Indenture, the Notes, the Guarantees and/or the Security Documents, as applicable, may be waived, with the consent of the Company and the holders of at least a majority in principal amount of the Notes then outstanding voting as a single class. However, without the consent of each holder of an outstanding Note affected, no amendment or waiver may:

(1) reduce the amount of Notes whose holders must consent to an amendment;

(2) reduce the rate of or extend the time for payment of interest on any Note;

(3) reduce the principal of or change the Stated Maturity (including the Springing Maturity Date, if earlier) of any Note;

(4) reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed in accordance with Article III;

(5) make any Note payable in money other than that stated in such Note;

(6) [reserved];

(7) make any change in the amendment provisions which require each holder's consent or in the waiver provisions; or

(8) except in connection with the incurrence of any debtor-in-possession financing (and use of cash collateral), (i) subordinate in right of payment all or any part of the Notes Obligations to any other Indebtedness for borrowed money or (ii) contractually subordinate the Liens on all or substantially all of the Collateral securing the Notes Obligations to any other Liens on Collateral securing any other Indebtedness for borrowed money incurred by the Company or any Guarantor (each of the foregoing, "Priming Debt") unless (A) a reasonable, bona fide opportunity to participate in any portion of such Priming Debt that is made available to any holder is offered to all of the directly and adversely affected holders on a no less than pro rata

basis (other than with respect to backstop or similar fees and expense reimbursement), which offer shall remain open to such directly and adversely affected holder for a period of not less than 10 Business Days; *provided*, however, that if any such directly and adversely affected holder does not accept an offer to provide its pro rata share of the portion of such Priming Debt made available within the time specified for acceptance of such offer being made, such directly and adversely affected holder shall be deemed to have declined such offer and (B) holders of at least a majority in principal amount of the Notes then outstanding voting as a single class have consented thereto.

(b) In addition, without the consent of the holders of at least 66 2/3% in aggregate principal amount of the Notes then outstanding, an amendment, supplement or waiver may not release a Lien in the Security Documents securing the Notes on all or substantially all of the Collateral, or otherwise release any Collateral, in any manner materially adverse to the holders of the Notes, other than in accordance with this Indenture and the Security Documents.

(c) It shall not be necessary for the consent of the holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

(d) After an amendment under this Section 9.02 becomes effective, the Company shall mail, or otherwise deliver in accordance with the procedures of the Depository, to the holders a notice briefly describing such amendment. The failure to give such notice to all holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

SECTION 1.03 Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment or a waiver by a holder of a Note shall bind the holder and every subsequent holder of that Note or portion of the Note that evidences the same debt as the consenting holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such holder or subsequent holder may revoke the consent or waiver as to such holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date on which the Trustee receives an Officer's Certificate from the Company stating that the requisite principal amount of Notes have consented. After an amendment or waiver becomes effective, it shall bind every holder. An amendment or waiver becomes effective upon the (i) receipt by the Company or the Trustee of consents by the holders of the requisite principal amount of securities, (ii) satisfaction of conditions to effectiveness as set forth in this Indenture and any indenture supplemental hereto containing such amendment or waiver and (iii) execution of such amendment or waiver (or supplemental indenture) by the Company, the Guarantors and the Trustee.

(b) The Company may, but shall not be obligated to, fix a record date for the purpose of determining the holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

SECTION 1.04 Notation on or Exchange of Notes. If an amendment, supplement or waiver changes the terms of a Note, the Company may require the holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the holder. Alternatively, if the Company or the Trustee so determine, the Company in exchange for the Note shall issue and, upon written order of the Company signed by an Officer, the Trustee shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment, supplement or waiver.

SECTION 1.05 Trustee and Notes Collateral Agent to Sign Amendments. The Trustee and Notes Collateral Agent, as applicable, shall sign any amendment, supplement or waiver authorized or permitted pursuant to this Article IX if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee or Notes Collateral Agent, as applicable. If it does, the Trustee and Notes Collateral Agent, as applicable, may but need not sign it. In signing such amendment, the Trustee and Notes Collateral Agent, as applicable, shall receive indemnity satisfactory to it and shall be provided with, and shall be fully protected in relying upon, (i) an Officer's Certificate stating that such amendment, supplement or waiver is authorized or permitted by this Indenture, (ii) an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture, and (iii) if such amendment, supplement or waiver is executed pursuant to Section 9.02, evidence reasonably satisfactory to the Trustee and Notes Collateral Agent, as applicable, of the consent of the holders required to consent thereto.

SECTION 1.06 Additional Voting Terms; Calculation of Principal Amount. All Notes issued under this Indenture shall vote and consent together on all matters (as to which any of such Notes may vote) as one class and no Notes will have the right to vote or consent as a separate class on any matter. Determinations as to whether holders of the requisite aggregate principal amount of Notes have concurred in any direction, waiver or consent shall be made in accordance with this Article IX and Section 2.13. In connection with any request for consent from holders of Notes conducted through the Depositary's applicable procedures, the Trustee and the Notes Collateral Agent may conclusively rely upon a certification of the final holder votes, by percentage of the principal amount of Notes directly or indirectly held, from a tabulation, calculation or similar agent retained by the Company.

ARTICLE X

SECTION 1.01 Security Documents; Additional Collateral.

(a) Security Documents.

(i) In order to secure the due and punctual payment of the Obligations under this Indenture, the Notes and Security Documents and any First Lien Priority Indebtedness, the Company, the Guarantors, the Notes Collateral Agent and the other parties thereto, or other parties in accordance with the provisions of Section 4.11 and this Article X, will enter into the applicable Security Documents. The Company shall and shall cause each Guarantor to, and each Guarantor shall, make all filings (including filings of continuation statements and amendments to UCC financing statements that may be necessary to continue the effectiveness of such UCC financing statements) under the UCC and other applicable laws as are required to maintain (at the sole cost and expense of the Company and the Guarantors) the security interests and Liens created by the Security Documents in and on the Collateral (subject to the terms of any Junior Lien Priority Intercreditor Agreement and the Security Documents) as a perfected security interest and Lien to the extent perfection is required by the Security Documents and within the time frames set forth therein, subject only to Permitted Liens, and with the priority required by any Junior Lien Priority Intercreditor Agreement and the other Security Documents.

(ii) For the avoidance of doubt, the Trustee and the Notes Collateral Agent are not obligated to make the filings described in this clause (a).

(b) After-Acquired Collateral. If the Company or any Guarantor acquires any property which is of a type constituting Collateral under any Security Document (excluding, for the avoidance of doubt, any Excluded Assets), it shall promptly after the acquisition thereof execute and deliver such security instruments, mortgages and financing statements as are reasonably necessary to vest in the Notes Collateral Agent a perfected security interest and Lien (subject only to Permitted Liens) in and on such after acquired property and to have such after acquired property added to the Collateral, and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such after acquired property to the same extent and with the same force and effect.

(c) Real Estate Documents. With respect to any real property acquired by the Company or a Guarantor after the Issue Date (excluding, for the avoidance of doubt, any Excluded Assets), the Company or the applicable Guarantor shall deliver or cause to be delivered to the Trustee and the Notes Collateral Agent, within 120 days of the date of acquisition thereof (or as promptly as reasonably possible thereafter) (each such property, a "Mortgaged Property"), the following, in each case, in reasonably satisfactory form and substance to the Trustee and the Notes Collateral Agent:

1. Mortgages. One or more counterparts of a mortgage, deed of trust, security deed or deed to secure debt (each a "Mortgage"), as applicable, duly executed and acknowledged, in favor of the Notes Collateral Agent for its benefit and the benefit of the Trustee and the holders of the Notes, in proper form for recording in the land records in the jurisdiction in which such Mortgaged Property is located (the "Land Records"), sufficient to create a valid and enforceable mortgage lien in favor of the Notes Collateral Agent for its benefit and the benefit of the Trustee and the holders of the Notes, securing the obligations of the Company and the Guarantors under this Indenture, the Notes, the Guarantees and the Security Documents subject only to Permitted Liens and Permitted Exceptions, together with evidence that a counterpart of such Mortgages have been delivered to the Title Company for recording in the Land Records;

2. Title Insurance. A lender's policy of title insurance (or commitment to issue such a policy having the effect of a policy of title insurance) issued by a nationally recognized title insurance company (the "Title Company") insuring (or committing to insure) the Lien of the applicable Mortgage as valid and enforceable first priority mortgage lien on the Mortgaged Property described therein (each, a "Title Policy") which insures the Notes Collateral Agent that such Mortgage creates a valid and enforceable first priority mortgage lien on such Mortgaged Property, in an amount not less than 105% of the fair market value of such Mortgaged Property as reasonably determined, in good faith, by the Company, free and clear of all defects and encumbrances except Permitted Liens and Permitted Exceptions, together with such endorsements including, without limitation, to the extent available in the state in which the Mortgaged Property is located at commercially reasonably rates, a "tie-in" or "cluster" endorsement, and, if available under applicable law, endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, future advances, doing business, non-imputation, public road access, survey (or other mapping product), variable rate, environmental lien, subdivision, separate tax lot revolving credit and so-called comprehensive coverage over covenants and restrictions and such Title Policy shall not include an exception for mechanics' liens;

3. Other Real Property Documents. Evidence that the Company and the Guarantors have delivered to the Title Company such affidavits, certificates, information (including financial data), instruments of indemnification (including a so-called "gap" indemnification) and other documents as may be reasonably necessary to cause the Title Company to issue the Title Policies and endorsements contemplated by Section 10(c)(2) above;

4. [Reserved];

5. Counsel Opinions. Opinions addressed to the Notes Collateral Agent for its benefit and for the benefit of the Trustee and holders of the Notes of (i) local counsel in each jurisdiction where the Mortgaged Property is located with respect to the enforceability and perfection of the Mortgages and other matters customarily included in such opinions and (ii) counsel for the Company and the Guarantors regarding due authorization, execution and delivery of the Mortgages;

6. Insurance. Policies or certificates of insurance covering the property and assets of the Company and the Guarantors and naming the Notes Collateral Agent as additional insured (with respect to liability insurance) and loss payee and mortgagee (with respect to property insurance); *provided* that the Notes Collateral Agent shall receive such funds for the benefit of the holders of the Notes and shall make further distributions of such funds to the holders of the Notes in accordance with the terms of this Indenture and the Security Documents; and

7. Real Property Collateral Fees and Expenses. Evidence of payment by the Company of all Title Policy premiums, search and examination charges, escrow charges and related

charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages, fixture filings and other documents and issuance of the Title Policies and endorsements contemplated by Section 10(c)(2) above.

SECTION 1.02 Concerning the Trustee and the Notes Collateral Agent.

(a) The provisions of this Section 10.02 are solely for the benefit of the Trustee and the Notes Collateral Agent and none of the Company, any of the Guarantors nor any of the holders shall have any rights as a third party beneficiary of any of the provisions contained herein. Notwithstanding any provision to the contrary contained elsewhere in this Indenture and the Security Documents, the Trustee and the Notes Collateral Agent shall have only those duties or responsibilities expressly provided hereunder or thereunder and the Trustee and the Notes Collateral Agent shall not have nor be deemed to have any fiduciary relationship with each other, the Company, any Guarantor or any holder, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture and the Security Documents or otherwise exist against the Trustee and the Notes Collateral Agent.

(b) The Notes Collateral Agent shall act pursuant to the written instructions of the holders and the Trustee (or such other persons as set forth in the Security Documents) with respect to the Security Documents and the Collateral. For the avoidance of doubt, the Notes Collateral Agent shall have no discretion under this Indenture, any Junior Lien Priority Intercreditor Agreement or the Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the holders of a majority in aggregate principal amount of the then outstanding Notes or the Trustee, as applicable, or, if applicable, such other persons as set forth in the Security Documents. After the occurrence and during the continuance of an Event of Default, subject to the provisions of the Security Documents, the Trustee may direct the Notes Collateral Agent in connection with any action required or permitted by this Indenture or the Security Documents.

(c) None of the Trustee or the Notes Collateral Agent or any of their respective Affiliates shall be liable for any action taken or omitted to be taken by any of them under or in connection with this Indenture or the transactions contemplated hereby (except for its own willful misconduct or gross negligence) or under or in connection with any Security Document or the transactions contemplated thereby (except for its own willful misconduct or gross negligence).

(d) Other than in connection with a release of Collateral permitted under Section 10.03 (except as may be required by Section 9.02) or otherwise permitted under the terms of the Security Documents, in each case that the Notes Collateral Agent may or is required hereunder or under any other Security Document to take any action (an "Action"), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any other Security Document, the Notes Collateral Agent may seek direction and indemnity satisfactory to it from the holders of a majority in aggregate principal amount of the then outstanding Notes. The Notes Collateral Agent shall not be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction from the holders of a majority in aggregate principal amount of the then outstanding Notes. Subject to the Security Documents, if the Notes Collateral Agent shall request direction from the holders of a majority in aggregate principal amount of the then outstanding Notes with respect to any Action, the Notes Collateral Agent shall be entitled to refrain from such Action unless and until the Notes Collateral Agent shall have received direction and indemnity satisfactory to it from the holders of a majority in aggregate principal amount of the then outstanding Notes, and the Notes Collateral Agent shall not incur liability to any Person by reason of so refraining.

(e) Beyond the exercise of reasonable care in the custody of the Collateral in its possession, the Notes Collateral Agent will have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. The Notes Collateral Agent will be deemed to have exercised reasonable care in the custody of the collateral in its possession if the collateral is accorded treatment substantially equal to that which it accords its own property, and the Notes Collateral Agent

will not be liable or responsible for any loss or diminution in the value of any of the collateral by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Notes Collateral Agent in good faith.

(f) The Notes Collateral Agent will not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence or willful misconduct on the part of the Notes Collateral Agent, as determined by a court of competent jurisdiction in a final, non-appealable order, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of any grantor to the Collateral, for insuring the collateral or for the payment of taxes, charges, assessments or liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Notes Collateral Agent hereby disclaims any representation or warranty to the present and future holders of the Notes concerning the perfection of the liens granted hereunder or in the value of any of the Collateral. Notwithstanding anything to the contrary in this Indenture or the Security Documents, in no event shall the Notes Collateral Agent or the Trustee be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Indenture or the Security Documents (including without limitation the filing or continuation of any UCC).

(g) The Company shall indemnify the Notes Collateral Agent against any cost, expense, loss or liability in accordance with Section 7.07 in the event that the Notes Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any obligation for the benefit of another, which may cause the Notes Collateral Agent, as applicable, to be considered an "owner or operator" under any environmental laws or otherwise cause the Notes Collateral Agent to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, and, further, the Notes Collateral Agent reserves the right, instead of taking such action, either to resign as Notes Collateral Agent or to arrange for the transfer of the title or control of the asset to a court appointed receiver. The Notes Collateral Agent will not be liable to any person for any environmental claims or any environmental liabilities or contribution actions under any federal, state or local law, rule or regulation by reason of the Notes Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment. Notwithstanding anything to the contrary contained in this Indenture or the Security Documents, in the event the Notes Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Notes Collateral Agent shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under any mortgages or take any such other action unless the Notes Collateral Agent has received security or indemnity from the holders in an amount and in a form all satisfactory to the Notes Collateral Agent in its sole discretion, protecting the Notes Collateral Agent from all such liability. The Notes Collateral Agent shall at any time be entitled to cease taking any action described above if it no longer reasonably deems any indemnity, security or undertaking from the Company or the holders to be sufficient.

(h) The Notes Collateral Agent shall be entitled to all of the protections, immunities, indemnities, rights and privileges of the Trustee set forth in this Indenture and all such protections, immunities, indemnities, rights and privileges shall apply to the Notes Collateral Agent in its roles under any other Security Document, whether or not expressly stated therein.

(i) The Notes Collateral Agent shall be entitled to compensation, reimbursement and indemnity as set forth in Section 7.07.

SECTION 1.03 Releases of Liens. The Liens on the Collateral will automatically and without the need for any further action by any Person be released with respect to the Notes and the related Guarantees:

(a) in whole, as to all property or assets subject to such Liens, upon payment in full of the principal of, together with any accrued and unpaid interest on and all other Notes Obligations owed under the Notes and this Indenture, the Guarantees and Security Documents that are payable at or prior to the time such principal together with accrued and unpaid interest are paid;

(b) in whole, as to all property or assets subject to such Liens, upon:

(i) satisfaction and discharge of this Indenture in accordance with Article 8 hereof; or

(ii) the Company's exercise of its legal defeasance option or covenant defeasance option under Article VIII;

(c) as to any property or asset (A) that is sold, transferred or otherwise disposed of (other than to another Grantor) in a transaction not prohibited by Section 4.06 hereof or (B) that is owned or at any time acquired by a Guarantor to the extent such Guarantor has been released from its Guarantee in accordance with the terms of this Indenture;

(d) as to any property or assets, upon the consent of the requisite holders pursuant to Section 9.02 of this Indenture;

(e) in whole or in part, to the extent such Collateral becomes Excluded Assets as a result of a transaction not prohibited by this Indenture; or

(f) in accordance with the applicable provisions of the Security Documents.

Upon the release of any Liens in favor of the Notes Collateral Agent on the Collateral (subject to the provisions described under Section 10.02(b)) the Notes Collateral Agent, upon receipt of an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent to such release have been met, will execute and deliver such documents and instruments, prepared by the Company, as the Company and the Guarantors may request in writing to evidence such termination and release (without recourse, representation or warranty) without the consent of the holders of the Notes.

SECTION 1.04 Form and Sufficiency of Release. In the event that the Company or any Guarantor has sold, exchanged, or otherwise disposed of or proposes to sell, exchange or otherwise dispose of any portion of the Collateral that, under the terms of this Indenture may be sold, exchanged or otherwise disposed of by the Company or any Guarantor, and the Company or such Guarantor requests the Notes Collateral Agent to furnish a written disclaimer, release or quitclaim of any interest in such property under this Indenture, the Guarantees and the Security Documents, upon receipt of an Officer's Certificate from the Company and Opinion of Counsel stating that all conditions precedent to such release have been met, the Notes Collateral Agent shall, at the sole cost and expense of the Company, execute, acknowledge and deliver to the Company or such Guarantor such an instrument in the form provided by the Company (to the extent acceptable to the Notes Collateral Agent, acting reasonably), and providing for release without recourse, representation or warranty, promptly after satisfaction of the conditions set forth herein for delivery of such release and shall, at the sole cost and expense of the Company, take such other action as the Company or such Guarantor may reasonably request to effect such release.

SECTION 1.05 Purchaser Protected. No purchaser or grantee of any property or rights purporting to be released shall be bound to ascertain the authority of the Trustee or the Notes Collateral Agent to execute the release or to inquire as to the existence of any conditions herein prescribed for the exercise of such authority.

SECTION 1.06 Authorization of Actions to be Taken by the Notes Collateral Agent under the Security Documents.

(a) The Company, the Guarantors and each holder of the Notes, by their acceptance of the Notes and the Guarantees, (i) hereby irrevocably appoints GLAS Trust Company LLC, as Notes

Collateral Agent to act as its agent hereunder and under any Junior Lien Priority Intercreditor Agreement and each other Security Document, and GLAS Trust Company LLC accepts such appointment and (ii) agrees that the Notes Collateral Agent shall be entitled to the rights, privileges, protections, immunities, indemnities and benefits provided to the Trustee under Article 7 hereof, including the compensation, reimbursement, and indemnification provisions set forth in Section 7.07 hereof and the resignation and removal provisions of Section 7.08 hereof (with the references to the Trustee therein being deemed to refer to the Notes Collateral Agent). Furthermore, each holder of a Note, by accepting such Note, consents to and approves the terms of and irrevocably authorizes and directs the Notes Collateral Agent to (i) perform the duties and exercise the rights, powers and discretions that are provided for in any Junior Lien Priority Intercreditor Agreement and each other Security Document in each of its capacities thereunder, together with any other incidental rights, powers and discretions and (ii) execute each document, including each Security Document and any Junior Lien Priority Intercreditor Agreement, expressed to be executed by the Notes Collateral Agent on its behalf, binding the holders to the terms thereof.

(b) If the Company or any Guarantor (i) incurs any obligations secured by Liens permitted by clause (6) of the definition of "Permitted Liens", and (ii) delivers to the Notes Collateral Agent an Officer's Certificate, accompanied by an Opinion of Counsel, so stating and requesting the Notes Collateral Agent to enter into an intercreditor agreement contemplated by subclause (B) or subclause (D) of clause (6) of the definition of "Permitted Liens" and stating that such intercreditor agreement complies with such subclause (B) or subclause (D) of clause (6), as applicable, the Notes Collateral Agent shall (and is hereby authorized and directed to) enter into such intercreditor agreement (at the sole expense and cost of the Company, including legal fees and expenses of the Notes Collateral Agent), bind the holders on the terms set forth therein and perform and observe its obligations thereunder.

SECTION 1.07 Authorization of Receipt of Funds by the Trustee and the Notes Collateral Agent under the Security Agreement.

The Trustee and the Notes Collateral Agent are authorized to receive any funds for the benefit of holders distributed under the Security Documents to the Trustee or the Notes Collateral Agent, to apply such funds as provided in this Indenture and the Security Documents and to make further distributions of such funds in accordance with the applicable provisions of Section 6.10 hereof.

SECTION 1.08 Powers Exercisable by Receiver or Notes Collateral Agent.

In case the Collateral shall be in the possession of a receiver, monitor trustee or other Custodian, lawfully appointed, the powers conferred in this Article 10 upon the Company or any Guarantor, as applicable, with respect to the release, sale or other disposition of such property may be exercised by such receiver, monitor, trustee or other Custodian, and an instrument signed by such receiver, monitor, trustee or other Custodian shall be deemed the equivalent of any similar instrument of the Company or any Guarantor, as applicable, or of any officer or officers thereof required by the provisions of this Article 10.

ARTICLE XI

[Intentionally Omitted]

ARTICLE XII

GUARANTEE

SECTION 1.01 Guarantee.

(a) Each Guarantor, by executing and delivering a supplemental indenture to this Indenture substantially in the form of Exhibit C hereto, hereby jointly and severally guarantees, on a senior secured basis, as a primary obligor and not merely as a surety, to each holder and to the Notes Collateral Agent,

Trustee and their respective successors and assigns the performance and punctual payment when due, whether at Stated Maturity, by acceleration or otherwise, of all obligations of the Company under this Indenture and the Notes, whether for payment of principal of, premium, if any, or interest on the Notes, expenses, indemnification or otherwise (all the foregoing being hereinafter collectively called the "Guaranteed Obligations"). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from any Guarantor, and that each Guarantor shall remain bound under this Article XII notwithstanding any extension or renewal of any Guaranteed Obligation.

(b) Each Guarantor waives presentation to, demand of payment from and protest to the Company of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Guarantor waives notice of any default under the Notes or the Guaranteed Obligations. The Guarantee of each Guarantor hereunder shall not be affected by (i) the failure of any holder, the Notes Collateral Agent or the Trustee to assert any claim or demand or to enforce any right or remedy against the Company or any other Person under this Indenture, the Notes or any other agreement or otherwise; (ii) any extension or renewal of this Indenture, the Notes or any other agreement; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement; (iv) the release of any security held by any holder, the Notes Collateral Agent or the Trustee for the Guaranteed Obligations or each Guarantor; (v) the failure of any holder, the Notes Collateral Agent or Trustee to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (vi) any change in the ownership of each Guarantor, except as provided in Section 12.02(b). Each Guarantor hereby waives any right to which it may be entitled to have its Guarantee hereunder divided among the Guarantors, such that such Guarantor's Guarantee would be less than the full amount claimed.

(c) Each Guarantor hereby waives any right to which it may be entitled to have the assets of the Company first be used and depleted as payment of the Company's obligations under this Indenture and the Notes or such Guarantor's Guarantee hereunder prior to any amounts being claimed from or paid by such Guarantor hereunder. Each Guarantor hereby waives any right to which it may be entitled to require that the Company be sued prior to an action being initiated against such Guarantor.

(d) Each Guarantor further agrees that its Guarantee herein constitutes a guarantee of payment and performance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any holder, the Notes Collateral Agent or the Trustee to any security held for payment of the Guaranteed Obligations.

(e) The Guarantee of each Guarantor is, to the extent and in the manner set forth in this Article XII, senior in right of payment to all existing and future Subordinated Indebtedness of such Guarantor.

(f) Except as expressly set forth in Sections 8.01(b), 12.02 and 12.06, the Guarantee of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the Guarantee of each Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any holder, the Notes Collateral Agent or the Trustee to assert any claim or demand or to enforce any remedy under this Indenture, the Notes or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of any Guarantor or would otherwise operate as a discharge of any Guarantor as a matter of law or equity.

(g) Except as expressly set forth in Section 12.02(b), each Guarantor agrees that its Guarantee shall remain in full force and effect until payment in full of all the Guaranteed Obligations of such Guarantor. Each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on

any Guaranteed Obligation is rescinded or must otherwise be restored by any holder, the Notes Collateral Agent or the Trustee upon the bankruptcy or reorganization of the Company or otherwise.

(h) In furtherance of the foregoing and not in limitation of any other right which any holder, the Notes Collateral Agent or the Trustee has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Company to pay the principal of or interest on any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each Guarantor hereby promises to and shall, upon receipt of written demand by the Notes Collateral Agent or the Trustee, forthwith pay, or cause to be paid, in cash, to the holders, the Notes Collateral Agent or the Trustee an amount equal to the sum of (i) the unpaid principal amount of such Guaranteed Obligations, (ii) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by applicable law) and (iii) all other monetary obligations of the Company to the holders, the Notes Collateral Agent and the Trustee.

(i) Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the holders in respect of any Guaranteed Obligations guaranteed hereby until payment in full of all Guaranteed Obligations. Each Guarantor further agrees that, as between it, on the one hand, and the holders, the Notes Collateral Agent and the Trustee, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in Article VI for the purposes of the Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article VI, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purposes of this Section 12.01.

(j) Each Guarantor also agrees to pay any and all expenses (including reasonable attorneys' fees and expenses) incurred by the Notes Collateral Agent or the Trustee in enforcing any rights under this Section 12.01.

(k) Upon request of the Notes Collateral Agent or the Trustee, each Guarantor shall execute and deliver such further instruments and do such further acts as may be reasonably necessary to carry out more effectively the purpose of this Indenture.

SECTION 1.02 Limitation on Liability.

(a) Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by each Guarantor shall not exceed the maximum amount that can be hereby guaranteed by the applicable Guarantor without rendering the Guarantee, as it relates to such Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally or capital maintenance or corporate benefit rules applicable to guarantees for obligations of affiliates.

(b) A Guarantee as to any Guarantor shall automatically terminate and be of no further force or effect and such Guarantor shall be automatically released from all obligations under this Article XII upon:

(i) the sale, disposition, exchange or other transfer (including through merger, consolidation, amalgamation or otherwise) of the Capital Stock (including any sale, disposition or other transfer following which the applicable Guarantor is no longer a Subsidiary) of the applicable Guarantor to a Person that is not the Company or a Guarantor if such sale, disposition, exchange or other transfer is made in a manner not in violation of this Indenture;

(ii) [reserved];

(iii) [reserved]; or

(iv) the Company's exercise of its legal defeasance option or covenant defeasance option under Article VIII or if the Company's obligations under this Indenture are discharged in accordance with the terms of this Indenture.

Notwithstanding the foregoing, (a) any Guarantor that becomes a non-wholly owned Subsidiary shall not be released from its Guarantee as a result of becoming a non-wholly owned Subsidiary unless (x) there is a bona fide business purpose for the transaction that causes such Guarantor to become non-wholly owned and would result in such release and (y) a person other than an Affiliate of the Company holds any Equity Interests in such Subsidiary, (b) no Guarantor may be released if, on the date of and after giving effect to the release of the Guarantee, the Guarantor (or any Subsidiary thereof) would own (or hold an exclusive license with respect to) any Material IP, (c) no Guarantor may be released if such Person is then obligated in respect of any First Lien Priority Indebtedness and (d) any Elective Guarantor shall be released from its Guarantees at the election of the Company upon notice thereof to the Trustee.

SECTION 1.03 [Intentionally Omitted].

SECTION 1.04 Successors and Assigns. This Article XII shall be binding upon each Guarantor and its successors and assigns and shall inure to the benefit of and be enforceable by the successors and assigns of the Trustee, the Notes Collateral Agent and the holders and, in the event of any transfer or assignment of rights by any holder, the Trustee or the Notes Collateral Agent, the rights and privileges conferred upon that party in this Indenture and in the Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

SECTION 1.05 No Waiver. Neither a failure nor a delay on the part of any one of the Trustee, the Notes Collateral Agent or the holders in exercising any right, power or privilege under this Article XII shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee, the Notes Collateral Agent and the holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article XII at law, in equity, by statute or otherwise.

SECTION 1.06 Modification. No modification, amendment or waiver of any provision of this Article XII, nor the consent to any departure by any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee or the Notes Collateral Agent, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Guarantor in any case shall entitle any Guarantor to any other or further notice or demand in the same, similar or other circumstances.

SECTION 1.07 Execution of Supplemental Indenture for Future Guarantors. Each Subsidiary which is required to become a Guarantor of the Notes pursuant to Section 4.11 shall promptly execute and deliver to the Trustee and the Notes Collateral Agent a supplemental indenture substantially in the form of Exhibit C hereto pursuant to which such Subsidiary shall become a Guarantor under this Article XII and shall guarantee the Guaranteed Obligations. Concurrently with the execution and delivery of such supplemental indenture, the Company shall deliver to the Trustee and the Notes Collateral Agent an Opinion of Counsel and an Officer's Certificate stating that such supplemental indenture has been duly authorized, executed and delivered by such Subsidiary and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, the Guarantee of such Guarantor is a valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms.

SECTION 1.08 Non-Impairment. The failure to endorse a Guarantee on any Note shall not affect or impair the validity thereof.

ARTICLE XIII

MISCELLANEOUS

SECTION 1.01 [Reserved].

SECTION 1.02 Notices.

(a) Any notice or communication required or permitted hereunder shall be in writing and delivered in person, via email or mailed by first-class mail addressed as follows:

if to the Company or a Guarantor:

The RealReal, Inc.
55 Francisco Street Suite 150
San Francisco, CA 94133
Attention: Todd Suko, Chief Legal Officer and Secretary
E-mail: todd.suko@therealreal.com

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

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Attention: Michael S. Benn; Benjamin S. Arfa
E-mail: MSBenn@wlrk.com; BSArfa@wlrk.com

if to the Trustee, Notes Collateral Agent, Paying Agent and Registrar:

GLAS Trust Company LLC
3 Second Street, Suite 206
Jersey City, NJ 07311
Attention: Transaction Management Group: The RealReal
Email: tmgus@glas.agency

The Company, any Guarantor, the Trustee, the Notes Collateral Agent, the Paying Agent and the Registrar by notice to the others may designate additional or different addresses for subsequent notices or communications.

(b) Any notice or communication mailed to a holder shall be mailed, first class mail, to the holder at the holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

(c) Failure to mail a notice or communication to a holder or any defect in it shall not affect its sufficiency with respect to other holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it, except that notices to the Trustee are effective only if received.

The Trustee and the Notes Collateral Agent may, in each of their sole discretion, agree to accept and act upon instructions or directions pursuant to this Indenture sent by e-mail, facsimile transmission or other similar electronic methods. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee or the Notes Collateral Agent in its discretion elects to act upon such instructions, the Trustee's or the Notes Collateral Agent's, as applicable, understanding of such instructions shall be deemed controlling. The Trustee and the Notes Collateral

Agent, as applicable, shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee and the Notes Collateral Agent, including without limitation the risk of the Trustee or the Notes Collateral Agent, as applicable, acting on unauthorized instructions, and the risk or interception and misuse by third parties.

Notwithstanding anything to the contrary contained herein, as long as the Notes are in the form of a Global Note, notice to the holders may be made electronically in accordance with procedures of the Depository.

SECTION 1.012 [Reserved].

SECTION 1.013 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee at the request of the Trustee:

(a) except upon the increase of the principal amount of any outstanding Global Note on the applicable Interest Payment Date by an amount equal to the amount of PIK Interest for the applicable interest period, an Officer's Certificate in form reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) except upon (i) the issuance of the Initial Notes and (ii) the increase of the principal amount of any outstanding Global Note on the applicable Interest Payment Date by an amount equal to the amount of PIK Interest for the applicable interest period, an Opinion of Counsel in form reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 1.014 Statements Required in Certificate or Opinion. Each certificate or opinion (including any Officer's Certificate or Opinion of Counsel) with respect to compliance with a covenant or condition provided for in this Indenture (other than pursuant to Section 4.09) shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with; *provided*, *however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

SECTION 1.015 When Notes Disregarded. In determining whether the holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or the Guarantors or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or the Guarantors shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

SECTION 1.016 Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of the holders. The Notes Collateral Agent may make reasonable rules for action by the holders. The Registrar and a Paying Agent may make reasonable rules for their functions.

SECTION 1.017 Legal Holidays. If a payment date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue on any amount that would have been otherwise payable on such payment date if it were a Business Day for the intervening period. If a regular Record Date is not a Business Day, the Record Date shall not be affected. Except as otherwise expressly provided herein, when the performance of any covenant, duty or obligation is stated to be required on a day which is not a Business Day, the date of such performance shall extend to the immediately succeeding Business Day.

SECTION 1.018 GOVERNING LAW. THIS INDENTURE, THE NOTES AND THE GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

SECTION 1.010 No Recourse Against Others. No director, officer, employee, manager or incorporator of, and no holder of any Equity Interests in, the Company or any direct or indirect parent company of the Company, as such, shall have any liability for any obligations of the Company or any Guarantor under the Notes, the Guarantees, the Security Documents or this Indenture, as applicable, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

SECTION 1.011 Successors. All agreements of the Company and the Guarantors in this Indenture and the Notes shall bind such person's successors. All agreements of the Trustee and the Notes Collateral Agent in this Indenture shall bind its successors.

SECTION 1.012 Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. Notwithstanding the foregoing, the exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture and signature pages for all purposes.

SECTION 1.013 Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 1.014 Indenture Controls. If and to the extent that any provision of the Notes limits, qualifies or conflicts with a provision of this Indenture, such provision of this Indenture shall control.

SECTION 1.015 Severability. In case any provision in this Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

SECTION 1.016 Waiver of Jury Trial. EACH OF THE COMPANY, THE GUARANTORS, THE TRUSTEE AND THE NOTES COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 1.017 U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) ("U.S.A. Patriot Act"), the Trustee and the Notes Collateral Agent, like all financial institutions and in order to help fight the funding of terrorism and money laundering, are required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee or Notes Collateral Agent, as applicable with such information as it may request in order for it to satisfy the requirements of the U.S.A. Patriot Act.

SECTION 1.018 Submission to Jurisdiction. The parties irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, City of New York, over any suit, action or proceeding arising out of or relating to this Indenture or the Notes. To the fullest extent permitted by applicable law, the parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

SECTION 1.019 Electronic Signatures. This Indenture and any certificate, agreement or other document to be signed in connection with this Indenture and the transactions contemplated hereby shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature; or (iii) in the case of this Indenture and any certificate, agreement or other document to be signed in connection with this Indenture and the transactions contemplated hereby (other than any Notes), any electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including relevant provisions of the Uniform Commercial Code (collectively, "Signature Law"). Each electronic signature (except in the case of any Notes) or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature (except in the case of any Notes), of any party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the Uniform Commercial Code or other Signature Law due to the character or intended character of the writings.

[*Remainder of page intentionally left blank.*]

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

COMPANY:

THE REALREAL, INC.

By: /s/ Todd Suko
Name: Todd Suko
Title: Interim Chief Financial Officer, Chief Legal Officer and Secretary

[Signature Page to Indenture]

GLAS TRUST COMPANY LLC as Trustee and Notes Collateral Agent

By: /s/ Katie Fischer
Name: Katie Fischer
Title: Vice President

APPENDIX A

PROVISIONS RELATING TO INITIAL NOTES AND PIK NOTES

1. Definitions.

1.1 Definitions.

For the purposes of this Appendix A the following terms shall have the meanings indicated below:

"Definitive Note" means a certificated Initial Note, Additional Note and PIK Note (bearing the Restricted Notes Legend if the transfer of such Note is restricted by applicable law) that does not include the Global Notes Legend.

"Depository" means The Depository Trust Company, its nominees and their respective successors.

"Global Notes Legend" means the legend set forth under that caption in Section 2.2(f)(i) of Appendix A to this Indenture.

"IAI" means an institutional "accredited investor" as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"Notes Custodian" means the custodian with respect to a Global Note (as appointed by the Depository) or any successor person thereto, who shall initially be the Trustee.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Regulation S" means Regulation S under the Securities Act.

"Regulation S Notes" means all Initial Notes offered and sold outside the United States in reliance on Regulation S.

"Restricted Notes Legend" means the legend set forth in Section 2.2(f)(i) herein.

"Restricted Period," with respect to any Notes, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Notes are first offered to persons other than distributors (as defined in Regulation S under the Securities Act) in reliance on Regulation S, notice of which day shall be promptly given by the Company to the Trustee, and (b) the Issue Date.

"Rule 144A" means Rule 144A under the Securities Act.

"Rule 144A Notes" means all Initial Notes offered and sold to QIBs in reliance on Rule 144A.

"Rule 501" means Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"Transfer Restricted Definitive Notes" means Definitive Notes that bear or are required to bear or are subject to the Restricted Notes Legend.

"Transfer Restricted Global Notes" means Global Notes that bear or are required to bear or are subject to the Restricted Notes Legend.

"Transfer Restricted Notes" means the Transfer Restricted Definitive Notes and Transfer Restricted Global Notes.

"Unrestricted Definitive Notes" means Definitive Notes that are not required to bear, or are not subject to, the Restricted Notes Legend.

"Unrestricted Global Notes" means Global Notes that are not required to bear, or are not subject to, the Restricted Notes Legend.

1.2 Other Definitions.

Term:	Defined in Section:
Agent Members	2.1(b)
Clearstream	2.1(b)
Euroclear	2.1(b)
Global Notes	2.1(b)
Regulation S Global Notes	2.1(b)
Regulation S Permanent Global Notes	2.1(b)
Regulation S Temporary Global Notes	2.1(b)
Rule 144A Global Notes	2.1(b)

2. The Notes.

2.1 Form and Dating; Global Notes.

(a) The Initial Notes issued on the date hereof will be (i) privately placed by the Company and (ii) issued, initially, only to (1) QIBs in reliance on Rule 144A and (2) Persons other than U.S. Persons (as defined in Regulation S) in reliance on Regulation S. Such Initial Notes may thereafter be transferred to, among others, QIBs, purchasers in reliance on Regulation S and, except as set forth below, IAIs in accordance with Rule 501.

(b) Global Notes. (i) Except as provided in clause (d) of Section 2.2 below, Rule 144A Notes initially shall be represented by one or more Notes in definitive, fully registered, global form without interest coupons (collectively, the "Rule 144A Global Notes").

Regulation S Notes initially shall be represented by one or more Notes in fully registered, global form without interest coupons (collectively, the "Regulation S Temporary Global Note" and, together with the Regulation S Permanent Global Note (defined below), the "Regulation S Global Notes"), which, in the case of Initial Notes, shall be registered in the name of the Depository or the nominee of the Depository for the accounts of designated agents holding on behalf of Euroclear Bank S.A./N.V., as operator of the Euroclear system ("Euroclear") or Clearstream Banking, Société Anonyme ("Clearstream").

Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Note shall be exchanged for beneficial interests in a permanent Global Note (the "Regulation S Permanent Global Note") pursuant to the applicable procedures of the Depository. Simultaneously with the authentication of the Regulation S Permanent Global Note, the Trustee in the case of Initial Notes shall cancel the Regulation S Temporary Global Note. In the case of Initial Notes, the aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Note that are held by Participants through Euroclear or Clearstream.

The term "Global Notes" means the Rule 144A Global Notes and the Regulation S Global Notes. The Global Notes shall bear the Global Note Legend. The Global Notes initially shall (i) be registered in the name of the Depository or the nominee of such Depository, in each case for credit to an account of an Agent Member, (ii) be delivered to the Trustee as custodian for such Depository and (iii) bear the Restricted Notes Legend.

Members of, or direct or indirect participants in, the Depository (collectively, the "Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Notes.

The Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the sole owner of the Global Notes for all purposes under the Indenture and the Notes. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository, or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any Note.

(ii) Transfers of Global Notes shall be limited to transfer in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in the Global Notes may be transferred or exchanged for Definitive Notes only in accordance with the applicable rules and procedures of the Depository and the provisions of Section 2.2. In addition, a Global Note shall be exchangeable for Definitive Notes if (x) the Depository (1) notifies the Company at any time that it is unwilling or unable to continue as depositary for such Global Note and a successor depositary is not appointed within 90 days or (2) has ceased to be a clearing agency registered under the Exchange Act and a successor depositary is not appointed within 90 days, (y) the Company, at its option, notifies the Trustee that the Company elects to cause the issuance of Definitive Notes or (z) there shall have occurred and be continuing an Event of Default with respect to such Global Note and a request has been made for such exchange; *provided* that in no event shall the Regulation S Temporary Global Note be exchanged by the Company for Definitive Notes prior to (x) the expiration of the Restricted Period and (y) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act. In all cases, Definitive Notes delivered in exchange for any Global Note or beneficial interests therein shall be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository in accordance with its customary procedures.

(iii) In connection with the transfer of a Global Note as an entirety to beneficial owners pursuant to subsection (ii) of this Section 2.1(b), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and, upon written order of the Company signed by an Officer, the Trustee shall authenticate and make available for delivery, to each beneficial owner identified by the Depository in writing in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations.

(iv) Any Transfer Restricted Note delivered in exchange for an interest in a Global Note pursuant to Section 2.2 shall, except as otherwise provided in Section 2.2, bear the Restricted Notes Legend.

(v) Notwithstanding the foregoing, through the Restricted Period, a beneficial interest in a Regulation S Global Note may be held only through Euroclear or Clearstream unless delivery is made in accordance with the applicable provisions of Section 2.2.

(vi) The holder of any Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Indenture or the Notes.

2.2 Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. A Global Note may not be transferred as a whole except as set forth in Section 2.1(b). Global Notes will not be exchanged by the Company for Definitive Notes except under the circumstances described in Section 2.1(b)(ii). Global Notes also may

be exchanged or replaced, in whole or in part, as provided in Section 2.08 of this Indenture. Beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.2(b).

(b) Transfer and Exchange of Beneficial Interests in Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depository, in accordance with the provisions of this Indenture and the applicable rules and procedures of the Depository. Beneficial interests in Transfer Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Beneficial interests in Global Notes shall be transferred or exchanged only for beneficial interests in Global Notes. Transfers and exchanges of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Transfer Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Transfer Restricted Global Note in accordance with the transfer restrictions set forth in the Restricted Notes Legend; *provided*, *however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in a Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person. A beneficial interest in an Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.2(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests in any Global Note that is not subject to Section 2.2(b)(i), the transferor of such beneficial interest must deliver to the Registrar (1) a written order from an Agent Member given to the Depository in accordance with the applicable rules and procedures of the Depository directing the Depository to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the applicable rules and procedures of the Depository containing information regarding the Agent Member account to be credited with such increase. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note pursuant to Section 2.2(g).

(iii) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in a Transfer Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Transfer Restricted Global Note if the transfer complies with the requirements of Section 2.2(b)(ii) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in a Rule 144A Global Note, then the transferor must deliver a certificate in the form attached to the applicable Note; and

(B) if the transferee will take delivery in the form of a beneficial interest in a Regulation S Global Note, then the transferor must deliver a certificate in the form attached to the applicable Note.

(iv) Transfer and Exchange of Beneficial Interests in a Transfer Restricted Global Note for Beneficial Interests in an Unrestricted Global Note. A beneficial interest in a Transfer Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.2(b)(ii) above and the Registrar receives the following:

(A) if the holder of such beneficial interest in a Transfer Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form attached to the applicable Note; or

(B) if the holder of such beneficial interest in a Transfer Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form attached to the applicable Note,

and, in each such case, if the Company or the Registrar so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Company and the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Notes Legend are no longer required in order to maintain compliance with the Securities Act. If any such transfer or exchange is effected pursuant to this subparagraph (iv) at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of a written order of the Company in the form of an Officer's Certificate in accordance with Section 2.01 of the Indenture, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred or exchanged pursuant to this subparagraph (iv).

(v) Transfer and Exchange of Beneficial Interests in an Unrestricted Global Note for Beneficial Interests in a Transfer Restricted Global Note. Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Note.

(c) Transfer and Exchange of Beneficial Interests in Global Notes for Definitive Notes. A beneficial interest in a Global Note may not be exchanged for a Definitive Note except under the circumstances described in Section 2.1(b)(ii). A beneficial interest in a Global Note may not be transferred to a Person who takes delivery thereof in the form of a Definitive Note except under the circumstances described in Section 2.1(b)(ii). In any case, beneficial interests in Global Notes shall be transferred or exchanged only for Definitive Notes.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests in Global Notes. Transfers and exchanges of Definitive Notes for beneficial interests in the Global Notes also shall require compliance with either subparagraph (i), (ii) or (iii) below, as applicable:

(i) Transfer Restricted Definitive Notes to Beneficial Interests in Transfer Restricted Global Notes. If any holder of a Transfer Restricted Definitive Note proposes to exchange such Transfer Restricted Definitive Note for a beneficial interest in a Transfer Restricted Global Note or to transfer such Transfer Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the holder of such Transfer Restricted Definitive Note proposes to exchange such Transfer Restricted Note for a beneficial interest in a Transfer Restricted Global Note, a certificate from such holder in the form attached to the applicable Note;

(B) if such Transfer Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate from such holder in the form attached to the applicable Note;

(C) if such Transfer Restricted Definitive Note is being transferred to a Non U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate from such holder in the form attached to the applicable Note;

(D) if such Transfer Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate from such holder in the form attached to the applicable Note;

(E) if such Transfer Restricted Definitive Note is being transferred to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate from such holder in the form attached to the applicable Note, including the certifications, certificates and Opinion of Counsel, if applicable; or

(F) if such Transfer Restricted Definitive Note is being transferred to the Company or a Subsidiary thereof, a certificate from such holder in the form attached to the applicable Note;

the Trustee shall cancel the Transfer Restricted Definitive Note, and increase or cause to be increased the aggregate principal amount of the appropriate Transfer Restricted Global Note.

(ii) Transfer Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A holder of a Transfer Restricted Definitive Note may exchange such Transfer Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note or transfer such Transfer Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if the Registrar receives the following:

(A) if the holder of such Transfer Restricted Definitive Note proposes to exchange such Transfer Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form attached to the applicable Note; or

(B) if the holder of such Transfer Restricted Definitive Notes proposes to transfer such Transfer Restricted Definitive Note to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form attached to the applicable Note,

and, in each such case, if the Company or the Registrar so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Company and the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Notes Legend are no longer required in order to maintain compliance with the Securities Act. Upon satisfaction of the conditions of this subparagraph (ii), the Trustee shall cancel the Transfer Restricted Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note. If any such transfer or exchange is effected pursuant to this subparagraph (ii) at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of a written order of the Company in the form of an Officer's Certificate, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of Transfer Restricted Notes transferred or exchanged pursuant to this subparagraph (ii).

(iii) Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A holder of an Unrestricted Definitive Note may exchange such Unrestricted Definitive Note for a beneficial interest in an Unrestricted Global Note or transfer such Unrestricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes. If any such transfer or exchange is effected pursuant to this subparagraph (iii) at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of a written order of the Company in the form of an Officer's Certificate, the Trustee shall authenticate one or more

Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of Unrestricted Definitive Notes transferred or exchanged pursuant to this subparagraph (iii).

(iv) Unrestricted Definitive Notes to Beneficial Interests in Transfer Restricted Global Notes. An Unrestricted Definitive Note cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Note.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a holder of Definitive Notes and such holder's compliance with the provisions of this Section 2.2(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such holder or by its attorney, duly authorized in writing. In addition, the requesting holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.2(e).

(i) Transfer Restricted Definitive Notes to Transfer Restricted Definitive Notes. A Transfer Restricted Note may be transferred to and registered in the name of a Person who takes delivery thereof in the form of a Transfer Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A under the Securities Act, then the transferor must deliver a certificate in the form attached to the applicable Note;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 under the Securities Act, then the transferor must deliver a certificate in the form attached to the applicable Note;

(C) if the transfer will be made pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate in the form attached to the applicable Note;

(D) if the transfer will be made to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (A) through (D) above, a certificate in the form attached to the applicable Note; and

(E) if such transfer will be made to the Company or a Subsidiary thereof, a certificate in the form attached to the applicable Note.

(ii) Transfer Restricted Definitive Notes to Unrestricted Definitive Notes. Any Transfer Restricted Definitive Note may be exchanged by the holder thereof for an Unrestricted Definitive Note or transferred to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note if the Registrar receives the following:

(A) if the holder of such Transfer Restricted Definitive Note proposes to exchange such Transfer Restricted Definitive Note for an Unrestricted Definitive Note, a certificate from such holder in the form attached to the applicable Note; or

(B) if the holder of such Transfer Restricted Definitive Note proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder in the form attached to the applicable Note,

and, in each such case, if the Company or the Registrar so request, an Opinion of Counsel in form reasonably acceptable to the Company and the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Notes Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Notes to Unrestricted Definitive Notes. A holder of an Unrestricted Definitive Note may transfer such Unrestricted Definitive Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note at any time. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the holder thereof.

(iv) Unrestricted Definitive Notes to Transfer Restricted Definitive Notes. An Unrestricted Definitive Note cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a Transfer Restricted Definitive Note.

At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.10 of the Indenture. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(f) Legend.

(i) Except as permitted by the following paragraph (iii), (iv) or (v), each Note certificate evidencing the Global Notes and any Definitive Notes (and all Notes issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only):

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT WITHIN SIX MONTHS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS SECURITY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS SECURITY),

(D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE COMPANY SO REQUESTS), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN SIX MONTHS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY. IF THE PROPOSED TRANSFEREE IS AN ACCREDITED INVESTOR, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE COMPANY SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AS USED HEREIN. THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT. BY ITS PURCHASE OR ACQUISITION OF THIS NOTE, THE HOLDER REPRESENTS AND AGREES THAT (1) IT IS NOT AND WILL NOT BE (AND IS NOT AND WILL NOT BE DEEMED FOR PURPOSES OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA") OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") TO BE) (A) AN "EMPLOYEE BENEFIT PLAN" (AS DEFINED UNDER SECTION 3(3) OF ERISA), (B) A PLAN SUBJECT TO SECTION 4975 OF THE CODE OR PROVISIONS UNDER APPLICABLE FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE ("SIMILAR LAWS"), OR (C) AN ENTITY, THE UNDERLYING ASSETS OF WHICH ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY OF THE FOREGOING BY REASON OF AN EMPLOYEE BENEFIT PLAN OR PLAN'S INVESTMENT IN SUCH ENTITY; OR (2) THE PURCHASE AND HOLDING OF THIS NOTE DOES NOT AND WILL NOT CONSTITUTE OR INVOLVE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR, IF APPLICABLE, A VIOLATION OF SIMILAR LAWS.

THIS NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1272 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED) FOR U.S. FEDERAL INCOME TAX PURPOSES. UPON WRITTEN REQUEST, THE COMPANY WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND ISSUE DATE OF THE NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE NOTE AND (3) THE YIELD TO MATURITY OF THE NOTE. HOLDER SHOULD CONTACT THE COMPANY AT 55 FRANCISCO STREET SUITE 150, SAN FRANCISCO, CA 94133, EMAIL: TODD.SUKO@THEREALREAL.COM."

Each Global Note shall bear the following additional Legend:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS

AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO DTC, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF."

Each Definitive Note shall bear the following additional Legend:

"IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS."

(ii) Upon any sale or transfer of a Transfer Restricted Definitive Note, the Registrar shall permit the holder thereof to exchange such Transfer Restricted Note for a Definitive Note that does not bear the legends set forth above and rescind any restriction on the transfer of such Transfer Restricted Definitive Note if the holder certifies in writing to the Registrar that its request for such exchange was made in reliance on Rule 144 (such certification to be in the form set forth on the reverse of the Initial Note).

(iii) Upon a sale or transfer after the expiration of the Restricted Period of any Initial Note acquired pursuant to Regulation S, all requirements that such Initial Note bear the Restricted Notes Legend shall cease to apply and the requirements requiring any such Initial Note be issued in global form shall continue to apply.

(g) Cancellation or Adjustment of Global Note. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.10 of this Indenture. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee, as applicable, to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee, as applicable, to reflect such increase.

(h) Obligations with Respect to Transfers and Exchanges of Notes.

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate, Definitive Notes and Global Notes at the Registrar's request.

(ii) No service charge shall be made for any registration of transfer or exchange of Notes, but the Company may require payment of a sum sufficient to cover any transfer tax,

assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charge payable upon exchanges pursuant to Sections 3.06, 4.06, 4.08 and 9.04 of this Indenture).

(iii) Prior to the due presentation for registration of transfer of any Note, the Company, the Trustee, the Notes Collateral Agent, any Paying Agent or the Registrar may deem and treat the person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Company, the Trustee, the Notes Collateral Agent, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(iv) All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(i) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in the Depository or any other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the holders and all payments to be made to the holders under the Notes shall be given or made only to the registered holders (which shall be the Depository or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among participants, members or beneficial owners of the Depository in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

EXHIBIT A

[FORM OF FACE OF NOTE]

[Global Notes Legend]

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF *THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO DTC, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF*.

THIS NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1272 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED) FOR U.S. FEDERAL INCOME TAX PURPOSES. UPON WRITTEN REQUEST, THE COMPANY WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND ISSUE DATE OF THE NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE NOTE AND (3) THE YIELD TO MATURITY OF THE NOTE. HOLDER SHOULD CONTACT THE COMPANY AT 55 FRANCISCO STREET SUITE 150, SAN FRANCISCO, CA 94133, EMAIL: TODD.SUKO@THEREALREAL.COM."

[Restricted Notes Legend]

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT WITHIN SIX MONTHS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS SECURITY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS SECURITY), (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES

ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE COMPANY SO REQUESTS), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN SIX MONTHS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY. IF THE PROPOSED TRANSFEREE IS AN ACCREDITED INVESTOR, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE COMPANY SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AS USED HEREIN. THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT. BY ITS PURCHASE OR ACQUISITION OF THIS NOTE, THE HOLDER REPRESENTS AND AGREES THAT (1) IT IS NOT AND WILL NOT BE (AND IS NOT AND WILL NOT BE DEEMED FOR PURPOSES OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA") OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") TO BE) (A) AN "EMPLOYEE BENEFIT PLAN" (AS DEFINED UNDER SECTION 3(3) OF ERISA), (B) A PLAN SUBJECT TO SECTION 4975 OF THE CODE OR PROVISIONS UNDER APPLICABLE FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE ("SIMILAR LAWS"), OR (C) AN ENTITY, THE UNDERLYING ASSETS OF WHICH ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY OF THE FOREGOING BY REASON OF AN EMPLOYEE BENEFIT PLAN OR PLAN'S INVESTMENT IN SUCH ENTITY; OR (2) THE PURCHASE AND HOLDING OF THIS NOTE DOES NOT AND WILL NOT CONSTITUTE OR INVOLVE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR, IF APPLICABLE, A VIOLATION OF SIMILAR LAWS."

[Definitive Notes Legend]

"IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS."

[FORM OF NOTE]

THE REALREAL, INC.

No. [ ]

144A CUSIP No. [●]
144A ISIN No. [●]

$[ ]

4.25%/8.75% PIK/Cash Senior Secured Note due 2029

THE REALREAL, INC., a Delaware corporation, promises to pay to Cede & Co., or registered assigns, the principal sum set forth on the Schedule of Increases or Decreases in Global Note attached hereto on March 1, 2029 or, if applicable, the Springing Maturity Date.

Interest Payment Dates: March 1 and September 1, commencing September 1, 2024.

Record Dates: February 15 and August 15.

Additional provisions of this Note are set forth on the other side of this Note.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed.

THE REALREAL, INC.

By: ____
Name:
Title:

Dated:

Exhibit A-4

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

GLAS TRUST COMPANY LLC,
as Trustee, certifies that this is one of the Notes referred to in the Indenture.

By: __
Authorized Signatory

Dated: _____

*/ If the Note is to be issued in global form, add the Global Notes Legend and the attachment from Exhibit A captioned "TO BE ATTACHED TO GLOBAL NOTES - SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE."

[FORM OF REVERSE SIDE OF NOTE]

4.25%/8.75% PIK/Cash Senior Secured Note Due 2029

1. Interest

THE REALREAL, INC., a Delaware corporation (such entity, and its successors and assigns under the Indenture hereinafter referred to, being herein called, the "Company"), promises to pay interest on the principal amount of this Note at the rate per annum indicated below. The Company shall pay interest semiannually on March 1 and September 1 of each year (each an "Interest Payment Date"), commencing September 1, 2024. The Notes will bear cash interest ("Cash Interest") at a rate of 8.75% per annum payable semi-annually in arrears. In addition, the Notes will bear interest at a rate of 4.25% payable in kind ("PIK Interest") by, in the case of Global Note, increasing the principal amount of one or more outstanding Global Notes registered in the name of, or held by, the Depository or its nominee, or if, and in the limited circumstances where, the Notes are no longer held in global form, by issuing Notes ("PIK Notes") (rounded up to the nearest $ 1.00) under the Indenture, having the same terms and conditions as the Notes (in each case, a "PIK Payment"). Interest on the Notes shall accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from February 29, 2024, until the principal hereof is due. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay interest on overdue principal at the rate borne by the Notes, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

2. Method of Payment

The Company shall pay interest on the Notes (except defaulted interest) to the Persons who are registered holders at the close of business on February 15 or August 15 (each a "Record Date") immediately preceding the Interest Payment Date even if Notes are canceled after the Record Date and on or before the Interest Payment Date (whether or not a Business Day). Holders must surrender Notes to the Paying Agent to collect principal payments. The Company shall pay principal, premium, if any, and Cash Interest in money of the United States of America that at the time of payment is legal tender for payment of public and private debts. Cash payments in respect of the Notes represented by a Global Note (including principal, premium, if any, and Cash Interest) shall be made by wire transfer of immediately available funds to the accounts specified by the Depository or any successor depositary. The Company shall make all cash payments in respect of a certificated Note (including principal, premium, if any, and Cash Interest) at the office of the Paying Agent, except that, at the option of the Company, payment of Cash Interest may be made by mailing a check to the registered address of each holder thereof; *provided*, *however*, that cash payments on the Notes may also be made, in the case of a holder of at least $1,000,000 aggregate principal amount of Notes, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such holder elects payment by wire transfer by giving written notice to the Trustee or Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee or Paying Agent may accept in its discretion).

PIK Interest will be payable on each Interest Payment Date (x) with respect to Notes represented by one or more Global Notes registered in the name of, or held by, the Depository or its nominee on the relevant Record Date, by increasing the principal amount of the outstanding Global Notes on such Interest Payment Date by an amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest $1.00) and upon receipt of an Authentication Order delivered to the Trustee, the Trustee will cause such Global Notes to be increased and (y) with respect to Notes represented by certificated notes, by issuing PIK Notes in certificated form on such Interest Payment Date in an aggregate principal amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest $1.00), and the Trustee will, at the request of the Company, authenticate and deliver such PIK Notes for issuance to the holders in certificated form for original issuance to the holders on the relevant Record Date, as evidenced by the records of such holders. Following an increase in the principal amount of the outstanding Global Notes as a result of a PIK Payment, the Global Notes will bear interest on such increased principal amount from and after the date of such PIK Payment. Any PIK Notes issued in certificated form will be dated as of the applicable Interest Payment Date and will bear interest from

and after such date. All Notes issued pursuant to a PIK Payment will mature on the Stated Maturity (including the Springing Maturity Date, if earlier) and will be governed by, and subject to the terms, provisions and conditions of the Indenture referred to below and shall have the same rights and benefits as the Notes issued on the Issue Date. Any PIK Notes issued in certificated form will be issued with the description "PIK" on the face of such PIK Note, and references to the "principal" or "principal amount" of the PIK Notes shall include any increase in the principal amount of the outstanding Notes as a result of any PIK Payment.

3. Paying Agent and Registrar

Initially, GLAS Trust Company LLC, as trustee under the Indenture (the "Trustee"), will act as Paying Agent and Registrar. The Company may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the Trustee; provided, however, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor Registrar or Paying Agent, as the case may be, as evidenced by an appropriate agreement entered into by the Company and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Company or any of its wholly owned domestically organized Subsidiaries may act as Paying Agent or Registrar.

4. Indenture

The Company issued the Notes under an Indenture dated as of February 29, 2024 (the "Indenture"), among the Company the Trustee and GLAS Trust Company LLC, as collateral agent (the "Notes Collateral Agent"). Capitalized terms used herein are used as defined in the Indenture, unless otherwise indicated. The terms of the Notes include those stated in the Indenture. The Notes are subject to all terms and provisions of the Indenture, and the holders (as defined in the Indenture) are referred to the Indenture for a statement of such terms and provisions. If and to the extent that any provision of the Notes limits, qualifies or conflicts with a provision of the Indenture, such provision of the Indenture shall control.

The Notes are senior secured obligations of the Company. This Note is one of the [Initial] [PIK] Notes referred to in the Indenture. The Notes include the Initial Notes and any PIK Notes. The Initial Notes and any PIK Notes will, at the Company's option, be treated as a single class of securities for all purposes under this Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase; *provided* that if the PIK Notes are not fungible with the Initial Notes for U.S. federal income tax purposes, the PIK Notes will have a separate CUSIP number and/or ISIN, if applicable. The Indenture imposes certain limitations on the ability of the Company and the Subsidiaries to, among other things, make certain Investments and other Restricted Payments, Incur Indebtedness, enter into consensual restrictions upon the payment of certain dividends and distributions by such Subsidiaries, enter into or permit certain transactions with Affiliates, create or Incur Liens and make Asset Sales. The Indenture also imposes limitations on the ability of the Company and each Guarantor to consolidate or merge with or into any other Person or convey, transfer or lease all or substantially all of its property.

The Guarantors (including each Wholly Owned Subsidiary of the Company that is required to guarantee the Guaranteed Obligations pursuant to Section 4.11 of the Indenture) shall jointly and severally guarantee the Guaranteed Obligations pursuant to the terms of the Indenture.

5. Redemption

On or after March 1, 2025, the Company may redeem the Notes at its option, in whole at any time or in part from time to time, upon not less than 10 nor more than 60 days' prior notice mailed (or caused to be mailed) by the Company by first-class mail, or delivered electronically in accordance with the Depository's procedures if held by the Depository, to each holder's registered address (with a copy to the Trustee), at the following redemption prices (expressed as a percentage of principal amount), *plus* accrued and unpaid interest to, but excluding, the applicable redemption date (subject to the right of holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date), if redeemed during the periods set forth below:

Period	Redemption Price
March 1, 2025 to (but excluding) March 1, 2026	113.000%
March 1, 2026 to (but excluding) October 1, 2026	106.500%
October 1, 2026 and thereafter	100.000%

In addition, prior to March 1, 2025, the Company may redeem the Notes at its option, in whole at any time or in part from time to time, upon not less than 10 nor more than 60 days' prior notice mailed (or caused to be mailed) by the Company by first-class mail, or delivered electronically in accordance with the Depository's procedures if held by the Depository, to each holder's registered address (with a copy to the Trustee), at a redemption price equal to 100% of the principal amount of the Notes redeemed *plus* the Applicable Premium as of, and accrued and unpaid interest to, but excluding, the applicable redemption date (subject to the right of holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date).

Notwithstanding the foregoing, at any time and from time to time on or prior to March 1, 2025, the Company may redeem in the aggregate up to 40% of the original aggregate principal amount of the Notes (calculated after giving effect to any PIK Payments) with the net cash proceeds of one or more Equity Offerings by the Company to the extent the net cash proceeds thereof are contributed to the common equity capital of the Company or are used to purchase Capital Stock (other than Disqualified Stock) of the Company, at a redemption price (expressed as a percentage of principal amount thereof) of 113.000%, *plus* accrued and unpaid interest to, but excluding, the applicable redemption date (subject to the right of holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date); *provided*, *however*, that at least 60% of the original aggregate principal amount of the Notes (calculated after giving effect to any PIK Payments) must remain outstanding after each such redemption; *provided*, *further*, that such redemption shall occur within 90 days after the date on which any such Equity Offering is consummated and upon not less than 10 nor more than 60 days' notice mailed (or caused to be mailed) by the Company by first-class mail, or delivered electronically in accordance with the Depository's procedures if held by the Depository, to each holder's registered address (with a copy to the Trustee) and otherwise in accordance with the procedures set forth in the Indenture.

Once notice of redemption is mailed or otherwise delivered in accordance with Section 3.05 of the Indenture, Notes called for redemption become due and payable on the applicable redemption date and at the redemption price stated in the notice, except as provided in Section 3.05(c) of the Indenture.

6. Mandatory Redemption

Without limiting the obligations of the Company set forth in Sections 4.06 and 4.08 of the Indenture or the application of the Springing Maturity Date, the Company is not required to make any mandatory redemption or sinking fund payments with respect to the Notes.

7. [Reserved]

8. Repurchase of Notes at the Option of the Holders upon Change of Control and Asset Sales

Upon the occurrence of a Change of Control, each holder shall have the right, subject to certain conditions specified in the Indenture, to require the Company to repurchase all or any part of such holder's Notes at a purchase price in cash equal to 101% of the principal amount thereof, *plus* accrued and unpaid interest to, but excluding, the date of repurchase (subject to the right of the holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date), as provided in, and subject to the terms of, the Indenture.

In accordance with Section 4.06 of the Indenture, the Company will be required to offer to purchase Notes upon the occurrence of certain events.

9. [Intentionally Omitted]

10. Denominations; Transfer; Exchange

The Notes are in registered form, without coupons, in denominations of $1.00 principal amount and integral multiples of $1.00 in excess thereof. A holder shall register the transfer of or exchange of the Notes in accordance with the Indenture. Upon any registration of transfer or exchange, the Registrar and the Trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents and to provide all information necessary to allow the Registrar to comply with any applicable tax reporting obligations, and the Company may require a holder to pay any taxes required by law or permitted by the Indenture. The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of any Notes selected for redemption (except, in the case of a Note to be redeemed in part, the portion thereof not to be redeemed) or of any Notes for a period of 10 days before the sending of a notice of redemption of Notes to be redeemed.

11. Persons Deemed Owners

The registered holder of this Note shall be treated as the owner of it for all purposes.

12. Unclaimed Money

Subject to any applicable abandoned property law, the Trustee and each Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, holders entitled to the money must look to the Company for payment as general creditors, and the Trustee and each Paying Agent shall have no further liability with respect to such monies.

13. Discharge and Defeasance

Subject to certain conditions, the Company at any time may terminate some of or all its obligations under the Notes and the Indenture if the Company deposits with the Trustee money in U.S. dollars, U.S. Government Obligations or a combination thereof sufficient to pay the principal of, premium (if any), and interest on the Notes to, but excluding, the date of deposit together with irrevocable instructions from the Company directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be.

14. Amendment; Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture, the Notes, the Guarantees and/or the Security Documents, as applicable, may be amended, and any past Default or compliance with any provisions of the Indenture, the Notes, the Guarantees and/or the Security Documents, as applicable, may be waived, with the consent of the Company and the holders of at least a majority in principal amount of the Notes then outstanding voting as a single class.

The Company and the Trustee and, if applicable, the Notes Collateral Agent, may amend the Indenture, the Notes, the Guarantees and/or the Security Documents, if applicable, without notice to or the consent of any holder in accordance with Section 9.01 of the Indenture.

15. Defaults and Remedies

If an Event of Default (other than an Event of Default specified in Section 6.01(f) or (g) of the Indenture with respect to the Company) occurs and is continuing, the Trustee by notice to the Company or the holders of at least 25% in principal amount of outstanding Notes by notice to the Company (which notice shall, in each case, specify the Event of Default), with a copy to the Trustee, may declare the principal of, premium (as if the Notes have been optionally redeemed on the date of acceleration) (including, without limitation, the Redemption Premium or the Applicable Premium, as applicable), if any, and accrued but unpaid interest on all the Notes to be due and payable. Upon such a declaration,

such principal, premium (including, without limitation, the Redemption Premium or the Applicable Premium, as applicable), if any, and interest will be due and payable immediately. If an Event of Default specified in Section 6.01(f) or (g) of the Indenture with respect to the Company occurs, the principal of, premium (including, without limitation, the Redemption Premium or the Applicable Premium, as applicable), if any, and interest on all the Notes will become immediately due and payable without any declaration or other act on the part of the Trustee or any holders. The holders of a majority in principal amount of outstanding Notes may rescind any such acceleration with respect to the Notes and its consequences.

16. Trustee Dealings with the Company

The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

17. No Recourse Against Others

No director, officer, employee, manager or incorporator of, and no holder of any Equity Interests in the Company or any direct or indirect parent company of the Company, as such, shall have any liability for any obligations of the Company or any Guarantor under the Notes, the Guarantees, the Security Documents or the Indenture, as applicable, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

18. Authentication

This Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Note.

19. Abbreviations

Customary abbreviations may be used in the name of a holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

20. Governing Law

THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

21. CUSIP Numbers; ISINs

The Company has caused CUSIP numbers and ISINs to be printed on the Notes and has directed the Trustee to use CUSIP numbers and ISINs in notices of redemption as a convenience to the holders. No representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers printed thereon.

The Company will furnish to any holder of Notes upon written request and without charge to the holder a copy of the Indenture which has in it the text of this Note.

ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to:

_____
(Print or type assignee's name, address and zip code)

_____
(Insert assignee's soc. sec. or tax I.D. No.

and irrevocably appoint agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date: _____ Your Signature: _____

_____
Sign exactly as your name appears on the other side of this Note.

Signature Guarantee:

Date:	
Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee	Signature of Signature Guarantee

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR

REGISTRATION OF TRANSFER RESTRICTED NOTE

This certificate relates to $_____ principal amount of Notes held in (check applicable space) ____ book-entry or _____ definitive form by the undersigned.

The undersigned (check one box below):

□ has requested the Trustee by written order to deliver in exchange for its beneficial interest in the Global Note held by the Depository a Note or Notes in definitive, registered form of authorized denominations and an aggregate principal amount equal to its beneficial interest in such Global Note (or the portion thereof indicated above);

□ has requested the Trustee by written order to exchange or register the transfer of a Note or Notes.

In connection with any transfer of any of the Notes evidenced by this certificate occurring while this Note is still a Transfer Restricted Definitive Note or a Transfer Restricted Global Note, the undersigned confirms that such Notes are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

(1)	□	to the Company; or
(2)	□	to the Registrar for registration in the name of the holder, without transfer; or
(3)	□	pursuant to an effective registration statement under the Securities Act of 1933; or
(4)	□	inside the United States to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on Rule 144A, in each case pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or
(5)	□	outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act in compliance with Rule 904 under the Securities Act of 1933 and such Note shall be held immediately after the transfer through Euroclear or Clearstream until the expiration of the Restricted Period (as defined in the Indenture); or
(6)	□	to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933) that has furnished to the Trustee a signed letter containing certain representations and agreements; or
(7)	□	pursuant to another available exemption from registration provided by Rule 144 under the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered holder thereof; *provided*, *however*, that if box (5), (6) or (7) is checked, the Company or the Trustee may require, prior to registering any such transfer of the Notes, such legal opinions, certifications and other information as the Company or the Trustee have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933.

Date: _____ Your Signature: _____

_____
Sign exactly as your name appears on the other side of this Note.

Signature Guarantee:

Date:	
Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee	Signature of Signature Guarantee

TO BE COMPLETED BY PURCHASER IF (4) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: __ _____

NOTICE: To be executed by an executive officer

[TO BE ATTACHED TO GLOBAL NOTES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE

The initial principal amount of this Global Note is $_____. The following increases or decreases in this Global Note have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Notes Custodian

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to Section 4.06 (Asset Sale) or 4.08 (Change of Control) of the Indenture, check the box:

Asset Sale □ Change of Control □

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 4.06 (Asset Sale) or 4.08 (Change of Control) of the Indenture, state the amount ($1.00 or any integral multiple of $1.00 in excess thereof):

$

Date: ___ Your Signature: ___
(Sign exactly as your name appears on the other side of this Note)

Signature Guarantee: ____
Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

EXHIBIT B

[FORM OF TRANSFEREE LETTER OF REPRESENTATION]

TRANSFEREE LETTER OF REPRESENTATION

THE REALREAL, INC.
[●]

Ladies and Gentlemen:

This certificate is delivered to request a transfer of $[ ] principal amount of the 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029 (the "Notes") of THE REALREAL, INC. (collectively with its successors and assigns, the "Company").

Upon transfer, the Notes would be registered in the name of the new beneficial owner as follows:

Name: __
Address: __
Taxpayer ID Number: __

The undersigned represents and warrants to you that:

1. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act")), purchasing for our own account or for the account of such an institutional "accredited investor" at least $100,000 principal amount of the Notes, and we are acquiring the Notes not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we invest in or purchase securities similar to the Notes in the normal course of our business. We, and any accounts for which we are acting, are each able to bear the economic risk of our or its investment.

2. We understand that the Notes have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Notes to offer, sell or otherwise transfer such Notes prior to the date that is six months after the later of the date of original issue and the last date on which either of the Company or any affiliate of the Company was the owner of such Notes (or any predecessor thereto) (the "Resale Restriction Termination Date") only (a) in the United States to a person whom we reasonably believe is a qualified institutional buyer (as defined in rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (b) outside the United States in an offshore transaction in accordance with Rule 904 of Regulation S under the Securities Act, (c) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if applicable) or (d) pursuant to an effective registration statement under the Securities Act, in each of cases (a) through (d) in accordance with any applicable securities laws of any state of the United States. In addition, we will, and each subsequent holder is required to, notify any purchaser of the Note evidenced hereby of the resale restrictions set forth above. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Notes is proposed to be made to an institutional "accredited investor" prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Company and the Trustee, which shall provide, among other things, that the transferee is an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act and that it is acquiring such Notes for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Company and the Trustee reserve the right prior to the offer, sale or other transfer prior to the Resale Restriction Termination Date of the Notes pursuant to clause 1(b), 1(c) or 1(d) above to require the delivery of an opinion of counsel, certifications or other information satisfactory to the Company and the Trustee.

Dated: _____

TRANSFEREE: _____,

By: __

Exhibit B-2

EXHIBIT C

[FORM OF SUPPLEMENTAL INDENTURE]

SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture") dated as of [ ], among [NEW GUARANTOR] (the "New Guarantor"), a direct or indirect subsidiary of THE REALREAL, INC. (or its successor), a Delaware corporation (the "Company"), and [●], a [_____], as trustee (the "Trustee") and collateral agent (the "Notes Collateral Agent") in each case under the indenture referred to below.

W I T N E S S E T H :

WHEREAS the Company, certain Guarantors, the Trustee and the Notes Collateral Agent have heretofore executed an indenture, dated as of February 29, 2024 (as amended, supplemented or otherwise modified, the "Indenture"), providing for the issuance of the Company's 4.25%/8.75% PIK/Cash Senior Notes due 2029 (the "Notes"), initially in the aggregate principal amount of $135,000,000;

WHEREAS Sections 4.11 and 12.07 of the Indenture provide that under certain circumstances the Company is required to cause the New Guarantor to execute and deliver to the Trustee a supplemental indenture pursuant to which the New Guarantor shall guarantee the Guaranteed Obligations; and

WHEREAS pursuant to Section 9.01 of the Indenture, the Trustee, the Notes Collateral Agent and the Company are authorized to execute and deliver this Supplemental Indenture;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the New Guarantor, the Company, the Trustee and the Notes Collateral Agent mutually covenant and agree for the equal and ratable benefit of the holders of the Notes as follows:

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recital hereto are used herein as therein defined, except that the term "holders" in this Supplemental Indenture shall refer to the term "holders" as defined in the Indenture and the Trustee and the Notes Collateral Agent acting on behalf of and for the benefit of such holders. The words "herein," "hereof" and "hereby" and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular Section hereof.

2. Agreement to Guarantee. The New Guarantor hereby agrees, jointly and severally with all existing Guarantors (if any), to guarantee the Guaranteed Obligations on the terms and subject to the conditions set forth in Article XII of the Indenture and to be bound by all other applicable provisions of the Indenture and the Notes and to perform all of the obligations and agreements of a Guarantor under the Indenture.

3. Notices. All notices or other communications to the New Guarantor shall be given as provided in Section 13.02 of the Indenture.

4. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

5. Governing Law. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

6. Trustee and the Notes Collateral Agent Make No Representation. The Trustee and the Notes Collateral Agent accept the amendments of the Indenture effected by this Supplemental Indenture on the terms and conditions set forth in the Indenture, including the terms and provisions defining and limiting the liabilities and responsibilities of the Trustee and the Notes Collateral Agent. Without limiting the generality of the foregoing, neither the Trustee nor the Notes Collateral Agent shall be responsible in any manner whatsoever for or with respect to any of the recitals or statements contained herein, all of which recitals or statements are made solely by the Company, or for or with respect to (i) the validity or sufficiency of this Supplemental Indenture or any of the terms or provisions hereof, (ii) the proper authorization hereof by the Company and the New Guarantor, in each case, by action or otherwise, (iii) the due execution hereof by the Company and the New Guarantor or (iv) the consequences of any amendment herein provided for, and the Trustee and the Notes Collateral Agent make no representation with respect to any such matters.

7. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Supplemental Indenture. This Supplemental Indenture and any certificate, agreement or other document to be signed in connection with this Supplemental Indenture and the transactions contemplated hereby shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature; or (iii) in the case of this Supplemental Indenture and any certificate, agreement or other document to be signed in connection with this Supplemental Indenture and the transactions contemplated hereby (other than any Notes), any electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including relevant provisions of the Uniform Commercial Code (collectively, "Signature Law"). Each electronic signature (except in the case of any Notes) or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature (except in the case of any Notes), of any party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the Uniform Commercial Code or other Signature Law due to the character or intended character of the writings.

8. Effect of Headings. The Section headings of this Supplemental Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions here.

[*Remainder of page intentionally left blank.*]

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

THE REALREAL, INC.

By: ____
Name:
Title:

[NEW GUARANTOR], as a Guarantor

By: ____
Name:
Title:

GLAS TRUST COMPANY LLC, not in its individual capacity, but solely as Trustee and Notes Collateral Agent

By: ____
Name:
Title:

WARRANT AGENCY AGREEMENT

WARRANT AGENCY AGREEMENT dated as of February 29, 2024 (this "**Agreement**") between The RealReal, Inc., a Delaware corporation (the "**Company**"), and Computershare, Inc., a Delaware corporation ("**Computershare**"), and its affiliate Computershare Trust Company, N.A., a federally chartered trust company (collectively with Computershare, the "**Warrant Agent**").

W I T N E S S E T H

WHEREAS, the Company has entered into an agreement with certain holders of the Company's outstanding 3.00% Convertible Senior Notes due 2025 (the "**Existing 2025 Notes**") and 1.00% Convertible Senior Notes due 2028 (the **"Existing 2028 Notes"** and together with the Existing 2025 Notes, the **"Existing Notes"**) to exchange such Existing Notes held by such holders for, among other things, warrants (the "**Warrants**") entitling the respective Holders of the Warrants to acquire an aggregate of up to 7,894,737 shares of common stock, par value $0.00001 per share, of the Company (the "**Common Stock"**) upon the terms and subject to the conditions hereinafter set forth; and

WHEREAS, the Company wishes the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing so to act, in connection with the issuance, registration, transfer, exchange, exercise and replacement of the Warrants and, in the Warrant Agent's capacity as the Company's transfer agent, the delivery of the Warrant Shares.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. Certain Definitions. For purposes of this Agreement, the following terms have the meanings indicated:

(a) "**Business Day**" means a day other than a Saturday, Sunday or other day on which banking institutions are authorized or required by law to close in New York, San Francisco, California or the otherwise relevant place of payment.

(b) "**Close of Business**" on any given date means 5:00 p.m., Eastern time, on such date; *provided, however*, that if such date is not a Business Day it means 5:00 p.m., Eastern time, on the next succeeding Business Day.

(c) "**Holder**" means the holder of record of a Warrant.

(d) "**Person**" means any individual, corporation, partnership, limited liability company, unlimited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

(e) "**Warrant Certificate**" means a certificate in substantially the form attached as Exhibit 1 hereto, representing such number of Warrants as is indicated therein, provided that any reference to the delivery of a Warrant Certificate in this Agreement shall include delivery of notice from the Depositary or a Participant (each as defined below) of the transfer or exercise of a Warrant in the form of a Global Warrant (as defined below).

(f) "**Warrant Shares**" means the shares of Common Stock underlying the Warrants and issuable upon exercise of the Warrants.

All other capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Warrant Certificate.

Section 2. Appointment of Warrant Agent. The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the express terms and conditions hereof (and no implied terms and conditions), and the Warrant Agent hereby accepts such appointment.

Section 3. Global Warrants.

(a) The Warrants shall be issuable in book-entry form (the "**Global Warrants**"). All of the Warrants shall initially be represented by one or more Global Warrants deposited with the Warrant Agent and registered in the name of Cede & Co., as nominee of The Depository Trust Company (the "**Depositary**"), or as otherwise directed by the Depositary. Ownership of beneficial interests in the Warrants shall be shown on, and the transfer of such ownership shall be effected through, records maintained by (i) the Depositary or its nominee for each Global Warrant or (ii) institutions that have accounts with the Depositary (such institution, with respect to a Warrant in its account, a "**Participant**"), in each case, in accordance with the applicable procedures of the Depositary. All notices and communications to be given to the Holders and all deliveries to be made to Holders in respect of the Warrants

shall be given or made only to, or upon the order of, the registered Holder(s) (which shall be the Depositary or its nominee in the case of the Global Warrants), and the Company shall not have any responsibility or liability for the delivery of Warrant Shares or other property to owners of beneficial interests in a Global Warrant, for any aspect of the records relating to or payments or deliveries made on account of those interests by or to the Depositary, for maintaining, supervising or reviewing any records of the Depositary relating to such beneficial ownership of those interests or for any act or omission of the Depositary.

(b) If the Depositary subsequently ceases to make its book-entry settlement system available for the Warrants, the Company may instruct the Warrant Agent regarding other arrangements for book-entry settlement. In the event that the Warrants are not eligible for, or it is no longer necessary to have the Warrants available in, book-entry form, the Warrant Agent shall provide written instructions to the Depositary to deliver to the Warrant Agent for cancellation each Global Warrant, and the Company shall instruct the Warrant Agent to deliver to each Holder a Warrant Certificate.

(c) Subject to the provisions of the Warrant and this Agreement, a Holder may elect to exchange some or all of such Holder's Global Warrants for a Warrant Certificate evidencing the same number of Warrants, by providing written notice to the Warrant Agent in the form attached hereto as Annex A (a "**Warrant Certificate Request Notice**" and the date of delivery of such Warrant Certificate Request Notice by the Holder, the "**Warrant Certificate Request Notice Date**" and the deemed surrender upon delivery by the Holder of a number of Global Warrants for the same number of Warrants evidenced by a Warrant Certificate, a "**Warrant Exchange**"). Upon receipt of the Warrant Certificate Request Notice, the Warrant Agent shall provide a written copy of such Warrant Request Notice to the Company, upon receipt of which the Company shall promptly (and in any event within five (5) Business Days of receipt of a completed Warrant Request Notice) effect the Warrant Exchange by issuing and delivering to the Holder a Warrant Certificate for such number of Warrants subject to such Warrant Exchange in the name set forth in the Warrant Certificate Request Notice (such delivery date, the "**Warrant Certificate Delivery Date**"). Such Warrant Certificate shall be dated the original issuance date of the Warrants, shall be manually executed by an authorized signatory of the Company and shall be in substantially the form attached hereto as Exhibit 1. The Company covenants and agrees that, upon the date of delivery of the Warrant Certificate Request Notice to the Warrant Agent, the Holder shall be deemed to be the holder of the Warrant Certificate representing the number of Warrants subject to such Warrant Certificate Request Notice and, notwithstanding anything to the contrary set forth herein, the Warrant Certificate shall be deemed for all purposes to contain all of the terms and conditions of the Warrants evidenced by such Warrant Certificate and the terms of this Agreement.

Section 4. Form of Warrant Certificates. The Warrant Certificate, together with the form of election to purchase Common Stock ("**Exercise Notice**") and the form of assignment to be printed on the reverse thereof, shall be in the form of Exhibit 1 hereto, with such additional identifying marks, notations, legends or endorsements as may be required to comply with any law or with any rule or regulation made pursuant thereto. The terms of the Warrants (including, for the avoidance of doubt, Global Warrants) shall be as set forth herein and in the Warrant Certificate; *provided* that, to the extent any provision of this Agreement conflicts with the express provisions of the Warrant Certificate, the provisions of this Agreement shall govern and be controlling.

Section 5. Countersignature and Registration.

(a) The Warrant Certificates shall be executed on behalf of the Company by its Chief Executive Officer,, Chief Financial Officer, Chief Legal Officer, any Executive Vice President, any Senior Vice President, any Vice President or such other officers or directors of the Company as the Chief Executive Officer, Chief Financial Officer or Chief Legal Officer may in his or her discretion designate, either manually or by electronic signature. The Warrant Certificates shall be countersigned by the Warrant Agent either manually or by electronic signature and shall not be valid for any purpose unless so countersigned. In case any officer of the Company who shall have signed any of the Warrant Certificates shall cease to be such officer of the Company before countersignature by the Warrant Agent and issuance and delivery by the Company, such Warrant Certificates, nevertheless, may be countersigned by the Warrant Agent, issued and delivered with the same force and effect as though the person who signed such Warrant Certificate had not ceased to be such officer of the Company; and any Warrant Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Warrant Certificate, shall be a proper officer of the Company to sign such Warrant Certificate, although at the date of the execution of this Warrant Agreement any such person was not such an officer.

(b) The Warrant Agent will keep or cause to be kept, at its office or offices designated for such purpose, books for registration and transfer of the Warrant Certificates issued hereunder. Such books shall show the names and addresses of the respective Holders of the Warrant Certificates, the number of Warrants evidenced on the face of each of such Warrant Certificate and the date of each of such Warrant Certificate.

Section 6. Transfer, Split Up, Combination and Exchange of Warrant Certificates; Mutilated, Destroyed, Lost or Stolen Warrant Certificates.

(a) Subject to the provisions of the Warrant Certificate, at any time after the Issuance Date and at or prior to the Close of Business on the Expiration Date, any Warrant Certificate may be transferred, split up, combined or exchanged for another Warrant Certificate representing a like number of Warrants as the Warrant Certificate surrendered then entitled such Holder to exercise. Any Holder desiring to transfer, split up, combine or exchange any Warrant Certificate shall make such request in writing delivered to the Warrant Agent, and shall surrender the Warrant Certificate to be transferred, split up, combined or exchanged at the office or offices of the Warrant Agent designated for such purpose. Any requested transfer of a Warrant Certificate shall be accompanied by satisfactory evidence of authority of the party making such request that may be required by the Warrant Agent. Thereupon the Warrant Agent shall countersign and deliver to the Person entitled thereto a Warrant Certificate as so requested. The Holder shall be responsible for any tax or governmental charges imposed in connection with any transfer of any Warrant Certificate and, to the extent the Company may be liable for such tax or charges, the Company shall not be required to deliver any Warrant Certificate until the Holder requesting such transfer has paid any tax or governmental charge imposed in connection with such transfer or until it has been established to the Company's reasonable satisfaction that no such tax or governmental charge is due. The Warrant Agent shall not have any duty or obligation to take any action under any action of this Agreement that requires the payment of taxes and/or charges unless and until it is satisfied that all such payments have been made.

(b) If any Warrant Certificate is lost, stolen, mutilated or destroyed, the Company and the Warrant Agent may upon receipt by the Warrant Agent of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of a Warrant Certificate, which evidence shall include an affidavit of loss, or in the case of mutilated certificates, the certificate or portion thereof remaining, and, in case of loss, theft, mutilation or destruction, of indemnity in customary form and amount, provision of an open penalty surety bond satisfactory to the Warrant Agent and holding it and Company harmless, absent notice to Warrant Agent that such certificates have been acquired by a bona fide purchaser and satisfaction of any other reasonable requirements established by Section 8-405 of the Uniform Commercial Code as in effect in the State of New York, and reimbursement to the Company and the Warrant Agent of all reasonable expenses incidental thereto, and upon surrender to the Warrant Agent and cancellation of the Warrant Certificate if mutilated, the Company will issue and deliver a new Warrant Certificate of like tenor to the Warrant Agent for delivery to the Holder in lieu of the Warrant Certificate so lost, stolen, destroyed or mutilated.

(c) A party requesting transfer of Warrant Shares must provide any evidence of authority that may be required by the Warrant Agent, including but not limited to, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association.

Section 7. Exercise of Warrants; Exercise Price; Expiration Date.

(a) The Warrants shall be exercisable commencing on the Issuance Date in accordance with Section 1(a) of the Warrant Certificate.

(b) In case the Holder of any Warrant Certificate shall exercise fewer than all Warrants evidenced thereby, a new Warrant Certificate evidencing the number of Warrants equivalent to the number of Warrants remaining unexercised may be issued by the Warrant Agent to the Holder of such Warrant Certificate or to his duly authorized assigns in accordance with Section 1(a)(iii) of the Warrant Certificate, subject to the provisions of Section 6 hereof.

(c) The Company shall calculate and transmit to the Warrant Agent, and the Warrant Agent shall have no obligation under this Agreement to calculate, the cashless exercise ratio. The number of Warrant Shares to be issued on such exercise will be determined by the Company (with written notice thereof to the Warrant Agent) using the formula set forth in Section 1(d) of the Warrant Certificate, the Warrant Agent shall have no duty or obligation to investigate or confirm whether the Company's determination of the number of Warrant Shares to be issued on such exercise, pursuant to Section 1(d) of the Warrant Certificate, is accurate or correct.

(d) In the event of a cash exercise of the Warrants, the Company hereby instructs the Warrant Agent to record basis for newly issued Warrant Shares in manner subsequently communicated in writing to the Warrant Agent.

(e) The Company shall provide cost basis for Warrant Shares issued pursuant to a cashless exercise at the time the Company provides the cashless exercise ratio to the Warrant Agent pursuant to Section 1(d) of the Warrant Certificate.

Section 8. Cancellation and Destruction of Warrant Certificates. All Warrant Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents, be delivered to the Warrant Agent for cancellation or in canceled form, or, if surrendered to the Warrant Agent, shall be canceled by it (at the expense of the Company), and no Warrant Certificates shall be issued in lieu

thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Warrant Agent for cancellation and retirement, and the Warrant Agent shall so cancel and retire, any other Warrant Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Warrant Agent shall deliver all canceled Warrant Certificates to the Company, or shall, at the written request of the Company, destroy such canceled Warrant Certificates, and in such case shall deliver a certificate of destruction thereof to the Company, subject to any applicable law, rule or regulation requiring the Warrant Agent to retain such canceled certificates, and the Warrant Agent's document management policies.

Section 9. Reservation and Availability of Shares of Common Stock or Cash.

(a) The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued shares of Common Stock or its authorized and issued shares of Common Stock held in its treasury, free from preemptive rights, the number of shares of Common Stock that will be sufficient to permit the exercise in full of all outstanding Warrants.

(b) The Company further covenants and agrees that it will pay when due and payable any and all federal and state documentary, stamp or similar issue or transfer taxes and governmental charges which may be payable in respect of the original issuance or delivery of the Warrants or the Warrant Shares. The Company shall not, however, be required to pay any tax or governmental charge which may be payable in respect of any transfer of Warrants or Warrant Shares or the issuance or delivery of Warrant Shares in a name other than that of the Holder of the Warrants surrendered for exercise, all such taxes and governmental charges being the responsibility of the Holder of the Warrants or Warrant Shares at the time of such transfer or of the Warrants at the time of such exercise, as applicable, and, to the extent the Company may be liable for such taxes or charges, the Company shall not be required to issue or deliver any Warrant Certificate or certificate for Warrant Shares until any such tax or governmental charge has been paid or until it has been established to the Company's reasonable satisfaction that no such tax or governmental charge is due.

Section 10. Adjustment of Exercise Price or Warrant Share Number. The Exercise Price and the Warrant Share Number are subject to adjustment from time to time upon the occurrence of certain events as provided in Section 2 of the Warrant Certificate ("**Adjustment Events**"). All Warrants originally issued by the Company subsequent to any adjustment made to the Exercise Price pursuant to the Warrant Certificate shall evidence the right to purchase, at the adjusted Exercise Price per share, a number of Warrant Shares per Warrant equal to the Warrant Share Number (as adjusted) in effect from time to time hereunder upon exercise of the Warrants, all subject to further adjustment as provided herein and in the Warrant Certificate. The Company hereby agrees that it will provide the Warrant Agent with reasonable notice of Adjustment Events. The Company further agrees that it will provide the Warrant Agent with any new or amended terms. The Warrant Agent shall have no obligation under any section of this Agreement to determine whether an Adjustment Event has occurred or to calculate any of the adjustments set forth herein.

Section 11. Certification of Adjusted Exercise Price or Warrant Share Number. Whenever the Exercise Price or the Warrant Share Number with respect to each Warrant is adjusted as provided herein or in the Warrant Certificate, the Company shall (a) promptly prepare a certificate setting forth the Exercise Price and Warrant Share Number as so adjusted, and a brief statement of the facts accounting for such adjustment; (b) promptly file with the Warrant Agent and with each transfer agent for the Common Stock a copy of such certificate; and (c) instruct the Warrant Agent to send a copy thereof to each Holder. The Warrant Agent shall be fully protected in relying on such certificate and on any such adjustment or statement contained therein and shall have no duty or liability with respect to, and shall not be deemed to have knowledge of, any such adjustment or any such event unless and until it shall have received such certificate is accurate and correct.

Section 12. Fractional Shares of Common Stock.

(a) The Company shall not issue fractions of Warrants or distribute Warrant Certificates which evidence fractional Warrants. Whenever any fractional Warrant would otherwise be required to be issued or distributed, the actual issuance or distribution shall reflect a rounding down of such fraction to the nearest whole Warrant.

(b) The Company shall not issue fractions of shares of Common Stock upon exercise of Warrants or distribute stock certificates which evidence fractional shares of Common Stock. Whenever any fraction of a share of Common Stock would otherwise be required to be issued or distributed, the actual issuance or distribution in respect thereof shall be made in accordance with Section 1(a)(iii) of the Warrant Certificate.

(c) The Company shall provide an initial funding of one thousand dollars ($1,000) for the purpose of issuing cash in lieu of fractional shares of Common Stock. From time to time thereafter, Computershare may request additional funding to cover additional cash payments with respect to fractional shares of Common Stock. Computershare shall have no obligation to make such cash payment unless the Company shall have provided the necessary funds to pay in full all amounts due and payable with respect thereto.

Section 13. Conditions of the Warrant Agent's Obligations. The Warrant Agent accepts its obligations herein set forth upon the express (and no implied) terms and conditions hereof, including the following to all of which the Company agrees and to all of which the rights hereunder of the Holders from time to time of the Warrant Certificates shall be subject:

(a) Compensation and Indemnification. The Company agrees to pay the Warrant Agent such fees as mutually agreed between the Company and the Warrant Agent and to reimburse the Warrant Agent for reasonable and documented out-of-pocket expenses (including reasonable counsel fees) incurred by the Warrant Agent in connection with the services rendered hereunder by the Warrant Agent. The Company also agrees to indemnify the Warrant Agent for, and to hold it harmless against, any loss, liability damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable fees and expenses of legal counsel) incurred without gross negligence, bad faith or willful misconduct on the part of the Warrant Agent (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Warrant Agent in connection with the execution, acceptance, administration, exercise and performance of its duties under this Agreement, including the reasonable costs and expenses of defending against any claim in connection herewith, directly or indirectly, or of enforcing its right of indemnification under this Agreement. The costs and expenses incurred in enforcing this right of indemnification shall also be paid by the Company.

(b) Agent for the Company. In acting under this Warrant Agreement and in connection with the Warrant Certificates, the Warrant Agent is acting solely as agent of the Company and does not assume any obligations or relationship of agency or trust for or with any of the Holders of Warrant Certificates or beneficial owners of Warrants.

(c) Documents. The Warrant Agent shall be protected and shall incur no liability for or in respect of any action taken or omitted by it in reliance upon any Warrant Certificate, notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper parties.

(d) Certain Transactions. The Warrant Agent, and its officers, directors and employees, may become the owner of, or acquire any interest in, Warrants, with the same rights that it or they would have if it were not the Warrant Agent hereunder, and, to the extent permitted by applicable law, it or they may engage or be interested in any financial or other transaction with the Company and may act on, or as depositary, trustee or agent for, any committee or body of holders of Warrant Shares or other obligations of the Company as freely as if it were not the Warrant Agent hereunder. Nothing in this Warrant Agreement shall be deemed to prevent the Warrant Agent from acting as trustee under any indenture to which the Company is a party.

(e) No Liability for Interest. Unless otherwise agreed in writing with the Company, the Warrant Agent shall have no liability for interest on any monies at any time received by it pursuant to any of the provisions of this Agreement or of the Warrant Certificates.

(f) No Liability for Invalidity. The Warrant Agent shall have no liability with respect to any invalidity of this Agreement or any of the Warrant Certificates (except as to the Warrant Agent's countersignature thereon).

(g) No Responsibility for Representations. The Warrant Agent shall not be responsible for any of the recitals or representations herein or in the Warrant Certificates (except as to the Warrant Agent's countersignature thereon), all of which are made solely by the Company.

(h) No Implied Obligations. The Warrant Agent shall be obligated to perform only such duties as are herein and in the Warrant Certificates specifically set forth and no implied duties or obligations shall be read into this Agreement or the Warrant Certificates against the Warrant Agent. The Warrant Agent shall not be under any obligation to take any action hereunder which may tend to involve it in any expense or liability, the payment of which within a reasonable time is not, in its reasonable opinion, assured to it. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any of the Warrant Certificates authenticated by the Warrant Agent and delivered by it to the Company pursuant to this Agreement or for the application by the Company of the proceeds of the Warrant Certificates. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained herein or in the Warrant Certificates or in the case of the receipt of any written demand from a Holder of a Warrant Certificate with respect to such default, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law.

(i) No Duty to Verify Beneficial Ownership. The Warrant Agent shall not have any obligation to verify or confirm the beneficial ownership of Common Stock or any other security of any Holder at any time, and it shall not have any responsibility or liability with respect to the provisions under Section 1(f) of the Warrant Certificate, including for any exercise of a Warrant that is not in compliance with the exercise limitations thereunder.

(i) Limitation of Liability. Notwithstanding anything contained herein to the contrary, the Warrant Agent's aggregate liability during any term of this Agreement with respect to, arising from, or arising in connection with this Agreement, or from all services provided or omitted to be provided under this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, the amounts paid hereunder by the Company to Warrant Agent as fees and charges, but not including reimbursable expenses, during the twelve (12) months immediately preceding the event for which recovery from Warrant Agent is being sought.

(k) Consequential Damages. Neither party to this Agreement shall be liable to the other party for any consequential, indirect, special or incidental damages under any provisions of this Agreement or for any consequential, indirect, punitive, special or incidental damages arising out of any act or failure to act hereunder even if that party has been advised of or has foreseen the possibility of such damages.

(l) Legal Opinion. As of the date hereof, the Company shall have provided to the Warrant Agent an opinion of counsel, which shall state that all Warrants, and when issued the Warrants Shares, as applicable, (i) were offered, sold or issued as part of an offering that was registered in compliance with the Securities Act of 1933, as amended or pursuant to an exemption from the registration requirements of the 1933 Act, as amended (as the case may be) and (ii) are validly issued, fully paid and non-assessable.

(m) Confidentiality. The Warrant Agent and the Company agree that all books, records, information and data pertaining to the business of the other party, including inter alia, personal, non-public warrant holder information, which are exchanged or received pursuant to the negotiation or the carrying out of this Agreement including the fees for services set forth in the fee schedule mutually agreed upon by the parties hereto shall remain confidential, and shall not be voluntarily disclosed to any other person, except as may be required by law, including, without limitation, pursuant to subpoenas from state or federal government authorities (e.g., in divorce and criminal actions).

(n) Survival. Notwithstanding anything contained herein to the contrary, the provisions of this Section 14 shall survive termination of this Agreement, the expiration of the Warrants and/or the resignation, removal or replacement of the Warrant Agent.

Section 14. Purchase or Consolidation or Change of Name of Warrant Agent.

(a) Any Person into which the Warrant Agent or any successor Warrant Agent may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Warrant Agent or any successor Warrant Agent shall be party, or any Person succeeding to the corporate trust business of the Warrant Agent or any successor Warrant Agent, shall be the successor to the Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such corporation would be eligible for appointment as a successor Warrant Agent under the provisions of Section 16. In case at the time such successor Warrant Agent shall succeed to the agency created by this Agreement any of the Warrant Certificates shall have been countersigned but not delivered, any such successor Warrant Agent may adopt the countersignature of the predecessor Warrant Agent and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, any successor Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Agreement.

(b) In case at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignature under its prior name and deliver Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Agreement.

Section 15. Duties of Warrant Agent. The Warrant Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by all of which the Company, by its acceptance hereof, shall be bound:

(a) From time to time, the Company may provide Warrant Agent with instructions concerning the services performed by the Warrant Agent hereunder. In addition, at any time Warrant Agent may apply to any officer of Company for instruction, and may consult with legal counsel satisfactory to it, who may be legal counsel for the Company, with respect to any matter arising in connection with the services to be performed by the Warrant Agent under this Agreement. The advice or opinion of such counsel shall be full and complete authorization and protection for the Warrant Agent and its agents and subcontractors in respect of any action taken, suffered or omitted by it hereunder in the absence of bad faith and in accordance with the advice or opinion of such counsel. The Warrant Agent and its agents and subcontractors shall not be liable and shall be indemnified by Company for any action taken or omitted by Warrant Agent in the absence of bad faith and in reliance upon any Company instructions or

upon the advice or opinion of such counsel. Warrant Agent shall not be held to have notice of any change of authority of any person, until receipt of written notice thereof from Company.

(b) Whenever in the performance of its duties under this Agreement the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the Chief Executive Officer, President, Chief Financial Officer, any Executive Vice President or any Senior Vice President of the Company; and such certificate shall be full authorization and protection to the Warrant Agent, and the Warrant Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken in the absence of bad faith by it under the provisions of this Agreement in reliance upon such certificate.

(c) Subject to the limitation set forth in Section 13, the Warrant Agent shall be liable hereunder only for its own gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction).

(d) The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Warrant Certificates (except its countersignature thereof) by the Company or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) The Warrant Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Warrant Agent) or in respect of the validity or execution of any Warrant Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Warrant Certificate; nor shall it be responsible for the adjustment of the Exercise Price or the making of any change in the number of shares of Common Stock required under the provisions of Section 10 or 12 or responsible for the manner, method or amount of any such change or the ascertaining of the existence of facts that would require any such adjustment or change (except with respect to the exercise of Warrants evidenced by Warrant Certificates after actual notice of any adjustment of the Exercise Price); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Agreement or any Warrant Certificate or as to whether any shares of Common Stock will, when issued, be duly authorized, validly issued, fully paid and nonassessable.

(f) The Company shall perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, documents, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing by the Warrant Agent of the provisions of this Agreement.

(g) The Warrant Agent is hereby authorized to accept instructions with respect to the performance of its duties hereunder from the Chief Executive Officer, President, Chief Financial Officer, any Executive Vice President or any Senior Vice President of the Company, and to apply to such officers for advice or instructions in connection with its duties, and it shall not be liable and shall be indemnified and held harmless for any action taken or suffered to be taken by it in the absence of bad faith in accordance with instructions of any such officer, provided Warrant Agent carries out such instructions without gross negligence, bad faith or willful misconduct (which gross negligence, bad faith, or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction).

(h) The Warrant Agent and any shareholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

(i) The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorney or agents, and the Warrant Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorney or agents or for any loss to the Company resulting from any such act, default, neglect or misconduct, absent gross negligence, bad faith or willful misconduct (each as determined by a final, non-appealable judgment of a court of competent jurisdiction) in the selection or continued employment thereof.

Section 16. Change of Warrant Agent. The Warrant Agent may resign and be discharged from its duties under this Agreement upon thirty (30) days' notice in writing sent to the Company and to each transfer agent of the Common Stock, and to the Holders of record of the Warrant Certificates. In the event the transfer agency relationship in effect between the Company and the Warrant Agent terminates, the Warrant Agent will be deemed to

have resigned automatically and be discharged from its duties under this Agreement as of the effective date of such termination, and the Company shall be responsible for sending any required notice thereunder. The Company may remove the Warrant Agent or any successor Warrant Agent upon thirty (30) days' notice in writing, sent to the Warrant Agent or successor Warrant Agent, as the case may be, and to each transfer agent of the Common Stock, and to the Holders of the Warrant Certificates. If the Warrant Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Warrant Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Warrant Agent or by the Holder of a Warrant Certificate (who shall, with such notice, submit his Warrant Certificate for inspection by the Company), then the Holder of any Warrant Certificate may apply to any court of competent jurisdiction for the appointment of a new Warrant Agent, provided that, for purposes of this Agreement, the Company shall be deemed to be the Warrant Agent until a new warrant agent is appointed. Any successor Warrant Agent, whether appointed by the Company or by such a court, shall be a Person, other than a natural person organized and doing business under the laws of the United States or of a state thereof, in good standing, which is authorized under such laws to exercise stock transfer powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Warrant Agent a combined capital and surplus of at least $50,000,000. After appointment, the successor Warrant Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Warrant Agent without further act or deed; but the predecessor Warrant Agent shall deliver and transfer to the successor Warrant Agent any property at the time held by it hereunder, and execute and deliver any conveyance, act or deed necessary for the purpose, but such predecessor Warrant Agent shall not be required to make any additional expenditure (without proper reimbursement by the Company) or assume any additional liability in connection with the foregoing. Not later than the effective date of any such appointment, the Company shall file notice thereof in writing with the predecessor Warrant Agent and each transfer agent of the Common Stock, and mail a notice thereof in writing to the Holders of the Warrant Certificates. However, failure to give any notice provided for in this Section 16, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Warrant Agent or the appointment of the successor Warrant Agent, as the case may be.

Section 17. Issuance of New Warrant Certificates. Notwithstanding any of the provisions of this Agreement or of the Warrants to the contrary, the Company may, at its option, issue new Warrant Certificates evidencing Warrants in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Exercise Price per share and the number or kind or class of shares of stock or other securities or property purchasable under the several Warrant Certificates made in accordance with the provisions of this Agreement.

[1]Section 18. Funds. All funds received by Computershare under this Agreement that are to be distributed or applied by Computershare in the performance of its services hereunder (the "**Funds**") shall be held by Computershare as agent for the Company and deposited in one or more bank accounts to be maintained by Computershare in its name as agent for the Company. Until paid pursuant to this Agreement, Computershare may hold or invest the Funds through such accounts in: (a) funds backed by obligations of, or guaranteed by, the United States of America; (b) debt or commercial paper obligations rated A-1 or P-1 or better by S&P Global Inc. ("**S&P**") or Moody's Investors Service, Inc. ("**Moody's**"), respectively; (c) Government and Treasury backed AAA-rated Fixed NAV money market funds that comply with Rule 2a-7 of the Investment Company Act of 1940, as amended; or (d) short term certificates of deposit, bank repurchase agreements, and bank accounts with commercial banks with Tier 1 capital exceeding $1 billion, or with an investment grade rating by S&P (LT Local Issuer Credit Rating), Moody's (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). Computershare shall have no responsibility or liability for any diminution of the Funds that may result from any deposit or investment made by Computershare in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. Computershare may from time to time receive interest, dividends or other earnings in connection with such deposits or investments. Computershare shall not be obligated to pay such interest, dividends or earnings to the Company, any holder or any other party. The Warrant Agent shall forward funds received for warrant exercises in a given month by the fifth (5th) business day of the following month by wire transfer to an account designated by the Company.

Section 19. Notices. Notices or demands authorized by this Agreement to be given or made (i) by the Warrant Agent or by the Holder of any Warrant Certificate to or on the Company; (ii) subject to the provisions of Section 16, by the Company or by the Holder of any Warrant Certificate to or on the Warrant Agent; or (iii) by the Company or the Warrant Agent to the Holder of any Warrant Certificate, shall be deemed given (a) on the date delivered, if delivered personally, (b) on the first Business Day following the deposit thereof with Federal Express or another recognized overnight courier, if sent by Federal Express or another recognized overnight courier, (c) on the fourth Business Day following the mailing thereof with postage prepaid, if mailed by registered or certified mail (return receipt requested), and (d) the date of transmission, if such notice or communication is delivered via facsimile or email attachment at or prior to 5:30 p.m. (Eastern time) on a Business Day and (e) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile or email attachment on a day that is

[1] **Note to CPU**: This is included at 12(c).

not a Business Day or later than 5:30 p.m. (Eastern time) on any Business Day, in each case to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to the Company, to:

The RealReal, Inc.
55 Francisco Street Suite 150
San Francisco, CA 94133
Attention: Legal Department and Accounting Department
E-mail: legal@therealreal.com; accounting@therealreal.com

with a copy to (for informational purposes only):

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019

Attention: Josh R. Cammaker, Michael S. Benn and Benjamin S. Arfa
E-mail: JRCammaker@wlrk.com, MSBenn@wlrk.com and BSArfa@wlrk.com

(b)If to the Warrant Agent, to:

Computershare Trust Company, N.A.
Computershare Inc.
150 Royall Street
Canton, MA 02021
Attention: Client Services

For any notice delivered by email to be deemed given or made, such notice must be followed by notice sent by overnight courier service to be delivered on the next business day following such email, unless the recipient of such email has acknowledged via return email receipt of such email.

(c) If to the Holder of any Warrant Certificate, to the address of such Holder as shown on the registry books of the Company. Any notice required to be delivered by the Company to the Holder of any Warrant may be given by the Warrant Agent on behalf of the Company. Notwithstanding any other provision of this Agreement, where this Agreement provides for notice of any event to a Holder of any Warrant, such notice shall be sufficiently given if given to the Depositary (or its designee) pursuant to the procedures of the Depositary or its designee.

Section 20. Supplements and Amendments.

(a) The Company and the Warrant Agent may from time to time supplement or amend this Agreement without the approval of any Holders of the Warrants (i) in order to add to the covenants and agreements of the Company for the benefit of the Holders of the Warrants or to surrender any rights or power reserved to or conferred upon the Company in this Agreement, provided that such addition or surrender shall not adversely affect the interests of the Holders of the Warrants in any material respect or (ii) as contemplated by Section 3 of the Warrant Certificate. As a condition precedent to the Warrant Agent's execution of any amendment, the Company shall deliver to the Warrant Agent a certificate from a duly authorized officer of the Company that states that the proposed amendment is in compliance with the terms of this Section 20. No supplement or amendment to this Agreement shall be effective unless executed by the Warrant Agent. The Warrant Agent may, but shall not be obligated to, execute any amendment or supplement or waiver that affects the Warrant Agent's own rights, duties or immunities under this Agreement.

(b) In addition to the foregoing, with the consent of Holders of a majority of the outstanding Warrants, the Company and the Warrant Agent may modify this Agreement and/or the Warrant Certificate for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Warrant Agreement or the Warrant Certificate or modifying in any manner the rights of the Holders of the Warrants; provided, however, that no modification of the terms upon which the Warrants are exercisable (including, but not limited to, the Exercise Price, the Warrant Share Number and adjustments described in Section 10) or of this Section 20 may be made without the consent of the Holder of each outstanding Warrant. Any Warrants held by the Company or its Affiliates shall be deemed not to be outstanding for purposes of this Section 20(b). The Company will provide written notice to the Warrant Agent of any amendment to the terms of any Warrants with one or more Holders. The Company shall not amend the Warrants without the written consent of the Warrant Agent, not to be unreasonably withheld or delayed.

Section 21. Successors. All covenants and provisions of this Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 22. Benefits of this Agreement. Nothing in this Agreement shall be construed to give any Person other than the Company, the Holders of Warrants and the Warrant Agent any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent and the Holders of the Warrants.

Section 23. Governing Law. This Agreement and each Warrant Certificate issued hereunder shall be governed by and construed in accordance with the law of the State of New York, without regard to the principles of conflicts of law thereof.

Section 24. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect, and enforceability as an original signature.

Section 25. Force Majeure. Notwithstanding anything to the contrary contained herein, the Warrant Agent will not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, epidemic, pandemic, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

Section 26. Entire Agreement. This Agreement and the Warrant Certificate contain the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. Notwithstanding anything to the contrary contained in this Agreement, in the event of inconsistency between any provision in this Agreement and any provision in a Warrant Certificate, as it may from time to time be amended, all rights, duties obligations, liabilities and immunities of the Warrant Agent shall be governed and controlled by this Agreement. The Company shall not amend any provisions of the Warrant Certificate without the prior consent of the Warrant Agent, not to be unreasonably withheld or delayed.

Section 27. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement; *provided, however,* that if such prohibited and invalid provision shall adversely affect the rights, immunities, liabilities, duties or obligations of the Warrant Agent, the Warrant Agent shall be entitled to resign immediately upon written notice to the Company.

Section 28. Captions. The captions of the sections of this Agreement have been inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

THE REALREAL, INC.

By: /s/ Todd Suko

Name: Todd Suko

Title: Interim Chief Financial Officer, Chief Legal Officer and Secretary

COMPUTERSHARE TRUST COMPANY, N.A., and COMPUTERSHARE INC., collectively as Warrant Agent

By: /s/ Collin Ekeogu

Name: Collin Ekeogu

Title: Manager, Corporate Actions

Annex A

Form of Warrant Certificate Request Notice

WARRANT CERTIFICATE REQUEST NOTICE

To: Computershare Inc., as Warrant Agent for The RealReal, Inc. (the "Company")

The undersigned Holder of Common Stock Warrants ("Warrants") in the form of Global Warrants issued by the Company hereby elects to receive a Warrant Certificate evidencing the Warrants held by the Holder as specified below:

1. Name of Holder of Warrants in form of Global Warrants: _____

2. Name of Holder in Warrant Certificate (if different from name of Holder of Warrants in form of Global Warrants):
_____

3. Number of Warrants in name of Holder in form of Global Warrants: _____

4. Number of Warrants for which Warrant Certificate shall be issued: _____

5. Number of Warrants in name of Holder in form of Global Warrants after issuance of Warrant Certificate, if any: _____

6. Warrant Certificate shall be delivered to the following address:

_____

_____

_____

_____

The undersigned hereby acknowledges and agrees that, in connection with this Warrant Exchange and the issuance of the Warrant Certificate, the Holder is deemed to have surrendered the number of Warrants in form of Global Warrants in the name of the Holder equal to the number of Warrants evidenced by the Warrant Certificate.

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

Exhibit 1

Form of Warrant Certificate

The RealReal, Inc.

Form of Common Stock Warrant Certificate

Warrants: _____ Issuance Date: February 29, 2024

Certificate Number: _____-1

CUSIP: [___]

This COMMON STOCK WARRANT CERTIFICATE (this "**Warrant Certificate**") certifies that, for value received, Cede & Co. or its assigns (the "**Holder**") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after February 29, 2024 (the "**Issuance Date**") and at or prior to the close of business on March 1, 2029 (the "**Expiration Date**") but not thereafter, to subscribe for and purchase from THE REALREAL, INC., a Delaware corporation (the "**Company**"), for each warrant represented hereby (each, a "**Warrant**"), one share of common stock, par value $0.00001 per share (the "**Common Stock**"), of the Company (such number of shares of Common Stock for which each Warrant is exercisable, as adjusted pursuant to the terms hereof, the "**Warrant Share Number**"). The purchase price of one share of Common Stock upon exercise of the Warrants shall be equal to the Exercise Price (as defined below), subject to Section 1(d) below. Except as otherwise defined herein, capitalized terms in this Warrant Certificate shall have the meanings set forth in Section 19.

1. EXERCISE OF WARRANTS.

(a) Mechanics of Exercise.

i. Subject to the provisions of Section 1(f) herein, exercise of the purchase rights represented by each Warrant may be made, in whole or in part, at any time or times on or after the Issuance Date and on or before the Expiration Date by (x) in the case of Warrants represented by a Warrant Certificate that is not a Global Warrant, delivery to the Company pursuant to Section 9 hereof of a duly executed copy (or e-mail attachment) of the Exercise Notice in the form attached hereto as **Exhibit A** (the "**Exercise Notice**") or (y) in the case of Global Warrants, complying with the applicable procedures of the Depositary. The date on which such applicable requirements are complied with is an "**Exercise Date**." If (and only if) Cash Exercise is applicable to such exercise pursuant to Section 1(d) below, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares covered by such exercise to the Warrant Agent at the office of the Warrant Agent designed for such purpose from time to time, by (A) wire transfer from a United States bank payable to the Warrant Agent or (B) payment to the Warrant Agent through the DTC system, unless cashless exercise is applicable, by no later than 10:00 a.m. Eastern time on the Trading Day immediately following the applicable Exercise Date. If less than all of the Warrants evidenced by a Warrant Certificate surrendered upon the exercise of the purchase rights represented by the Warrants are exercised at any time prior to the expiration of the Warrants, a new Warrant Certificate shall be issued for the remaining number of such Warrants, and the Warrant Agent is hereby authorized to countersign the required new Warrant Certificate pursuant to the terms of the Agreement. Partial exercises of this Warrant Certificate shall have the effect of lowering the outstanding number of Warrants represented hereby in an amount equal to the applicable number of Warrants exercised, and any new Warrant Certificate issued as a result thereof shall reflect such applicable lower number. The Holder and the Company shall maintain records showing the number of Warrants exercised and the date of such exercises.

ii. Delivery of Warrant Shares Upon Exercise. The Company shall instruct the Warrant Agent and take all actions as are reasonably within its control to cause the Warrant Shares issuable hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder or its designee with the Depository through its Deposit or Withdrawal at Custodian system ("**DWAC**") by the date that is the earlier of (x) two (2) Trading Days after the applicable Exercise Date and (y) a number of Trading Days after the applicable Exercise Date equal to the then-standard settlement cycle on the Principal Market, but, solely if Cash Exercise is applicable to such exercise, no earlier than such time as the aggregate Exercise Price has been delivered to the Warrant Agent (such date, the "**Warrant Share Delivery Date**"). On the Exercise Date, the Holder shall be deemed

for all corporate purposes to have become the holder of record of the Warrant Shares issuable upon the applicable exercise, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (solely in the case of Cash Exercise) is received by no later than 10:00 a.m. Eastern time on the Trading Day immediately following the applicable Exercise Date. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as the Warrants remain outstanding and exercisable. The Warrant Shares issuable hereunder shall be issued free of any restrictive legends and bearing an unrestricted CUSIP number.

iii. Delivery of New Warrant Certificate Upon Exercise. If this Warrant Certificate shall have been exercised in part, the Company shall, upon surrender of this Warrant Certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant Certificate evidencing the rights of the Holder to exercise the unexercised Warrants called for by this Warrant Certificate, which new Warrant Certificate shall in all other respects be identical with this Warrant Certificate.

iv. Rescission Rights. If the Company fails to instruct the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 1(a)(ii) by the Warrant Share Delivery Date, then the Holder will have the right to rescind the applicable exercise.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of the Warrants. As to any fraction of a share which the Holder would otherwise be entitled to receive upon such exercise (based on the aggregate number of Warrants exercised at a given time), the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Last Reported Sale Price of the Common Stock on the Exercise Date or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or governmental charges or other incidental expense in respect of the issuance of Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; *provided, however*, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, the Holder shall be responsible for any tax or governmental charges or other incidental expense and, to the extent the Company may be liable for such tax or charges, the Company shall not be required to issue or deliver any certificate for Warrant Shares until any such tax or governmental charge or other incidental expense shall have been paid or until it has been established to the Company's reasonable satisfaction that no such tax or governmental charge or other incidental expense is due.

(b) Exercise Price. For purposes of the Warrants, "**Exercise Price**" means $1.71, subject to adjustment as provided herein.

(c) Company's Failure to Timely Deliver Warrant Shares. In addition to any other rights available to the Holder, if the Company fails to instruct the Transfer Agent and take all other actions as are reasonably within its control to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 1(a) above pursuant to a valid exercise on or before the Warrant Share Delivery Date (other than any such failure that is solely due to any action or inaction by the Holder with respect to such exercise), and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "**Buy-In**"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the Warrant Share Number that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrants, instructions for which were not given or other actions for which were not taken (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its obligations under Section 1(a)(ii). For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of

Warrants to acquire shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance or injunctive relief with respect to the Company's failure to timely instruct the Transfer Agent and take all other actions reasonably within its control to cause the Transfer Agent to deliver shares of Common Stock upon exercise of the Warrants as required pursuant to the terms hereof. Provided that the Warrant Agent has performed its duties as soon as commercially practicable, the Warrant Agent shall not be liable for the Company's failure to timely deliver the Warrant Shares pursuant to the terms of the Warrants, nor shall the Warrant Agent be liable for any liquidated damages or any other damages associated therewith. For purposes of this paragraph, references to the Holder include the beneficial owner of the Warrants.

(d) Exercise Method. Subject to the terms set forth herein, the Warrants may be exercised either (i) through "**Cash Exercise**", which means that the Holder is required to pay the Exercise Price in cash for each Warrant Share to be purchased by the Holder and delivered by the Company pursuant to the terms of this Warrant Certificate and the Agreement, or (ii) through "**Cashless Exercise**", which means that the Holder shall be entitled to authorize the Company to withhold from issuance a number of Warrant Shares issuable upon exercise of all Warrants being exercised by such Holder at such time as is required to pay the applicable Exercise Price, such that the Company shall deliver to the Holder for each Warrant exercised the "Net Number" of Warrant Shares, determined according to the following formula:

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A = the number of Warrant Shares with respect to which the Warrant is exercised on the applicable Exercise Date;

B = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the applicable Exercise Date; and

C = the Exercise Price in effect on the applicable Exercise Date.

Notwithstanding anything contained herein to the contrary, Cash Exercise shall apply with respect to any exercise of Warrants only if (i) the Company shall have provided written notice to the Holder at least five (5) Business Days prior to the applicable Exercise Date that Cash Exercise shall apply to any exercise of Warrants and shall not have subsequently provided another notice to the effect that Cashless Exercise shall apply, (ii) a registration statement registering the issuance and the resale of the Warrant Shares issuable upon exercise under the 1933 Act is effective and the related prospectus is available for use on the applicable Exercise Date and the Company expects such registration statement and prospectus to remain available for such resale for at least ten Business Days following such Exercise Date and (iii) such exercise of the Warrants and the issuance and resale of the Warrant Shares issuable upon exercise will be subject to registration under the registration statement contemplated by the immediately preceding clause (ii). At any time when Cash Exercise has been designated as applicable pursuant to clause (i) of the immediately preceding sentence, the Company shall notify the Holder at least three (3) Business Days prior to any such time when the registration statement specified in clause (ii) of the immediately preceding will not be available for use and such registration statement shall not subsequently be deemed available for use until the third Business Day after the Company shall have notified the Holder that such registration statement is again available for use. The Company may not change its election pursuant to clause (i) of the second immediately preceding sentence more than once in any six-month period. For the avoidance of doubt, if any of the conditions specified in clauses (i), (ii) or (iii) of the third immediately preceding sentence is not satisfied with respect to any exercise, Cashless Exercise shall apply to such exercise. The Company shall advise the Holder whether Cash Exercise or Cashless Exercise is currently applicable pursuant to the foregoing provisions promptly upon inquiry. If at any time the Holder pays the Exercise Price in connection with an exercise of Warrants and Cash Exercise is not applicable to such exercise, the

Company shall promptly (and in any event within one Business Day) return such Exercise Price to the Holder.

(e) Disputes. The number of Warrant Shares to be issued on any Cashless Exercise will be determined by the Company using the formula set forth in Section 1(d). In the case of a dispute as to the arithmetic calculation of the number of Warrant Shares to be issued pursuant to the terms hereof, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 13.

(f) Limitations on Exercises. A beneficial owner of Warrants shall not have the right to receive any Warrant Shares upon exercise of any Warrant, and any such exercise shall be null and void and treated as if never made, to the extent that, after giving effect to such exercise, such beneficial owner together with the other Attribution Parties with respect to such beneficial owner collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by any beneficial owner and its Attribution Parties shall include the number of shares of Common Stock held by such beneficial owner and Attribution Parties plus the number of shares of Common Stock issuable upon exercise of the Warrants with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised Warrants beneficially owned by such beneficial owner or Attribution Parties; and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants, including other Warrants) beneficially owned by such beneficial owner or Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 1(f). For purposes of this Section 1(f), beneficial ownership shall be calculated in accordance with Sections 13 and 16 of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock the beneficial owner may acquire upon the exercise of Warrants without exceeding the Maximum Percentage, the beneficial owner may rely on the number of outstanding shares of Common Stock as reflected in the latest of (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Company, or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives an Exercise Notice from the Holder (or is notified of an exercise of Warrants in accordance with the applicable procedures of the Depositary) at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such exercise would otherwise cause the applicable beneficial owner's beneficial ownership, as determined pursuant to this Section 1(f), to exceed the Maximum Percentage, such beneficial owner must cause the Holder to notify the Company of a reduced number of Warrants to be exercised; and (ii) as soon as reasonably practicable, the Company shall return to the Holder any Exercise Price with respect to any Warrants no longer exercised. Upon the written or oral request of the Holder, the Company shall within two (2) Business Days confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the Warrants, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. Upon delivery of a written notice to the Company, a beneficial owner of Warrants may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; *provided* that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to such beneficial owner and its Attribution Parties and not to any other holder or beneficial owner of Warrants. No prior inability to exercise any Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of the Warrants.

(g) Authorized Shares. The Company covenants that, during the period that any Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under the Warrants. The Company further covenants that its issuance of the Warrants shall

constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under the Warrants. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by the Warrants will, upon exercise of the purchase rights represented by the Warrants and payment for such Warrant Shares (if required) in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue) and prior to the applicable exercise date, the Company shall take all such reasonable action as may be necessary therefor.

1. ADJUSTMENT OF EXERCISE PRICE AND WARRANT SHARE NUMBER. The Exercise Price and Warrant Share Number are subject to adjustment from time to time as set forth in this Section 2.

(a) Stock Dividends and Splits. If the Company exclusively issues shares of Common Stock as a dividend or distribution on shares of the Common Stock, or if the Company effects a share split or share combination, the Exercise Price shall be adjusted based on the following formula:

$$EP' = EP_0 \times \frac{OS_0}{OS'}$$

where,

EP_0 = the Exercise Price in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as applicable;

EP' = the Exercise Price in effect immediately after the open of business on such Ex-Dividend Date or effective date, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or effective date (before giving effect to any such dividend, distribution, share split or share combination), as the case may be; and

OS' = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as the case may be.

If any adjustment to the Exercise Price is made pursuant to this Section 2(a), the Warrant Share Number shall be adjusted by multiplying the Warrant Share Number in effect immediately prior to such adjustment by a fraction, the numerator of which shall be the Exercise Price immediately prior to such adjustment, and the denominator of which shall be the Exercise Price immediately thereafter.

Any adjustment made under this Section 2(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 2(a) is declared but not so paid or made, the Exercise Price and Warrant Share Number shall be immediately readjusted, effective as of the date the board of directors of the Company determines not to pay such dividend or distribution, to the Exercise Price and Warrant Share Number that would then be in effect if such dividend or distribution had not been declared.

(b) Rights, Options and Warrants. If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants (other than in connection with a stockholder rights plan) entitling them, for a period of not more than 60 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Exercise Price shall be decreased based on the following formula:

$$EP' = EP_0 \times \frac{OS_0 + Y}{OS_0 + X}$$

where,

EP_0 = the Exercise Price in effect immediately prior to the open of business on the Ex-Dividend Date for such issuance;

EP' = the Exercise Price in effect immediately after the open of business on such Ex-Dividend Date;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

If any adjustment to the Exercise Price is made pursuant to this Section 2(b), the Warrant Share Number shall be adjusted by multiplying the Warrant Share Number in effect immediately prior to such adjustment by a fraction, the numerator of which shall be the Exercise Price immediately prior to such adjustment, and the denominator of which shall be the Exercise Price immediately thereafter.

Any adjustment made under this Section 2(b) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 2(b) is declared but not so paid or made, the Exercise Price and Warrant Share Number shall be immediately readjusted, effective as of the date the board of directors of the Company determines not to pay such dividend or distribution, to the Exercise Price and Warrant Share Number that would then be in effect if such dividend or distribution had not been declared.

Any adjustment made under this Section 2(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Exercise Price and Warrant Share Number shall be adjusted to the Exercise Price and Warrant Share Number that would then be in effect had the adjustment with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Exercise Price and Warrant Share Number shall be adjusted to the Exercise Price and Warrant Share Number that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 2(b), in determining whether any rights, options or warrants entitle the holders of Common Stock to subscribe for or purchase shares of the Common Stock at less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Company.

(c) Spin-Offs and Other Distributed Property.

(1) *Distributions Other than Spin-Offs*. If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities of the Company, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances (including share splits) as to which an adjustment was effected pursuant to Section 2(a) or Section 2(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 2(d), (iii) rights issued pursuant a stockholder rights plan, (iv) distributions of Reference Property in a Merger Event and (v) Spin-Offs as to which the provisions set forth below in this Section 2(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the "**Distributed Property**"), then the Exercise Price shall be decreased based on the following formula:

$$EP' = EP_0 \times \frac{SP_0 - FMV}{SP_0}$$

where,

EP_0 = the Exercise Price in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

EP' = the Exercise Price in effect immediately after the open of business on such Ex-Dividend Date;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Company) of the Distributed Property with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

If any adjustment to the Exercise Price is made pursuant to the portion of this Section 2(c) above, the Warrant Share Number shall be adjusted by multiplying the Warrant Share Number in effect immediately prior to such adjustment by a fraction, the numerator of which shall be the Exercise Price immediately prior to such adjustment, and the denominator of which shall be the Exercise Price immediately thereafter.

Any adjustment made under the portion of this Section 2(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Exercise Price and Warrant Share Number shall be increased to the Exercise Price and Warrant Share Number that would then be in effect if such distribution had not been declared. In the case of any distribution of rights, options or warrants, to the extent any such rights, options or warrants expire unexercised, the Exercise Price and Warrant Share Number shall be immediately readjusted to the Exercise Price and Warrant Share Number that would then be in effect had the adjustment made for the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, options or warrants. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing adjustment, each Holder shall receive, in respect of each Warrant, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned the number of shares of Common Stock equal to the Warrant Share Number on the record date for the distribution.

(2) *Spin-Offs*. With respect to an adjustment pursuant to this Section 2(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to any of its subsidiaries or other business units of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Exercise Price shall be decreased based on the following formula:

$$EP' = EP_0 \times \frac{MP_0}{MP_0 + FMV_0}$$

where,

EP_0 = the Exercise Price in effect immediately prior to the end of the Valuation Period;

EP' = the Exercise Price in effect immediately after the end of the Valuation Period;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"), *provided* that, if there is no Last Reported Sale Price of the Capital Stock or similar equity

interest distributed to holders of the Common Stock on such Ex-Dividend Date, the "Valuation Period" shall be the 10 consecutive Trading Day period after, and including the first Trading Day such Last Reported Sale Price is available; and

MP_0 = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

If any adjustment to the Exercise Price is made pursuant to the portion of this Section 2(c) above, the Warrant Share Number shall be adjusted by multiplying the Warrant Share Number in effect immediately prior to such adjustment by a fraction, the numerator of which shall be the Exercise Price immediately prior to such adjustment, and the denominator of which shall be the Exercise Price immediately thereafter.

The adjustment to the Exercise Price and Warrant Share Number under the portion this Section 2(c) above shall occur at the close of business on the last Trading Day of the Valuation Period. If any dividend or distribution that constitutes a Spin-Off is declared but not so paid or made, the Exercise Price and Warrant Share Number shall be immediately readjusted, effective as of the date the board of directors of the Company determines not to pay or make such dividend or distribution, to the Exercise Price and Warrant Share Number that would then be in effect if such dividend or distribution had not been declared or announced.

For purposes of this Section 2(c), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), other than rights issued pursuant a stockholder rights plan, which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 2(c) (and no adjustment to the Exercise Price or Warrant Share Number under this Section 2(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exercise Price and Warrant Share Number shall be made under this Section 2(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Issuance Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exercise Price and Warrant Share Number under this Section 2(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Exercise Price and Warrant Share Number shall be readjusted as if such rights, options or warrants had not been issued and (y) the Exercise Price and Warrant Share Number shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Exercise Price and Warrant Share Number shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 2(a), Section 2(b) and this Section 2(c), if any dividend or distribution to which this Section 2(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 2(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 2(b) is applicable (the "**Clause B Distribution**"),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 2(c) is

applicable (the "**Clause C Distribution**") and any Exercise Price and Warrant Share Number adjustment required by this Section 2(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Exercise Price and Warrant Share Number adjustment required by Section 2(a) and Section 2(b) with respect thereto shall then be made, except that, if determined by the Company, (I) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on such Ex-Dividend Date or effective date" within the meaning of Section 2(a) or "outstanding immediately prior to the open of business on such Ex-Dividend Date" within the meaning of Section 2(b).

(d) Cash Dividends or Distributions. If the Company makes any cash dividend or distribution to all or substantially all holders of the Common Stock, the Exercise Price shall be adjusted based on the following formula:

$$EP' = EP_0 \times \frac{SP_0 - C}{SP_0}$$

where,

EP_0 = the Exercise Price in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

EP' = the Exercise Price in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to all or substantially all holders of the Common Stock.

If any adjustment to the Exercise Price is made pursuant to this Section 2(d), the Warrant Share Number shall be adjusted by multiplying the Warrant Share Number in effect immediately prior to such adjustment by a fraction, the numerator of which shall be the Exercise Price immediately prior to such adjustment, and the denominator of which shall be the Exercise Price immediately thereafter.

Any adjustment made under this Section 2(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is not so paid, the Exercise Price and Warrant Share Number shall be readjusted, effective as of the date the board of directors of the Company determines not to make or pay such dividend or distribution, to be the Exercise Price and Warrant Share Number that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder shall receive, for each Warrant it holds, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Warrant Share Number on the record date for such cash dividend or distribution.

(e) Tender Offers or Exchange Offers. If the Company or any of its subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock that is subject to the then applicable tender offer rules under the 1934 Act, other than an odd lot tender offer, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Exercise Price shall be decreased based on the following formula:

$$EP' = EP_0 \times \frac{OS_0 \times SP'}{AC + (SP' \times OS')}$$

where,

EP_0 = the Exercise Price in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

EP' = the Exercise Price in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Company) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS' = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP' = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

If any adjustment to the Exercise Price is made pursuant to this Section 2(e), the Warrant Share Number shall be adjusted by multiplying the Warrant Share Number in effect immediately prior to such adjustment by a fraction, the numerator of which shall be the Exercise Price immediately prior to such adjustment, and the denominator of which shall be the Exercise Price immediately thereafter.

The adjustment to the Exercise Price under this Section 2(e) shall occur at the close of business on the 10th consecutive Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires. If the Company or one of its subsidiaries is obligated to purchase Common Stock pursuant to any such tender or exchange offer described in this Section 2(e) but the Company is, or such subsidiary is, permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the Exercise Price and Warrant Share Number will be readjusted to be the Exercise Price and Warrant Share Number that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that have been effected.

(f) Whenever any provision of this Warrant Certificate requires the Company to calculate the Last Reported Sale Prices over a span of multiple days (including, without limitation, a Valuation Period), the Company shall make appropriate adjustments (without duplication in respect of any adjustment made pursuant to the provisions described under Section 2) to each to account for any adjustment to the Exercise Price and Warrant Share Number that becomes effective, or any event requiring an adjustment to the Exercise Price and Warrant Share Number where the Ex-Dividend Date, effective date or expiration date of the event occurs, at any time during the period when the Last Reported Sale Prices are to be calculated.

(g) Notwithstanding this Section 2 or any other provision of the Warrants, if an Exercise Price or Warrant Share Number adjustment becomes effective on any Ex-Dividend Date, and a Holder that has exercised a Warrant on or after such Ex-Dividend Date and on or prior to the related record date would be treated as the record holder of the shares of Common Stock as of the Exercise Date based on an adjusted Exercise Price or Warrant Share Number, as applicable, for such Ex-Dividend Date, then, notwithstanding the Exercise Price or Warrant Share Number adjustment provisions in this Section 2, the Exercise Price or Warrant Share Number adjustment, as applicable, relating to such Ex-Dividend Date shall not be made for such exercising Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(h) If the Company has a stockholder rights plan in effect upon exercise of the Warrants, each share of Common Stock, if any, issued upon such exercise shall be entitled to receive the appropriate number of rights, if any, as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any exercise of Warrants, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights plan so that the Holders would not be entitled to receive any rights in respect of Common Stock,

if any, issuable upon exercise of the Warrants, the Exercise Price and Warrant Share Number shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock Distributed Property as provided in Section 2(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

2. MERGER EVENTS.

(a) In the case of:

i. any recapitalization, reclassification or change of the Common Stock (other than a change to par value, or from par value to no par value, or changes resulting from a subdivision or combination),

ii. any consolidation, merger, combination or similar transaction involving the Company,

iii. any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's subsidiaries substantially as an entirety or

iv. any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Merger Event**"), then, at and after the effective time of such Merger Event, the right to purchase Common Stock represented by each Warrant shall be changed into a right to purchase the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Warrant Share Number immediately prior to such Merger Event would have owned or been entitled to receive (the "**Reference Property**", with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon such Merger Event and, at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Warrant Agent an amendment of this Warrant Certificate providing for such change in the right to exercise each Warrant; *provided, however*, that at and after the effective time of the Merger Event, any shares of Common Stock that the Company would have been required to deliver upon exercise of the Warrants in accordance with this Warrant Certificate shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have received in such Merger Event.

If the Merger Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) the Reference Property for which the Warrants shall be exercisable shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. The Company shall notify Holders and the Warrant Agent in writing of such weighted average as soon as reasonably practicable after such determination is made.

If the Reference Property in respect of any such Merger Event includes, in whole or in part, shares of common equity, the amendment of this Warrant Certificate described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in Section 2 and this Section 3 with respect to the portion of Reference Property constituting such Common Equity. If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (other than cash and/or cash equivalents) of a Person other than the Company or the successor or purchasing corporation, as the case may be, in such Merger Event, then such amendment shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders as the Company shall reasonably consider necessary by reason of the foregoing, including the provisions providing for the purchase rights set forth in Section 1. The Company shall not become party to any such Merger Event unless its terms are consistent with this Section 3.

(b) When the Company executes an amendment pursuant to subsection (a) of this Section 3, the Company shall promptly file with the Warrant Agent a certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Merger Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly deliver or cause to be delivered notice thereof to all Holders. The Company shall cause notice of the execution of such amendment to be delivered to each

Holder within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such amendment.

(c) None of the foregoing provisions shall affect the right of a Holder of Warrants to exercise its Warrants prior to the effective date of such Merger Event.

(d) The Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated properties and assets of the Company and its subsidiaries, taken as a whole, to another Person (other than one or more of its wholly-owned subsidiaries), unless (i) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a corporation, partnership, limited liability company or similar entity organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, in each case, that is treated either as a corporation or as a disregarded entity for U.S. federal income tax purposes (and, for the avoidance of doubt, is not treated as a partnership for U.S. federal income tax purposes), (ii) subject to clause (iii), the Successor Company (if not the Company) shall expressly assume all of the obligations of the Company under the Warrants and (iii) if the Successor Company is not an entity treated as a corporation for U.S. federal income tax purposes, the Warrants shall be exercisable for equity in an entity treated as a corporation for U.S. federal income tax purposes that is organized or existing under the laws of the United States of America, any State thereof or the District of Columbia and is the regarded owner of the Successor Company for U.S. federal income tax purposes.

(e) The above provisions of this Section shall similarly apply to successive Merger Events.

3. BLACK SCHOLES VALUE. At the request of the Holder delivered at any time commencing on the earliest to occur of (x) the public disclosure of any Fundamental Change and (y) the consummation of any Fundamental Change through the date that is sixty (60) days after the public disclosure of the consummation of such Fundamental Change by the Company pursuant to a Current Report on Form 8-K filed with the SEC, the Company shall purchase the Warrants from the Holder by paying to the Holder cash in an amount equal to the Black Scholes Value for each Warrant. Payment of such amount shall be made by the Company to the Holder on the fifth (5th) Trading Day after the date of such request.

4. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation or bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issuance or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Warrants. Without limiting the generality of the foregoing, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (b) shall take all such reasonable actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of the Warrants.

5. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. The Holder, solely in its capacity as a holder of the Warrants, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant Certificate be construed to confer upon the Holder, solely in its capacity as the Holder of the Warrants, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which it is then entitled to receive upon the due exercise of the Warrants. In addition, nothing contained in this Warrant Certificate shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of the Warrants or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders; *provided, however*, that the Company shall not be obligated to provide such notice or information if it is filed with the SEC through EDGAR and available to the public through the EDGAR system.

6. TRANSFER OF WARRANTS.

(a) Transferability. This Warrant Certificate and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant Certificate at the principal office of the Company or the office or offices of its designated agent (which includes the Warrant Agent), designated for such purpose, together with a written assignment of this Warrant Certificate substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any taxes or

governmental charges payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company and the Warrant Agent shall execute and deliver a new Warrant Certificate or Certificates in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant Certificate evidencing the portion of this Warrant Certificate not so assigned, and this Warrant Certificate shall promptly be cancelled. At any time when the Holder has assigned this Warrant Certificate in full, the Holder shall surrender this Warrant Certificate to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Warrant Certificate in full. The Warrants, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant Certificate issued. Any party requesting transfer of Warrants or the Warrant Shares must provide any evidence of authority that may be required by the Warrant Agent, including, but not limited to, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association.

(b) New Warrant Certificates. If this Warrant Certificate is not held in global form through DTC (or any successor depositary), this Warrant Certificate may be divided or combined with other Warrant Certificates upon presentation hereof at the aforesaid office of the Company or the Warrant Agent, together with a written notice specifying the names and denominations in which new Warrant Certificates are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 7(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant Certificate or Certificates in exchange for the Warrant Certificate or Certificates to be divided or combined in accordance with such notice. All Warrant Certificates issued on transfers or exchanges shall be dated the Issuance Date and shall be identical with this Warrant Certificate except as to the number of Warrants represented thereby.

(c) Warrant Register. The Warrant Agent shall register this Warrant Certificate upon records to be maintained by the Warrant Agent (or, as applicable, the Company) for that purpose (the "**Warrant Register**"), in the name of the record Holder hereof from time to time. The Company and the Warrant Agent may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

7. WITHHOLDING. The Company (or other applicable withholding agent) shall be entitled to deduct and withhold taxes on all payments and distributions (or deemed distributions) on any Warrant to the extent required by applicable Law. The Holders shall provide the Company (or other applicable withholding agent) with any necessary tax forms, including an Internal Revenue Service Form W-9 or appropriate Internal Revenue Service Form W-8, as applicable, and any similar information. To the extent that any amounts are so deducted or withheld and timely remitted to the appropriate governmental authority in accordance with applicable Law, such deducted or withheld amounts shall be treated for all purposes of any Warrant as having been paid to the Person in respect of which such deduction or withholding was made. Each Holder agrees, and each holder and beneficial owner of a Warrant, by its acquisition or ownership of any Warrant is deemed to agree, that, in the event the Company (or other applicable withholding agent) previously remitted any amounts to a governmental authority on account of taxes required to be deducted or withheld in respect of any payment or distribution (or deemed distribution) with respect to a Warrant, (i) the Company (or other applicable withholding agent) shall be entitled to offset any such amounts against (1) any amounts otherwise payable to such Holder or beneficial owner in respect of any Warrant (including from any Warrant Shares otherwise issuable upon exercise of a Warrant) or any Warrant Shares issued upon exercise of any Warrant, or (2) sales proceeds received by, or other funds or assets of, such Holder or beneficial owner or (ii) the Company shall be entitled to require any Holder in respect of whom such remittance was made to reimburse and indemnify the Company for such amounts (and such Holder shall promptly so reimburse and indemnify the Company upon demand).

8. NOTICES. Any and all notices or other communications or deliveries to be provided by the Holders hereunder, including, without limitation, any Exercise Notice, shall be in writing and delivered by e-mail addressed to the Company, at the following address or such other email address or address as the Company may specify for such purposes by notice to the Holders:

The RealReal, Inc.
Attention: Legal Department and Accounting Department
E-mail: legal@therealreal.com; accounting@therealreal.com

with a copy to (for informational purposes only):

Wachtell, Lipton, Rosen & Katz
Attention: Josh R. Cammaker, Michael S. Benn and Benjamin S. Arfa
E-mail: JRCammaker@wlrk.com, MSBenn@wlrk.com and BSArfa@wlrk.com

9. . Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile, by e-mail or sent by a nationally recognized overnight courier service addressed to the Holder at the facsimile number, email address or address of the Holder appearing in the books of the Warrant Agent. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number, if applicable, or e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (Eastern time) on any date; (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number, if applicable, or e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (Eastern time) on any Trading Day; (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service; or (iv) upon actual receipt by the party to whom such notice is required to be given. Notwithstanding any other provision of this Warrant Certificate, where this Warrant Certificate provides for notice of any event to the Holder, if this Warrant is held in global form by DTC (or any successor depositary), such notice shall be sufficiently given if given to DTC (or any successor depositary) pursuant to the procedures of DTC (or such successor depositary).

10. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant Certificate may be amended only in accordance with Section 20 of the Warrant Agency Agreement. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

11. SEVERABILITY. If any provision of this Warrant Certificate is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant Certificate so long as this Warrant Certificate as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

12. GOVERNING LAW. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the law of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of this Warrant Certificate shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "**New York Courts**"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant Certificate and agrees that such service shall constitute good and sufficient service of process and notice thereof. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Warrant Certificate. If any party shall commence an action or proceeding to enforce any provisions of this Warrant Certificate, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

13. CONSTRUCTION; HEADINGS. This Warrant Certificate shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant Certificate are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant Certificate.

14. DISPUTE RESOLUTION.

(a) Submission to Dispute Resolution. In the case the Holder disputes any determination relating to the Exercise Price, the Warrant Share Number or Black Scholes Value made by the Company or the board of directors of the Company, the Holder shall submit the dispute to the Company pursuant to the notice provisions in Section 9 hereof (x) if with respect to a Fundamental Change, within thirty (30) days after the earlier of public disclosure of the purchase price per share of Common Stock in such Fundamental Change or public disclosure of the consummation of such Fundamental Change, or (y) otherwise, within ten (10) Trading Days after the Holder learns of the circumstances giving rise to such dispute (or, if the Holder thereafter learns new information with respect to such circumstances, within ten (10) Trading Days after the Holder learns of such new information). If the Holder and the Company are unable to promptly resolve such dispute relating to such Exercise Price, such Warrant Share Number or such Black Scholes Value, at any time after the second (2nd) Business Day following such initial notice by the Holder (as the case may be) of such dispute to the Company, then the Holder and the Company shall mutually agree upon, and select, an independent, reputable investment bank to resolve such dispute; provided that if the Holder and the Company are unable to so agree within ten (10) Business Days, then the Company shall select an independent, reputable investment bank in its reasonable discretion. For all purposes under this Section 13 in the case of a Global Warrant, the Holder shall act at the direction of Participants representing a majority of the Warrants represented hereby.

The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 13 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which the investment bank was selected by the parties hereto (the "**Dispute Submission Deadline**") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the "**Required Dispute Documentation**") (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

The Company and the Holder shall use their efforts to cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be paid by each of the Holder and the Company based on the degree (as determined in good faith by the investment bank) to which the investment bank has accepted the positions of the Holder and the Company.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 13 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under the rules then in effect under § 7501, et seq. of the New York Civil Practice Law and Rules ("**CPLR**") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 13, (ii) the terms of this Warrant Certificate shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Warrant Certificate, (iii) either the Company or the Holder shall have the right to submit any dispute described in this Section 13 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 13 and (iv) nothing in this Section 13 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 13).

15. REMEDIES, CHARACTERIZATION, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant Certificate shall be cumulative and in addition to all other remedies available under this Warrant Certificate, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue

actual and consequential damages for any failure by the Company to comply with the terms of this Warrant Certificate. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, exercises and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant Certificate shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant Certificate.

16. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Warrant Certificate is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the holder otherwise takes action to collect amounts due under this Warrant Certificate or to enforce the provisions of this Warrant Certificate or (b) there occurs any bankruptcy, reorganization, receivership of the company or other proceedings affecting company creditors' rights and involving a claim under this Warrant Certificate, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements.

17. TRANSFER. This Warrant Certificate may be offered for sale, sold, transferred or assigned without the consent of the Company.

18. WARRANT AGENCY AGREEMENT. This Warrant Certificate is issued subject to the Warrant Agency Agreement. To the extent any provision of this Warrant Certificate conflicts with the express provisions of the Warrant Agency Agreement, the provisions of the Warrant Agency Agreement shall govern and be controlling.

19. CERTAIN DEFINITIONS. For purposes of this Warrant Certificate, terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Warrant Agency Agreement, and the following terms shall have the following meanings:

"**1933 Act**" means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

"**1934 Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Attribution Parties**" means, with respect to any beneficial owner of the Warrants, each Person subject to aggregation of Common Stock with such beneficial owner under Section 13 or Section 16 of the 1934 Act and the rules promulgated thereunder.

"**Black Scholes Value**" means the value of the Warrants remaining on the date of the Holder's request pursuant to Section 4, which value is calculated using the Black Scholes Option Pricing Model obtained from the "OV" function on Bloomberg utilizing (i) an underlying price per share equal to the sum of the price per share being offered in cash in the applicable Fundamental Change (if any) plus the value of the non-cash consideration being offered in the applicable Fundamental Change (if any), *provided* that if there is no such cash or non-cash consideration being offered in the applicable Fundamental Change, the underlying price per share shall be equal to the highest Last Reported Sale Price of the Common Stock during the period beginning on the Trading Day immediately preceding the announcement of the applicable Fundamental Change (or the consummation of the applicable Fundamental Change, if earlier) and ending on the Trading Day of the Holder's request pursuant to Section 4, (ii) a strike price equal to the Exercise Price in effect on the date of the Holder's request pursuant to Section 4, (iii) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the greater of (1) the remaining term of the Warrants as of the date of the Holder's request pursuant to Section 4 and (2) the remaining term of the Warrants as of the date of consummation of the applicable Fundamental Change or as of the date of the Holder's request pursuant to Section 4 if such request is prior to the date of the consummation of the applicable

Fundamental Change, (iv) a zero cost of borrow and (v) an expected volatility equal to the greater of 75% and the thirty (30) day volatility obtained from the "HVT" function on Bloomberg (determined utilizing a 365-day annualization factor) as of the Trading Day immediately following the earliest to occur of (A) the public disclosure of the applicable Fundamental Change and (B) the consummation of the applicable Fundamental Change.

"**Bloomberg**" means Bloomberg, L.P.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which banking institutions are authorized or required by law to close in New York, San Francisco, California or the otherwise relevant place of payment.

"**Capital Stock**" means:

(1) in the case of a corporation, corporate stock or shares;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"**Common Stock**" means (i) the Company's shares of common stock, $0.00001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

"**Eligible Market**" means The New York Stock Exchange, the Nasdaq Global Select Market or the Nasdaq Global Market.

"**Ex-Dividend Date**" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of shares of Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

"**Fundamental Change**" means

(a) a "person" or "group" within the meaning of Section 13(d) of the 1934 Act, other than the Company, its wholly-owned subsidiaries and the employee benefit plans of the Company and its wholly-owned subsidiaries, files a Schedule TO (or any successor schedule, form or report) or any schedule, form or report under the 1934 Act disclosing that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the 1934 Act, of Common Stock (or such other common equity into which the Common Stock has been reclassified) representing more than 50% of the voting power of the Common Stock (or such other common equity into which the Common Stock has been reclassified);

(b) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, a combination or a change in par value) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which all of the Common Stock will be converted into cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its subsidiaries, taken as a whole, to any Person other than one or more of the Company's wholly-owned subsidiaries;

(c) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock (or other common stock underlying the Warrants) ceases to be listed or quoted on any of The New York Stock Exchange, the Nasdaq Global Select Market or the Nasdaq Global Market (or any of their respective successors);

provided, *however*, that a transaction or transactions described in clause (b) above shall not constitute a Fundamental Change if at least 90% of the consideration received or to be received by the common stockholders of the Company, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of The New York Stock Exchange, the Nasdaq Global Select Market or the Nasdaq Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions such consideration becomes Reference Property for the Warrants, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights. If any event in which the Common Stock is replaced by the common stock of another entity occurs, from and after the effective date of such event, references to the Company in this definition shall instead be references to such other entity.

For purposes of this definition of "Fundamental Change" above, any transaction that constitutes a Fundamental Change pursuant to both clause (a) and clause (b) of such definition (without giving effect to the proviso in clause (b)) shall be deemed a single Fundamental Change under one clause of such definition(subject to the proviso in clause (b)).

"**Last Reported Sale Price**" of the Common Stock (or other security for which a closing sale price must be determined) on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or such other security) is traded. If the Common Stock (or such other security) is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the "Last Reported Sale Price" shall be the last quoted bid price for the Common Stock (or such other security) in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock (or such other security) is not so quoted, the "Last Reported Sale Price" shall be the average of the mid-point of the last bid and ask prices for the Common Stock (or such other security) on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The "Last Reported Sale Price" will be determined without regard to after-hours trading or any other trading outside of the regular trading session hours.

"**Person**" means any individual, corporation, partnership, limited liability company, unlimited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"**Principal Market**" means the principal Eligible Market on which the Common Stock is listed or quoted for trading on the date in question.

"**SEC**" means the United States Securities and Exchange Commission or the successor thereto.

"**Trading Day**" means a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on the Nasdaq Global Select Market or, if the Common Stock (or such other security) is not then listed on the Nasdaq Global Select Market, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded and (ii) a Last Reported Sale Price for the Common Stock (or closing sale price for such other security) is available on such securities exchange or market; *provided* that if the Common Stock (or such other security) is not so listed or traded, "Trading Day" means a Business Day.

"**Transfer Agent**" means Computershare Inc., a Delaware corporation, and its affiliate, Computershare Trust Company, N.A., a federally chartered trust company, and any successor transfer agent of the Company.

"**Warrant Agency Agreement**" means that certain Warrant Agency Agreement dated as of the Issuance Date, between the Company and the Warrant Agent.

"**Warrant Agent**" means Computershare Inc., a Delaware corporation, and its affiliate, Computershare Trust Company, N.A., a federally chartered trust company, and any successor Warrant Agent under the Warrant Agency Agreement.

"**Warrants**" means the warrants represented by this Warrant Certificate.

IN WITNESS WHEREOF, the Company has caused this Common Stock Warrant Certificate to be duly executed as of the Issuance Date set out above.

THE REALREAL, INC.
By:
Name:
Title:

EXHIBIT A

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THE COMMON STOCK WARRANT CERTIFICATE

The RealReal, Inc.

The undersigned holder hereby elects to exercise the Common Stock Warrant Certificate No. _____ (the "**Warrant Certificate**") of The RealReal, Inc., a Delaware corporation (the "**Company**"), as specified below. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant Certificate.

1. Number of Warrants. The Holder hereby exercises _____ Warrants represented by the Warrant Certificate.

2. Payment of Exercise Price. In the event that Cash Exercise is applicable, the Holder shall pay the aggregate Exercise Price in the sum of $_____ to the Warrant Agent in accordance with the terms of the Warrant Certificate.

3. Maximum Percentage Representation. Notwithstanding anything to the contrary contained herein, this Exercise Notice shall constitute a representation by the beneficial owner of the exercised Warrants that after giving effect to the exercise provided for in this Exercise Notice, such beneficial owner (together with its Attribution Parties) will not have beneficial ownership of a number of shares of Common Stock which exceeds the Maximum Percentage (as defined in the Warrant Certificate) of the total outstanding shares of Common Stock of the Company as determined pursuant to the provisions of Section 1(f) of the Warrant Certificate.

4. Securities Laws Representation. The Holder is not, nor has been at any time during the consecutive three (3) month period preceding the date hereof, an "affiliate" within the meaning of Rule 144 promulgated under the 1933 Act of the Company.

5. Delivery of Warrant Shares. The Company shall deliver to the Holder, or its designee or agent as specified below, _____ shares of Common Stock in accordance with the terms of the Warrant Certificate. Delivery shall be made to Holder, or for its benefit, as follows:

DTC Participant: _____

DTC Number: _____

Account Number: _____

Date: _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID:_____
E-mail Address:_____

EXHIBIT B

ASSIGNMENT FORM

(To assign the foregoing Warrant Certificate, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant Certificate and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____ __, _____

Holder's Signature: _____

Holder's Address: _____

Securities Laws Representation. The Holder is not, nor has been at any time during the consecutive three (3) month period preceding the date hereof, an "affiliate" within the meaning of Rule 144 promulgated under the 1933 Act of the Company.

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the registration statements (Nos. 333-270281, 333-264837, 333-255981, and 333-232528) on Form S-8 of our reports dated March 1, 2024, with respect to the financial statements of The RealReal, Inc. and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP

San Francisco, California
March 1, 2024

Exhibit 31.1

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, John Koryl certify that:

1. I have reviewed this Form-10K of The RealReal, 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: March 1, 2024

By: /s/ John Koryl

John Koryl
Chief Executive Officer

Exhibit 31.2

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, Todd Suko, certify that:

1. I have reviewed this Form-10K of The RealReal, 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: March 1, 2024

By: /s/ Todd Suko

Todd Suko
Interim Chief Financial Officer, Chief Legal Officer and Secretary

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of The RealReal, Inc. (the "Company") on Form 10-K for the period ending December 31, 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:

(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 result of operations of the Company.

Date: March 1, 2024

By: /s/ John Koryl

John Koryl
Chief Executive Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of The RealReal, Inc. (the "Company") on Form 10-K for the period ending December 31, 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:

(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 result of operations of the Company.

Date: March 1, 2024

By: /s/ Todd Suko

Todd Suko
Interim Chief Financial Officer, Chief Legal Officer and Secretary

THE REALREAL, INC.
CLAWBACK POLICY

1. **Purpose**. The purpose of this Policy is to describe the circumstances in which Executive Officers will be required to repay or return Erroneously Awarded Compensation to members of the Company. This Policy is designed to comply with, and will be interpreted in a manner that is consistent with, Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Section 10D of the Securities Exchange Act of 1934 and the listing standards of The Nasdaq Global Select Market ("Nasdaq") or any other national securities exchange on which the Company's securities are listed.

1. **Administration**. This Policy shall be administered by the Committee. Any determinations made by the Committee shall be final and binding on all affected individuals.

1. **Definitions**. For purposes of this Policy, the following capitalized terms shall have the meanings set forth below.

    a. "***Accounting Restatement***" shall mean an accounting restatement (i) due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial restatements that is material to the previously issued financial statements, or (ii) that corrects an error that is not material to previously issued financial statements, but would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

    a. "***Board***" shall mean the Board of Directors of the Company.

    a. "***Clawback Eligible Incentive Compensation***" shall mean, in connection with an Accounting Restatement and with respect to each individual who served as an Executive Officer at any time during the applicable performance period for any Incentive-based Compensation (whether or not such Executive Officer is serving at the time the Erroneously Awarded Compensation is required to be repaid to the Company), all Incentive-based Compensation Received by such Executive Officer (i) on or after October 2, 2023, (ii) after beginning service as an Executive Officer, (iii) who served as an Executive Officer at any time during the performance period for the Incentive-based Compensation, (iv) while the Company has a class of securities listed on a national securities exchange or a national securities association and (v) during the applicable Clawback Period.

    a. "***Clawback Period***" shall mean, with respect to any Accounting Restatement, the three completed fiscal years of the Company immediately preceding the Restatement Date and any transition period (that results from a change in the Company's fiscal year) of less than nine months within or immediately following those three completed fiscal years.

a. "***Committee***" shall mean the Compensation, Diversity and Inclusion Committee of the Board.

a. "***Company***" shall mean The RealReal, Inc., a Delaware corporation.

a. "***Effective Date***" shall mean July 25, 2023.

a. "***Erroneously Awarded Compensation***" shall mean, with respect to each Executive Officer in connection with an Accounting Restatement, the amount of Clawback Eligible Incentive Compensation that exceeds the amount of Incentive-based Compensation that otherwise would have been Received had it been determined based on the restated amounts, computed without regard to any taxes paid.

a. "***Executive Officer***" shall mean (i) the Company's current and former president, principal financial officer, principal accounting officer (or if there is no principal accounting officer, the controller), any vice-president in charge of a principal business unit, division or function (such as sales, administration, or finance), any other officer who performs a policy-making function for the Company, or any other person who performs similar policy-making functions for the Company, as determined by the Committee in accordance with Federal securities laws, SEC rules or the rules of any national securities exchange or national securities association on which the Company's securities are listed. Identification of an executive officer for purposes of this Policy includes at a minimum executive officers identified pursuant to 17 C.F.R. 229.401(b).

a. "***Financial Reporting Measures***" shall mean measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and all other measures that are derived wholly or in part from such measures. Stock price and total shareholder return (and any measures that are derived wholly or in part from stock price or total shareholder return) shall for purposes of this Policy be considered Financial Reporting Measures. For the avoidance of doubt, a Financial Reporting Measure need not be presented in the Company's financial statements or included in a filing with the SEC.

a. "***Incentive-based Compensation***" shall mean any compensation that is granted, earned or vested based wholly or in part upon the attainment of a Financial Reporting Measure. Incentive-based Compensation does not include: (i) bonuses paid solely at the discretion of the Board or the Committee that are not paid from a bonus pool that is determined by satisfying a financial reporting measure performance goal or solely upon satisfying one or more subjective standards and/or completion of a specified employment period, (ii) non-equity incentive plan awards earned solely upon satisfying one or more strategic or operational measures, (iii) equity awards not contingent upon achieving any financial reporting measure performance goal and vesting is contingent solely upon the completion of a specified employment period and/or attaining one or more non-

financial reporting measures or (iv) any Incentive-based Compensation received before the Company had a class of securities listed on a national securities exchange.

a. "***Policy***" shall mean this Clawback Policy, as the same may be amended and/or restated from time to time.

a. "***Received***" shall, with respect to any Incentive-based Compensation, mean actual or deemed receipt, and Incentive-based Compensation shall be deemed received in the Company's fiscal period during which the Financial Reporting Measure specified in the Incentive-based Compensation award is attained, even if payment or grant of the Incentive-based Compensation occurs after the end of that period.

a. "***Restatement Date***" shall mean the earlier to occur of (i) the date the Board, a committee of the Board or the officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the issuer is required to prepare an Accounting Restatement, or (ii) the date of court, regulator or other legally authorized body directs the issuer to prepare an Accounting Restatement.

a. "***SEC***" shall mean the U.S. Securities and Exchange Commission.

1. **Repayment of Erroneously Awarded Compensation**.

a. In the event of an Accounting Restatement, the Committee shall determine the amount of any Erroneously Awarded Compensation for each Executive Officer in connection with such Accounting Restatement and thereafter, provide each Executive Officer with a written notice containing the amount of Erroneously Awarded Compensation and a demand for repayment or return, as applicable. For Incentive-based Compensation based on (or derived from) stock price or total shareholder return where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in the applicable Accounting Restatement, the amount shall be determined by the Committee based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or total shareholder return upon which the Incentive-based Compensation was Received (in which case, the Company shall maintain documentation of such determination of that reasonable estimate and provide such documentation to Nasdaq).

a. The Committee shall take such action as it deems appropriate to recover Erroneously Awarded Compensation reasonably promptly after such obligation is incurred and shall have broad discretion to determine the appropriate means of recovery of such Erroneously Awarded Compensation based on all applicable facts and circumstances. The Committee may seek recoupment in the manner it chooses, in its sole discretion, which may include, without limitation, one or a combination of the following: (i) direct reimbursement from the Executive Officer of Incentive-based Compensation previously paid, (ii) deduction of the recouped amount from unpaid compensation otherwise owed by the Company to the

Covered Executive, (iii) set-off, (iv) rescinding or cancelling vested or unvested equity or cash based awards, and (v) any other remedial and recovery action permitted by law, as determined by the Committee. For the avoidance of doubt, except as set forth in Section 4(d) below, in no event may the Company accept an amount that is less than the amount of Erroneously Awarded Compensation in satisfaction of an Executive Officer's obligations hereunder.

a. To the extent that an Executive Officer fails to repay all Erroneously Awarded Compensation to the Company when due (as determined in accordance with Section 4(b) above), the Company shall take all actions reasonable and appropriate to recover such Erroneously Awarded Compensation from the applicable Executive Officer. The applicable Executive Officer shall be required to reimburse the Company for any and all expenses reasonably incurred (including legal fees) by the Company in recovering such Erroneously Awarded Compensation in accordance with the immediately preceding sentence.

a. Notwithstanding anything herein to the contrary, the Company shall not be required to take the actions contemplated by Section 4(b) above if the following conditions are met and the Committee determines that recovery would be impracticable:

    i. The direct expenses paid to a third party to assist in enforcing the Policy against an Executive Officer would exceed the amount to be recovered, after the Company has made a reasonable attempt to recover the applicable Erroneously Awarded Compensation, documented such attempts and provided such documentation to Nasdaq.

    i. Recovery would violate home country law where that law was adopted prior to November 28, 2022, provided that, before determining that it would be impracticable to recover any amount of Erroneously Awarded Compensation based on violation of home country law, the Company has obtained an opinion of home country counsel, acceptable to Nasdaq, that recovery would result in such a violation and a copy of the opinion is provided to Nasdaq; or

    i. Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

1. **Reporting and Disclosure**. The Company shall file all disclosures with respect to this Policy in accordance with the requirement of the Federal securities laws, including the disclosure required by the applicable SEC filings.

1. **Indemnification Prohibition**. No member of the Company shall be permitted to indemnify any Executive Officer against (i) the loss of any Erroneously Awarded Compensation that is repaid, returned or recovered pursuant to the terms of this Policy, or (ii) any claims relating to the Company's enforcement of its rights under this Policy.

Further, no member of the Company shall enter into any agreement that exempts any Incentive-based Compensation from the application of this Policy or that waives the Company's right to recovery of any Erroneously Awarded Compensation and this Policy shall supersede any such agreement (whether entered into before, on or after the Effective Date).

1. **Interpretation**. The Committee is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. This Policy shall be binding and enforceable against all Executive Officers and their beneficiaries, heirs, executors or other legal representatives.

1. **Effective Date**. This Policy shall be effective as of the Effective Date.

1. **Amendment**; **Termination**. The Committee may amend this Policy from time to time in its discretion and shall amend this Policy as it deems necessary, including as and when it determines that it is legally required by any Federal securities laws, SEC rules or the rules of any national securities exchange or national securities association on which the Company's securities are listed. The Committee may terminate this Policy at any time. Notwithstanding anything in this Section 9 to the contrary, no amendment or termination of this Policy shall be effective if such amendment or termination would (after taking into account any actions taken by the Company contemporaneously with such amendment or termination) cause the Company to violate any Federal securities laws, SEC rules or the rules of any national securities exchange or national securities association on which the Company's securities are listed.

1. **Other Recoupment Rights**; **No Additional Payments**. The Committee intends that this Policy will be applied to the fullest extent of the law. This Policy shall be incorporated by reference into and shall apply to all incentive, bonus, equity, equity-based and compensation plans, agreements, and awards outstanding as of the Effective Date or entered into on or after the Policy's Effective Date. The Committee may require that any employment agreement, equity award agreement, or any other agreement entered into on or after the Effective Date shall, as a condition to the grant of any benefit thereunder, require an Executive Officer to agree to abide by the terms of this Policy. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company under applicable law, regulation or rule or pursuant to the terms of any similar policy in any employment agreement, equity award agreement, or similar agreement and any other legal remedies available to the Company.

1. **Entire Agreement.** This Policy supersedes, replaces and merges any and all previous agreements and understandings regarding the Company's policy on the recovery of compensation, and this Policy constitutes the entire agreement between the Company and the Executive Officers with respect to such terms and conditions.

1. **Successors**. This Policy shall be binding and enforceable against all Executive Officers and their beneficiaries, heirs, executors, administrators or other legal representatives.

Effective July 25, 2023