

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2020

OR

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

For the transition period from ____ to ____

Commission File Number: 001-38953

The RealReal, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)
55 Francisco Street Suite 600
San Francisco, CA
(Address of principal executive offices)

45-1234222
(I.R.S. Employer
Identification No.)

94133
(Zip Code)

(855) 435-5893

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, \$0.00001 par value	REAL	The Nasdaq Global Select Market

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

Indicate by check mark whether the registrant has submitted electronically 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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input checked="" type="checkbox"/>		

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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of November 1, 2020, the registrant had 88,577,407 shares of common stock, \$0.00001 par value per share, outstanding.

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NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws. All statements other than statements of historical fact contained in this Quarterly Report on Form 10-Q, including statements regarding the ongoing impact of the COVID-19 pandemic on our business, 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,” “could,” “will,” “expects,” “plans,” “anticipates,” “intends,” “target,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential,” “continue” or the negative of these terms or other similar expressions. The forward-looking statements in this Quarterly Report on Form 10-Q 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 Quarterly Report on Form 10-Q and are subject to a number of risks, uncertainties and assumptions described in the section titled “Risk Factors” included under Part II, Item 1A below and elsewhere in this Quarterly Report on Form 10-Q, as well as in our other filings with the Securities and Exchange Commission (SEC). 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 the COVID-19 pandemic;
- our ability to effectively manage or sustain our growth and to effectively expand our operations;
- 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
- our ability to optimize, operate and manage our merchandising and fulfillment facilities;
- our ability to develop and protect our brand;
- our ability to comply with laws and regulations;
- our expectations regarding outstanding litigation;
- our expectations and management of future growth;
- our expectations concerning relationships with third parties;
- economic and industry trends, projected growth or trend analysis;
- 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 Quarterly Report on Form 10-Q 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 Quarterly Report on Form 10-Q, whether as a result of any new information, future events or otherwise.

Item 1. Financial Statements

THE REALREAL, INC.
Condensed Balance Sheets

(In thousands, except share and per share data)
(Unaudited)

	September 30, 2020	December 31, 2019
Assets		
Current assets		
Cash and cash equivalents	\$ 343,092	\$ 154,446
Short-term investments	52,156	208,811
Accounts receivable	4,559	7,779
Inventory, net	19,236	23,599
Prepaid expenses and other current assets	18,255	13,804
Total current assets	437,298	408,439
Property and equipment, net	61,944	55,831
Operating lease right-of-use assets	115,013	—
Other assets	2,020	2,660
Total assets	\$ 616,275	\$ 466,930
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable	\$ 5,410	\$ 11,159
Accrued consignor payable	44,490	52,820
Operating lease liabilities, current portion	15,263	—
Other accrued and current liabilities	55,767	54,567
Total current liabilities	120,930	118,546
Operating lease liabilities, net of current portion	111,680	—
Convertible senior notes, net	148,057	—
Other noncurrent liabilities	1,300	9,456
Total liabilities	381,967	128,002
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Common stock, \$0.00001 par value; 500,000,000 shares authorized as of September 30, 2020 and December 31, 2019; 88,532,457 and 85,872,320 shares issued and outstanding as of September 30, 2020 and December 31, 2019, respectively	1	1
Additional paid-in capital	713,195	693,426
Accumulated other comprehensive income	107	7
Accumulated deficit	(478,995)	(354,506)
Total stockholders' equity	234,308	338,928
Total liabilities and stockholders' equity	\$ 616,275	\$ 466,930

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

THE REALREAL, INC.
Condensed Statements of Operations

(In thousands, except share and per share data)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenue:				
Consignment and service revenue	\$ 64,407	\$ 69,245	\$ 176,570	\$ 184,890
Direct revenue	13,645	12,271	37,111	39,417
Total revenue	<u>78,052</u>	<u>81,516</u>	<u>213,681</u>	<u>224,307</u>
Cost of revenue:				
Cost of consignment and service revenue	16,304	19,446	47,253	52,592
Cost of direct revenue	11,964	9,842	31,678	31,056
Total cost of revenue	<u>28,268</u>	<u>29,288</u>	<u>78,931</u>	<u>83,648</u>
Gross profit	<u>49,784</u>	<u>52,228</u>	<u>134,750</u>	<u>140,659</u>
Operating expenses:				
Marketing	15,186	13,390	37,747	36,838
Operations and technology	40,578	37,407	117,858	103,271
Selling, general and administrative	35,384	28,436	103,047	76,110
Total operating expenses	<u>91,148</u>	<u>79,233</u>	<u>258,652</u>	<u>216,219</u>
Loss from operations	<u>(41,364)</u>	<u>(27,005)</u>	<u>(123,902)</u>	<u>(75,560)</u>
Interest income	448	1,902	2,350	2,918
Interest expense	(2,406)	(60)	(2,810)	(572)
Other income (expense), net	—	(119)	(89)	(2,106)
Loss before provision for income taxes	<u>(43,322)</u>	<u>(25,282)</u>	<u>(124,451)</u>	<u>(75,320)</u>
Provision (benefit) for income taxes	<u>(17)</u>	<u>(8)</u>	<u>38</u>	<u>51</u>
Net loss	<u>\$ (43,305)</u>	<u>\$ (25,274)</u>	<u>\$ (124,489)</u>	<u>\$ (75,371)</u>
Accretion of redeemable convertible preferred stock to redemption value	\$ —	\$ —	\$ —	\$ (3,355)
Net loss attributable to common stockholders	<u>\$ (43,305)</u>	<u>\$ (25,274)</u>	<u>\$ (124,489)</u>	<u>\$ (78,726)</u>
Net loss per share attributable to common stockholders, basic and diluted	<u>\$ (0.49)</u>	<u>\$ (0.30)</u>	<u>\$ (1.43)</u>	<u>\$ (2.28)</u>
Shares used to compute net loss per share attributable to common stockholders, basic and diluted	<u>87,869,321</u>	<u>84,634,956</u>	<u>87,176,677</u>	<u>34,556,485</u>

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

THE REALREAL, INC.
Condensed Statements of Comprehensive Loss

(In thousands)
(Unaudited)

	<u>Three Months Ended September 30,</u>		<u>Nine Months Ended September 30,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
Net loss	\$ (43,305)	\$ (25,274)	\$ (124,489)	\$ (75,371)
Other comprehensive income (loss), net of tax:				
Unrealized gain (loss) on investments	(294)	(4)	100	26
Comprehensive loss	<u>\$ (43,599)</u>	<u>\$ (25,278)</u>	<u>\$ (124,389)</u>	<u>\$ (75,345)</u>

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

THE REALREAL, INC.

Condensed Statements of Redeemable Convertible Preferred Stock, Convertible Preferred Stock and Stockholders' Equity (Deficit)

(In thousands, except share amounts)
(Unaudited)

	Redeemable Convertible Preferred Stock		Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount				
Balance as of December 31, 2019	—	\$ —	—	\$ —	85,872,320	\$ 1	\$ 693,426	\$ 7	\$ (354,506)	\$ 338,928
Issuance of common stock upon exercise of options	—	—	—	—	964,085	—	2,564	—	—	2,564
Issuance of common stock upon vesting of restricted stock units, net of										
shares withheld for employee taxes	—	—	—	—	14,289	—	(151)	—	—	(151)
Stock-based compensation expense	—	—	—	—	—	—	3,410	—	—	3,410
Other comprehensive income	—	—	—	—	—	—	—	314	—	314
Net loss	—	—	—	—	—	—	—	—	(38,292)	(38,292)
Balance as of March 31, 2020	—	\$ —	—	\$ —	86,850,694	\$ 1	\$ 699,249	\$ 321	\$ (392,798)	\$ 306,773
Issuance of common stock upon exercise of options	—	—	—	—	429,339	—	1,790	—	—	1,790
Issuance of common stock upon vesting of restricted stock units, net of										
shares withheld for employee taxes	—	—	—	—	68,208	—	(453)	—	—	(453)
Stock-based compensation expense	—	—	—	—	—	—	6,129	—	—	6,129
Purchase of capped calls	—	—	—	—	—	—	(22,546)	—	—	(22,546)
Equity component of convertible senior notes, net of issuance costs of \$767	—	—	—	—	—	—	19,020	—	—	19,020
Other comprehensive income	—	—	—	—	—	—	—	80	—	80
Net loss	—	—	—	—	—	—	—	—	(42,892)	(42,892)
Balance as of June 30, 2020	—	\$ —	—	\$ —	87,348,241	\$ 1	\$ 703,189	\$ 401	\$ (435,690)	\$ 267,901
Issuance of common stock upon exercise of options	—	—	—	—	720,682	—	2,781	—	—	2,781
Issuance of common stock upon vesting of restricted stock units, net of										
shares withheld for employee taxes	—	—	—	—	463,534	—	(147)	—	—	(147)
Stock-based compensation expense	—	—	—	—	—	—	7,372	—	—	7,372
Other comprehensive income	—	—	—	—	—	—	—	(294)	—	(294)
Net loss	—	—	—	—	—	—	—	—	(43,305)	(43,305)
Balance as of September 30, 2020	—	\$ —	—	\$ —	88,532,457	\$ 1	\$ 713,195	\$ 107	\$ (478,995)	\$ 234,308

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

THE REALREAL, INC.

Condensed Statements of Redeemable Convertible Preferred Stock, Convertible Preferred Stock and Stockholders' Equity (Deficit)

(In thousands, except share amounts)
(Unaudited)

	Redeemable Convertible Preferred Stock		Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount				
Balance as of December 31, 2018	31,053,601	\$ 151,381	73,724,645	\$ 142,819	8,593,077	\$ —	\$ —	\$ (25)	\$ (257,665)	\$ (257,690)
Issuance of Series H redeemable convertible preferred stock										
net of issuance costs of \$86	6,350,345	43,572	—	—	—	—	—	—	—	—
Issuance of Series H convertible preferred stock net of issuance costs of \$63	—	—	3,831,766	26,279	—	—	—	—	—	—
Accretion of redeemable preferred stock to redemption value	—	3,355	—	—	—	—	(3,260)	—	(95)	(3,355)
Compensation expense related to stock sales by current and former employees	—	—	—	—	—	—	819	—	—	819
Issuance of common stock upon exercise of options	—	—	—	—	739,053	—	1,319	—	—	1,319
Issuance of common stock upon exercise of warrants	—	—	—	—	4,935	—	13	—	—	13
Stock-based compensation expense	—	—	—	—	—	—	1,109	—	—	1,109
Other comprehensive income	—	—	—	—	—	—	—	28	—	28
Net loss	—	—	—	—	—	—	—	—	(23,222)	(23,222)
Balance as of March 31, 2019	<u>37,403,946</u>	<u>\$ 198,308</u>	<u>77,556,411</u>	<u>\$ 169,098</u>	<u>9,337,065</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 3</u>	<u>\$ (280,982)</u>	<u>\$ (280,979)</u>
Additional issuance costs for Series H redeemable convertible preferred stock (total issuance costs of \$166)	—	(80)	—	—	—	—	—	—	—	—
Reallocation of issuance costs for Series H convertible preferred stock (total issuance costs of \$59)	—	—	—	4	—	—	—	—	—	—
Issuance of common stock upon exercise of options	—	—	—	—	358,459	1	422	—	—	423
Issuance of common stock upon exercise of warrants	—	—	—	—	5,742	—	20	—	—	20
Stock-based compensation expense	—	—	—	—	—	—	1,287	—	—	1,287
Other comprehensive income	—	—	—	—	—	—	—	2	—	2
Net loss	—	—	—	—	—	—	—	—	(26,875)	(26,875)
Balance as of June 30, 2019	<u>37,403,946</u>	<u>\$ 198,228</u>	<u>77,556,411</u>	<u>\$ 169,102</u>	<u>9,701,266</u>	<u>\$ 1</u>	<u>\$ 1,729</u>	<u>\$ 5</u>	<u>\$ (307,857)</u>	<u>\$ (306,122)</u>
Conversion of redeemable convertible preferred stock to common stock in connection with initial public offering	(37,403,946)	(198,228)	—	—	19,585,426	—	198,228	—	—	198,228
Conversion of convertible preferred stock to common stock in connection with initial public offering	—	—	(77,556,411)	(169,102)	38,778,180	—	169,102	—	—	169,102
Conversion of convertible preferred stock warrants to common stock	—	—	—	—	—	—	2,710	—	—	2,710
warrants in connection with initial public offering	—	—	—	—	—	—	2,710	—	—	2,710
Issuance of common stock in connection with initial public offering, net of issuance costs of \$5,428	—	—	—	—	17,250,000	—	315,422	—	—	315,422
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes	—	—	—	—	1,969	—	(20)	—	—	(20)
Issuance of common stock upon exercise of options	—	—	—	—	352,638	—	674	—	—	674
Issuance of common stock for cashless exercise of warrants	—	—	—	—	89,542	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	—	—	2,520	—	—	2,520
Other comprehensive loss	—	—	—	—	—	—	—	(4)	—	(4)
Net loss	—	—	—	—	—	—	—	—	(25,274)	(25,274)
Balance as of September 30, 2019	<u>—</u>	<u>\$ —</u>	<u>—</u>	<u>\$ —</u>	<u>85,759,021</u>	<u>\$ 1</u>	<u>\$ 690,365</u>	<u>\$ 1</u>	<u>\$ (333,131)</u>	<u>\$ 357,236</u>

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

THE REALREAL, INC.
Condensed Statements of Cash Flows

(In thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2020	2019
Cash flows from operating activities:		
Net loss	\$ (124,489)	\$ (75,371)
Adjustments to reconcile net loss to cash used in operating activities:		
Depreciation and amortization	13,673	9,537
Stock-based compensation expense	16,911	4,916
Reduction of operating lease right-of-use assets	12,003	—
Bad debt expense	661	1,208
Compensation expense related to stock sales by current and former employees	—	819
Change in fair value of convertible preferred stock warrant liability	—	2,100
Accretion of unconditional endowment grant liability	39	70
Accretion of debt discounts and issuance costs	1,268	11
Amortization of premiums (discounts) on short-term investments	(114)	38
Changes in operating assets and liabilities:		
Accounts receivable	2,559	(2,572)
Inventory, net	4,363	(3,491)
Prepaid expenses and other current assets	(4,626)	(3,375)
Other assets	578	136
Operating lease liability	(8,710)	—
Accounts payable	(4,164)	1,394
Accrued consignor payable	(8,330)	4,611
Other accrued and current liabilities	2,511	494
Other noncurrent liabilities	(150)	1,356
Net cash used in operating activities	(96,017)	(58,119)
Cash flow from investing activities:		
Purchases of short-term investments	(73,280)	(12,169)
Proceeds from maturities of short-term investments	222,217	33,998
Proceeds from sale of short-term investments	7,932	—
Capitalized proprietary software development costs	(6,640)	(6,670)
Purchases of property and equipment	(15,685)	(16,111)
Net cash provided by (used in) investing activities	134,544	(952)
Cash flow from financing activities:		
Proceeds from issuance of common stock in initial public offering, net of issuance costs	—	315,486
Proceeds from issuance of redeemable convertible preferred stock, net of issuance costs	—	43,492
Proceeds from issuance of convertible preferred stock, net of issuance costs	—	26,283
Proceeds from issuance of convertible senior notes, net of issuance costs	166,278	—
Purchase of capped calls	(22,546)	—
Proceeds from exercise of stock options and common stock warrants	7,135	2,448
Taxes paid related to restricted stock vesting	(748)	(20)
Repayment of debt	—	(9,250)
Net cash provided by financing activities	150,119	378,439
Net increase in cash, cash equivalents and restricted cash	188,646	319,368
Cash, cash equivalents, and restricted cash		
Beginning of period	154,446	45,627
End of period	\$ 343,092	\$ 364,995
Supplemental disclosures of cash flow information		
Cash paid for interest	\$ 7	\$ 532
Cash paid for income taxes	90	—
Supplemental disclosures of non-cash investing and financing activities		
Accretion of redeemable convertible preferred stock to redemption value	—	3,355
Purchases of property and equipment included in accounts payable and other accrued and current liabilities	(3,102)	(877)
Purchases of capitalized proprietary software development costs included in accounts payable and other accrued and current liabilities	501	—
Deferred offering costs in accounts payable and accrued liabilities	—	28
Conversion of convertible preferred stock warrants in connection with IPO	—	2,710
Conversion of redeemable convertible preferred stock in connection with IPO	—	198,228
Conversion of convertible preferred stock in connection with IPO	—	169,102
Issuance costs associated with issuance of convertible senior notes included in other accrued and current liabilities	469	—
Tax withholding liability for restricted stock	3	—

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

THE REALREAL, INC.
Notes to Unaudited Condensed 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, men’s, kids’, jewelry and watches, and home and art. The Company was incorporated in the state of Delaware on March 29, 2011 and is headquartered in San Francisco, California.

Impact of the Coronavirus (“COVID-19”) Pandemic

The COVID-19 pandemic has materially impacted the Company's business operations and results of operations in 2020. For the three and nine months ended September 30, 2020, net revenues decreased 4% and 5% compared to the same periods in 2019, respectively, primarily due to adverse impacts from the COVID-19 pandemic on the business as further described below.

Operations in the Company’s fulfillment facilities were initially limited in accordance with shelter-in-place orders resulting in operations below full capacity. However, operations capacity was no longer limited by restrictions related to COVID-19 during the three months ended September 30, 2020. In-person white glove consignment appointments were temporarily suspended and augmented with virtual appointments but remain an option for our consignor base. All luxury consignment offices and retail stores were temporarily closed for varying periods of time but were all open during the entirety of three months ended September 30, 2020.

While the continuing and ultimate impact of the COVID-19 pandemic is highly uncertain, the Company expects its business operations and results of operations, including its net revenues, earnings and cash flows, will be further materially adversely impacted, including as a result of possible new restrictions to curb the spread of the disease, decreased productivity due to shelter-in-place orders, and a slowdown in the U.S. economy and uncertain global economic outlook.

The Company believes that its financial resources, along with managing discretionary expenses, will allow it to manage the anticipated impact of COVID-19 on the Company’s business operations for the foreseeable future. The Company believes its existing cash and cash equivalents and short-term investments as of September 30, 2020 will be sufficient to meet its working capital and capital expenditures needs for at least the next 12 months.

Basis of Presentation

The accompanying unaudited condensed financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) and the requirements of the U.S. Securities and Exchange Commission (the “SEC”) for interim reporting. The Company’s functional and reporting currency is the U.S. dollar.

The condensed balance sheet as of December 31, 2019 included herein was derived from the audited financial statements as of that date. The accompanying unaudited condensed financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the Company’s financial position, results of operations, comprehensive loss, redeemable convertible preferred stock, convertible preferred stock, and stockholders’ equity (deficit), and cash flows for the periods presented.

These unaudited condensed financial statements should be read in conjunction with the Company’s financial statements and notes included in our Annual Report on Form 10-K filed with the SEC on March 11, 2020.

Initial Public Offering

The Company’s registration statement on Form S-1 (the “IPO Registration Statement”) related to its initial public offering (“IPO”) was declared effective on June 27, 2019, and the Company’s common stock began trading on the Nasdaq Global Select Market on June 28, 2019. On July 2, 2019, the Company completed its IPO, selling 15,000,000 shares of common stock at a price to the public of \$20.00 per share, plus an additional 2,250,000 shares of common stock at a price to the public of \$20.00 per share pursuant to the exercise of the underwriters’ option to purchase additional shares. The Company received aggregate net proceeds of \$315.5 million after deducting underwriting discounts and commissions of \$24.1 million and issuance costs of \$5.3 million.

Immediately prior to the completion of the IPO, the Company filed its Amended and Restated Certificate of Incorporation, which authorizes a total of 500,000,000 shares of common stock, and 50,000,000 shares of undesignated preferred stock.

The Company recorded the conversion of 114,960,357 shares of convertible preferred stock and redeemable convertible preferred stock then outstanding into 58,363,606 shares of common stock to additional paid-in capital. All outstanding preferred stock warrants converted into an aggregate of 103,563 common stock warrants.

Reverse Stock Split

On June 13, 2019 the Company effected a reverse split of shares of the Company's common stock on a 1-for-2 basis (the "Reverse Stock Split"). All issued and outstanding shares of common stock, warrants for common stock, options to purchase common stock and the related per share amounts contained in the financial statements have been retroactively adjusted to reflect this Reverse Stock Split for all periods presented. The par value and authorized shares of common stock were not adjusted as a result of the Reverse Stock Split. Additionally, the authorized, issued and outstanding shares of redeemable convertible preferred stock and convertible preferred stock and their related per share amounts, other than the conversion price per share, were not adjusted as a result of the Reverse Stock Split.

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 and material right related to the Company's tiered consignor commission plan, valuation of inventory, software development costs, stock-based compensation, redemption value of redeemable convertible preferred stock, incremental borrowing rates related to lease liability, fair value of the liability component of convertible senior notes, 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.

The Company assessed the impacts of the pandemic on the estimates and assumptions used in preparing these financial statements. In particular, the Company is monitoring its returns reserve and adjusting in response to changing consumer behaviors. Its estimates may change as new events occur and additional information is obtained; any such changes will be recognized in the financial statements. Actual results could differ from estimates, and any such differences may be material to the financial statements.

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. Before the IPO, the Company's redeemable convertible preferred stock and convertible preferred stock were considered participating securities. However, the holders of such shares did not have a contractual obligation to participate in the Company's losses.

The Company's convertible senior notes are participating securities as they give the holders the right to receive dividends if dividend or distribution 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.

Revenue Recognition

The Company generates revenue from the sale of pre-owned luxury goods through its online marketplace and retail locations.

Consignment and Service Revenue

The Company provides a service to sell pre-owned luxury goods on behalf of consignors to buyers through its online marketplace and retail locations. The Company retains a percentage of the proceeds received as payment for its consignment service, which the Company refers to as its take rate. 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 remain with the consignor until transferred to the buyer subsequent to 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 certain buyer incentives and estimated returns and cancellations. The Company recognizes a returns reserve based on historical experience, which is recorded in other accrued and current liabilities on the condensed 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 condensed balance sheets.

The Company charges shipping fees to buyers and has elected to treat shipping and handling activities performed after control transfers to the buyer as fulfillment activities. All outbound shipping and handling costs are accounted for as fulfillment costs in cost of consignment and service revenue at the time revenue is recognized.

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 the three months and nine months ended September 30, 2020 and 2019.

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. Direct revenue is recognized net of incentives and estimated returns. 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.

Incentives

Promotional incentives, which include basket promotional code discounts and other credits, may periodically be offered to consignors and buyers. These are treated as a reduction of consignment and service revenue and direct revenue. Additionally, the Company may offer site credits to buyers on current transactions to be applied towards future transactions, which are accounted as deferred revenue and included in other accrued and current liabilities on the condensed balance sheets.

Contract Liabilities

The Company's contractual liabilities consist of deferred revenue for material rights primarily related to the tiered consignor commission plan totaling \$1.3 million as of September 30, 2020 and \$3.5 million as of December 31, 2019, which are recognized as revenue using a portfolio approach based on the pattern of exercise, and certain unredeemed site credits, which were immaterial as of September 30, 2020 and December 31, 2019. Contract liabilities are recorded in other accrued and current liabilities on the condensed balance sheets and are generally expected to be recognized within one year.

Cost of Revenue

Cost of consignment and service revenue consist of shipping costs, credit card fees, packaging, customer service personnel-related costs, and website hosting services. Cost of direct revenue consists of the cost of goods sold, credit card fees, packaging, customer service personnel-related costs, and website hosting services.

Stock-based Compensation

Stock-based compensation expense related to employees is measured based on the grant-date fair value of the awards. 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. The Company estimates the fair value of stock options granted using the Black-Scholes option pricing model and accounts for forfeitures as they occur. The fair value of restricted stock units (“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.

Prior to the IPO, certain employees have sold their shares of the Company’s common stock to the Company’s existing investors. In such secondary sale transactions, the Company recorded the difference in purchase price and the fair value of such shares as compensation expense within selling, general and administrative in the statements of operations and a corresponding credit to additional paid-in capital.

Cash, Cash Equivalents

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 consist primarily of amounts invested in U.S. treasury securities.

Short-term Investments

The Company has classified and accounted for its short-term investments as available-for-sale which are carried at fair value on its condensed balance sheets. Available-for-sale securities with remaining maturities of 12 months or less are classified as short term and available-for-sale securities with remaining maturities greater than 12 months are classified as long term. The Company records any unrealized gains and losses within accumulated other comprehensive income (loss) as a component of stockholders’ equity (deficit), except for unrealized losses determined to be other than temporary, of which there were none as of September 30, 2020 and December 31, 2019.

The Company evaluates its short-term investments periodically for possible impairment. A decline in the fair value below the amortized costs of the short-term investment is considered an other-than-temporary impairment if the Company has the intent to sell the short-term investments or it is more likely than not that the Company will be required to sell the short-term investment before recovery of the entire amortized cost basis.

Inventory, Net

Inventory primarily consists of finished goods arising from goods returned after the title has transferred from the buyer to the Company in an amount equal to that paid to the consignor. The Company also periodically purchases finished goods directly from 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.

Our provisions to write down obsolete and excess inventory to net realizable value have not been material as of September 30, 2020 and December 31, 2019.

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.

Accretion of Redeemable Convertible Preferred Stock

The carrying value of the redeemable convertible preferred stock that is probable of redemption is accreted to redemption value from the date of issuance to the earliest redemption date using the effective interest method until redemption is no longer probable.

Increases to the carrying value of redeemable convertible preferred stock recognized in each period are charged to additional paid-in capital, or in the absence of additional paid-in capital, charged to accumulated deficit.

Convertible Preferred Stock Warrant Liability

The Company issued convertible preferred stock warrants in conjunction with the issuance of debt. Such warrants were recorded as other noncurrent liabilities on the condensed balance sheets at their estimated fair value because the shares underlying the warrants may obligate the Company to transfer assets to the holders at a future date under certain circumstances such as a deemed liquidation event. The warrants are subject to re-measurement at each balance sheet date and the change in fair value, if any, is included in other income (expense), net. The Company continued to remeasure these warrants until the earlier of the expiration, exercise or conversion of the convertible preferred stock warrants into common warrants, which occurred upon the completion of the IPO on July 2, 2019. In connection with the completion of the IPO, the convertible preferred stock warrants automatically converted into common stock warrants. Upon conversion of the convertible preferred stock warrants, the related convertible preferred stock warrant liability was reclassified to additional paid-in capital.

Leases

Prior to the adoption of ASC 842 on January 1, 2020

Leases are reviewed for classification as operating or capital leases. For operating leases, the Company recognizes rent on a straight-line basis over the term of the lease. The Company records the difference between cash payments and rent expense recognized as a deferred rent liability included in other accrued and current liabilities and other noncurrent liabilities on the condensed balance sheets. Incentives granted under the Company's facility leases, including allowances to fund leasehold improvements, are deferred and are recognized as adjustments to rental expense on a straight-line basis over the term of the lease.

Subsequent to the adoption of ASC 842 on January 1, 2020

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, operating lease liabilities, current portion and operating lease liabilities, net of current portion are included on the Company's condensed 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 condensed statements of operations. Variable lease payments are recorded as expense as they are incurred.

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

Convertible Senior Notes

In accordance with ASC 470, convertible debt instruments that may be settled in cash or other assets, or partially in cash, upon conversion, are separately accounted for as long-term debt and equity components (or conversion feature). The accounting applies to the Company's convertible senior notes (the "Notes") issued in June 2020. The debt component represents the Company's contractual obligation to pay principal and interest and the equity component represents 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 an identical debt instrument that it would issue excluding the convertible option 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. In accordance with ASC 470, the Company uses the interest method to amortize the debt discount to interest expense over the amortization period which is the expected life of the debt.

Capped Call Transactions

In June 2020, in connection with the issuance of its convertible senior notes, the Company entered into Capped Call Transactions (see Note 6). 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 Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted Notes, with such reduction and/or offset subject to a cap based on the cap price. The capped calls meet the conditions outlined in ASC 815-40, *Derivatives and Hedging*, to be 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.

Debt Issuance Costs

Debt issuance costs are amortized to interest expense over the estimated life of the related debt based on the effective interest method. In accordance with ASC 835, *Interest*, the Company presents debt issuance costs on the condensed balance sheet as a direct deduction from the associated debt. A portion of debt issuance costs incurred in connection with the Notes issued in June 2020 was related to the equity component and was recorded as a reduction to additional paid in capital and is not amortized to interest expense over the estimated life of the related debt.

Concentrations of Credit Risks

Financial instruments that potentially subject the Company to concentrations of credit risk consist of cash and cash equivalents, accounts receivable, and investments. At times, such amount may exceed federally-insured limits. The Company reduces credit risk by placing its cash, cash equivalents, and investments with major financial institutions within the United States.

As of September 30, 2020 and December 31, 2019, 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 three and nine months ended September 30, 2020 and 2019.

Recently Adopted Accounting Pronouncements

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. ASU 2016-02 is aimed at making leasing activities more transparent and comparable. This new standard requires substantially all leases to be recognized by lessees on their balance sheets as a right-of-use asset and corresponding lease liability, including leases currently accounted for as operating leases. The new standard is effective for non-public entities in fiscal years beginning after December 15, 2021 and interim periods in fiscal years beginning after December 15, 2022. Early adoption is permitted for all entities.

The Company is an emerging growth company "EGC", as defined in the Jumpstart Our Business Startups Act of 2012 (JOBS Act). Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The new standard is effective for the Company beginning January 1, 2022. The Company chose to early adopt the standard on January 1, 2020. The Company can choose to adopt new or revised accounting standards earlier than such time those standards apply to private companies and retain its election for the extended transition period, if early adoption is permitted for all entities.

The Company adopted and began applying the standard on January 1, 2020 using the modified retrospective approach and applied it to all existing leases as of the adoption date, which allows for a cumulative-effect adjustment to retained earnings on the adoption date. The Company will continue to present prior period amounts under ASC 840. In addition, the Company elected the package of practical expedients permitted under the transition guidance within the new standard which does not require the Company to reassess whether contracts that expired prior to the adoption date contained an embedded lease, reassess historical lease classification, or evaluate direct costs for leases that were in effect at the adoption date.

As a result of implementing this guidance, the Company recognized \$110.3 million in right of use assets as of January 1, 2020. The Company also recorded \$12.8 million in current operating lease liabilities and \$106.2 million in operating lease liabilities, net of current portion in its condensed balance sheet as of January 1, 2020.

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurement (Topic 820)*. This standard modifies disclosure requirements related to fair value measurement and is effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The Company adopted this guidance effective January 1, 2020, which did not have a material impact on its financial statements.

Recently Issued Accounting Pronouncements

As an EGC, the Company has elected to retain the ability to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that the Company (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, the Company's financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates. Because the market value of the Company's common stock held by non-affiliates exceeded \$700 million as of June 30, 2020, the Company will be deemed a "large accelerated filer" under the Exchange Act and will lose emerging growth company status as of December 31, 2020.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments—Credit Losses: Measurement of Credit Losses on Financial Instruments (Topic 326)*. The standard amends guidance on reporting credit losses for assets held at amortized cost basis and available for sale debt securities. For available for sale debt securities, credit losses will be presented as an allowance rather than as a write-down. As an EGC, the Company has not yet adopted the standard. However, the Company will be required to adopt the standard as of January 1, 2020 in its 2020 10-K. The Company does not expect the adoption of this standard to have a material impact on the operating results.

In June 2018, the FASB issued ASU 2018-07, *Compensation—Stock Compensation (Topic 718)*, which expands the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from non-employees. As an EGC, the Company has not yet adopted the standard. However, as the Company will be required to adopt the standard as of January 1, 2020 in its 2020 10-K. The Company does not expect the adoption of this standard to have a material impact on the operating results.

In August 2020, the FASB issued ASU 2020-06, *Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*, which simplifies accounting for convertible instruments, such as the Convertible Senior Notes discussed in Note 6, by removing major separation models required under current U.S. GAAP. ASU 2020-06 removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception and it also simplifies the diluted earnings per share calculation in certain areas. The ASU will be effective for annual reporting periods after December 15, 2021 and early adoption is permitted. The Company is currently evaluating the impact of this standard on its financial statements.

Note 3. Cash, Cash Equivalents and Short-term Investments

The following tables summarize the estimated value of the Company's cash, cash equivalents and short-term investments (in thousands):

	September 30, 2020			
	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value
Cash and cash equivalents:				
Cash	\$ 191,279	\$ —	\$ —	\$ 191,279
Money market fund	151,813	—	—	151,813
Total cash and cash equivalents	<u>\$ 343,092</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 343,092</u>
Short-term investments:				
U.S. Treasury securities	\$ 16,015	\$ 40	\$ —	\$ 16,055
Corporate bonds	36,034	67	—	36,101
Total short-term investments	<u>\$ 52,049</u>	<u>\$ 107</u>	<u>\$ —</u>	<u>\$ 52,156</u>

	December 31, 2019			
	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value
Cash and cash equivalents:				
Cash	\$ 111,319	\$ —	\$ —	\$ 111,319
U.S. Treasury securities	29,981	—	—	29,981
Money market fund	5,399	—	—	5,399
Corporate bonds	3,749	—	—	3,749
Agency bonds	2,000	—	—	2,000
Commercial paper	1,998	—	—	1,998
Total cash and cash equivalents	\$ 154,446	\$ —	\$ —	\$ 154,446
Short-term investments:				
U.S. Treasury securities	\$ 151,857	\$ 13	\$ —	\$ 151,870
Corporate bonds	38,149	—	(5)	38,144
Agency bonds	11,028	—	(2)	11,026
Commercial paper	7,770	1	—	7,771
Total short-term investments	\$ 208,804	\$ 14	\$ (7)	\$ 208,811

As of September 30, 2020 and December 31, 2019, the contractual maturity for the short-term investments is less than one year. For the three and nine months ended September 30, 2020 and 2019, the Company recognized no material realized gains or losses on short-term investments.

Note 4. Fair Value Measurement

Assets and liabilities recorded at fair value on a recurring basis on the condensed 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.

The following tables provide the financial instruments measured at fair value (in thousands):

	September 30, 2020			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents:				
Money market fund	\$ 151,813	\$ —	\$ —	\$ 151,813
Total cash equivalents	\$ 151,813	\$ —	\$ —	\$ 151,813
Short-term investments:				
U.S. Treasury securities	\$ 16,055	\$ —	\$ —	\$ 16,055
Corporate bonds	—	36,101	—	36,101
Total short-term investments	\$ 16,055	\$ 36,101	\$ —	\$ 52,156

	December 31, 2019			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents:				
U.S. Treasury securities	\$ 29,981	\$ —	\$ —	\$ 29,981
Money market fund	5,399	—	—	5,399
Corporate bonds	—	3,749	—	3,749
Agency bonds	—	2,000	—	2,000
Commercial paper	—	1,998	—	1,998
Total cash equivalents	<u>\$ 35,380</u>	<u>\$ 7,747</u>	<u>\$ —</u>	<u>\$ 43,127</u>
Short-term investments:				
U.S. Treasury securities	\$ 151,870	\$ —	\$ —	\$ 151,870
Corporate bonds	—	38,144	—	38,144
Agency bonds	—	11,026	—	11,026
Commercial paper	—	7,771	—	7,771
Total short-term investments	<u>\$ 151,870</u>	<u>\$ 56,941</u>	<u>\$ —</u>	<u>\$ 208,811</u>

On June 15, 2020, the Company issued 3.00% convertible senior notes due 2025 with embedded conversion features. The Company estimated the fair value of the Notes using a discounted cash flow approach to derive the value of a debt instrument using the expected cash flows and the estimated yield related to the convertible notes. The significant assumptions used in estimating the expected cash flows were the estimated market yield based on an implied yield and credit quality analysis of a term loan with similar attributes. The Company recorded approximately \$152.7 million as the fair value of the liability on June 15, 2020, with a corresponding amount recorded as a discount on the initial issuance of the Notes of approximately \$19.8 million. The debt discount was recorded to equity and is being amortized to the debt liability over the life of the Notes using the effective interest method.

As of September 30, 2020, the fair value of the Notes, which differs from its carrying value is determined by prices for the Notes observed in market trading. The market for trading of the Notes is not considered to be an active market and therefore the estimate of fair value is based on Level 2 inputs, such as interest rates. As of September 30, 2020, the estimated fair value of the Notes, which has an aggregate face value of \$172.5 million, was \$172.0 million based on the market price on the last trading day for the period.

Note 5. Condensed 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):

	September 30, 2020	December 31, 2019
Proprietary software	\$ 23,288	\$ 23,318
Furniture and equipment	25,742	21,083
Automobiles	667	718
Leasehold improvements	50,852	43,505
	<u>100,549</u>	<u>88,624</u>
Less: accumulated depreciation and amortization	(38,605)	(32,793)
Property and equipment, net	<u>\$ 61,944</u>	<u>\$ 55,831</u>

Depreciation and amortization expense on property and equipment was \$4.9 million and \$3.5 million for the three months ended September 30, 2020 and 2019, respectively, and \$13.7 million and \$9.5 million for the nine months ended September 30, 2020 and 2019, respectively. Proprietary software taken out of service during the three months ended September 30, 2020 was \$6.8 million and was fully depreciated.

Other Accrued and Current Liabilities

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

	September 30, 2020	December 31, 2019
Returns reserve	\$ 12,793	\$ 17,005
Accrued compensation	14,043	11,626
Site credit liability	5,439	5,080
Accrued sales tax and other taxes	5,446	6,132
Deferred revenue	1,960	4,767
Accrued marketing and outside services	10,297	6,830
Accrued interest	1,496	—
Other	4,293	3,127
Other accrued and current liabilities	<u>\$ 55,767</u>	<u>\$ 54,567</u>

Note 6. Debt and Convertible Preferred Stock Warrants

Convertible Senior Notes

In June 2020, the Company issued an aggregate principal of \$172.5 million of its 3.00% Convertible Senior Notes due 2025 (the “Notes”), pursuant to an indenture (the “Indenture”) between the Company and U.S. Bank National Association, as trustee, in a private offering (the “Note Offering”) to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”). The Notes issued in the Note Offering include \$22.5 million in aggregate principal amount of the Notes sold to the initial purchasers resulting from the exercise in full of their option to purchase additional Notes. The Notes will mature on June 15, 2025, unless earlier redeemed or repurchased by the Company or converted.

The Company received net proceeds from the 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 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 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 Notes is 56.2635 shares of common stock per \$1,000 principal amount of Notes (which is equivalent to an initial conversion price of approximately \$17.77 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 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 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, the Notes will be convertible only under the following circumstances:

- During any calendar quarter commencing after September 30, 2020, if, for at least 20 trading days (whether or not consecutive) during the 30 consecutive trading day period ending on, and including, the last trading day of the immediately preceding calendar quarter, the last reported sale price per share of the Company’s common stock on such trading day exceeds 130% of the applicable conversion price on such trading day;
- 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, 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 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 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 ours) 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 notes 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 Notes then outstanding to become due and payable immediately.

In accounting for the issuance of the Notes, the Company separately accounted for the liability and equity components of the Notes by allocating the proceeds between the liability component and the embedded conversion options, or equity component, due to Company's ability to settle the Notes in cash, its common stock, or a combination of cash and common stock at Company's option. The allocation was done by first estimating the fair value of the liability component and the residual value was assigned to the equity component. The value of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated convertible feature. The allocation was performed in a manner that reflected the Company's non-convertible debt borrowing rate for similar debt. The interest rate of 5.67% was used to compute the initial fair value of the liability component of \$152.7 million. The equity component is not remeasured as long as it continues to meet the conditions for equity classification.

The net carrying amount of the liability component of the Notes was as follows:

	September 30, 2020
Principal	\$ 172,500
Unamortized debt discount	(18,814)
Unamortized debt issuance costs	(5,629)
Net carrying amount	<u>\$ 148,057</u>

The net carrying amount of the equity component of the Notes was as follows:

	September 30, 2020
Proceeds allocated to the conversion options (debt discount)	\$ 19,787
Issuance costs	(767)
Net carrying amount	<u>\$ 19,020</u>

In connection with the issuance of the Notes, the Company incurred approximately \$6.7 million of debt issuance costs, which primarily consisted of initial purchasers' discounts and legal and other professional fees. 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 totaling approximately \$0.8 million was recorded as a reduction to additional paid-in capital. The portion of these costs allocated to the liability component totaling approximately \$5.9 million was recorded as a reduction in the carrying value of the debt on the condensed balance sheet and is amortized to interest expense using the effective interest method over the expected life of the Notes or

approximately its five-year term. The effective interest rate on the liability component of the Notes for the period from the date of issuance through September 30, 2020 was 6.4%.

The following table sets forth the amounts recorded in interest expense related to the Notes from the date of issuance through September 30, 2020:

	Amount
Contractual interest expense	\$ 1,496
Amortization of debt discount	974
Amortization of debt issuance costs	294
Total interest and amortization expense	<u>\$ 2,764</u>

Future minimum payments under the Notes as of September 30, 2020, are as follows:

Fiscal Year	Amount
Remainder of 2020	\$ 2,574
2021	5,175
2022	5,175
2023	5,175
2024	5,175
2025	175,088
Total future payments	<u>198,362</u>
Less amounts representing interest	(25,862)
Total principal amount	<u>\$ 172,500</u>

Capped Call Transactions with Respect to the Notes

In June 2020, in connection with the issuance of the 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 (the "Purchased Calls") with certain financial institutions (collectively, the "Counterparties"). The Company paid an aggregate amount of approximately \$22.5 million to the Counterparties for the Purchased Calls. The Purchased Calls cover, subject to anti-dilution adjustments that are intended to be substantially identical to those in the Notes, approximately 9,705,454 shares of the Company's common stock at a strike price that corresponds to the initial conversion price of the Notes, also subject to adjustment, and are exercisable upon conversion of the Notes. The Purchased Call 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 Purchase Calls are subject to certain specified additional disruption events that may give rise to a termination of the Purchased Calls, including nationalization, insolvency or delisting, changes in law, failures to deliver, insolvency filings and hedging disruptions. The Purchased Calls settle in components commencing on April 16, 2025 with the last component scheduled to expire on June 12, 2025.

The cap price of the capped call transactions 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 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 Purchased Calls 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 during the three months ended June 30, 2020 related to the premium payments for the Capped Call Transactions.

Term Loans

In 2013, the Company entered into an agreement to obtain a term loan facility (“Term Loan Facility”) in the amount of \$5.0 million for general corporate purposes and working capital expenditures. In 2014, 2015 and 2016, the Company amended its Term Loan Facility to increase the amount borrowed under the facility by \$11.6 million. The Term Loan Facility is secured by liens on substantially all of the Company’s present and future assets.

The Term Loan Facility includes affirmative, negative and financial covenants that restrict the Company’s ability to, among other things, incur additional indebtedness, make investments, sell or otherwise dispose of assets, pay dividends or repurchase stock. The Term Loan Facility’s financial covenants required the Company to achieve at least 80% of its forecasted gross revenue and a liquidity ratio on a monthly basis.

In 2017, the Company executed the eighth amendment (“Eight Amendment”) to the Term Loan Facility. The Eighth Amendment refinanced the \$15.0 million repayment schedule to be two term loans, which included a \$7.5 million interest only term loan with a maturity date of January 31, 2019 (“Term Loan I”), and the remaining \$7.5 million under the existing Term Loan Facility with a maturity date of January 1, 2020 (“Term Loan II”) (together the “Term Loans”).

In 2018, the Company entered into the ninth, tenth, eleventh, and twelfth amendment (“Ninth Amendment,” “Tenth Amendment,” “Eleventh Amendment” and “Twelfth Amendment”) to the existing Term Loans. The Ninth Amendment removed the liquidity ratio covenant, amended Term Loan I to be due in 30 equal monthly installments, plus all accrued interest, beginning July 31, 2018, increased the variable annual interest rate from 0.10% above the prime rate to 0.35% above the prime rate and extended the maturity date of Term Loan I to January 31, 2021.

The Eighth Amendment and Ninth Amendment required the Company to pay a combined success fee of \$0.3 million upon (1) any sale or licensing of all or substantially all of the Company’s assets, (2) any change in control of the Company, or (3) an initial public offering of the Company’s equity securities. The Ninth Amendment also required the Company to pay an additional success fee of \$0.1 million upon the sale or issuance of the Company’s equity securities or subordinated debt securities for net cash proceeds of at least \$50.0 million on or prior to June 30, 2018. The Company paid the \$0.1 million success fee upon the Series G convertible preferred stock financing in June 2018 and the \$0.3 million success fee related to its IPO in July 2019.

The Tenth and Twelfth Amendments adjusted and waived certain covenant violations which were subsequently amended and met. The Eleventh Amendment provided an additional letter of credit of \$1.5 million for corporate credit cards with a maturity date of August 1, 2019.

On July 26, 2019 the Company fully repaid the principal of its Term Loans in the amount of \$6.5 million. With the repayment of the term loans, the Company was no longer subject to debt covenants as of September 30, 2020. Interest expense related to the Term Loans was zero and immaterial for the three months ended September 30, 2020 and 2019, respectively. During the nine months ended September 30, 2020 and 2019, the Company recorded interest expense related to the Term Loans of zero and \$0.6 million, respectively.

Warrants Issued with Term Loan Facility

During the period from 2013 to 2016, in connection with the Term Loan Facility, the Company issued convertible preferred stock warrants, which included warrants to purchase 131,652 shares of its Series B convertible preferred stock with an exercise price of \$1.03 per share, 6,868 shares of its Series C convertible preferred stock with an exercise price of \$2.18 per share, 43,010 shares of its Series D convertible preferred stock with an exercise price of \$2.79 per share and 25,597 shares of its Series E convertible preferred stock with an exercise price of \$2.93 per share (together the “Convertible Preferred Stock Warrants”). The Convertible Preferred Stock Warrants were exercisable from the date of issuance and have a 10-year term. The initial estimated fair value of the Convertible Preferred Stock Warrants was recorded as convertible preferred stock warrant liability with an offset to the debt discount associated with the Term Loan Facility. The debt discount is amortized to interest expense over the repayment period of the loan using the effective-interest method. All convertible Preferred Stock Warrants were converted to common stock warrants and exercised through net share settlement in July 2019. No warrants were outstanding as of September 30, 2020.

Note 7. Convertible Preferred Stock and Redeemable Convertible Preferred Stock

In March 2019, the Company sold 6,350,345 shares of Series H redeemable convertible preferred stock and 3,831,766 shares of Series H convertible preferred stock at \$6.8748 per share to new and existing investors for aggregate gross proceeds of \$70.0 million. At March 31, 2019, convertible preferred stock and redeemable convertible preferred stock consisted of the following (in thousands, except share amounts):

	March 31, 2019			
	Shares Authorized	Shares Issued and Outstanding	Net Carrying Value	Aggregate Liquidation Preference
Series A	18,960,000	18,941,619	\$ 9,161	\$ 9,217
Series B	13,784,443	13,652,791	13,774	14,000
Series C	9,335,659	9,328,791	20,289	20,374
Series D	14,367,652	14,324,642	39,886	40,000
Series E	13,612,543	13,586,946	39,880	40,000
Series F	12,956,724	12,956,724	56,154	58,397
Series G	21,986,733	21,986,733	118,325	123,881
Series H	10,182,113	10,182,111	69,937	70,138
Total	<u>115,185,867</u>	<u>114,960,357</u>	<u>\$ 367,406</u>	<u>\$ 376,007</u>

On July 2, 2019 and immediately prior to the completion of the IPO, all outstanding shares of convertible preferred stock and redeemable convertible preferred stock then outstanding converted into 58,363,606 shares of common stock. The carrying value of the redeemable convertible preferred stock was accreted to redemption value from the date of issuance to the earliest redemption date using the effective interest method. As of March 31, 2019, the Company determined that redemption of the redeemable convertible preferred stock was not probable and as such, did not record any additional accretion after March 31, 2019.

Note 8. Share-based Compensation Plans

2011 Equity Incentive Plan

In 2011, the Company adopted the Equity Incentive Plan (2011 Plan) authorizing the granting of incentive stock options (ISOs) and non-statutory stock options (NSOs) to eligible participants for up to 12,987,255 shares of common stock. Under the 2011 Plan, incentive stock options and non-statutory stock options are to be granted at an exercise price that is no less than 100% of the fair value of the stock at the date of grant. Options generally vest over four years and are exercisable for up to 10 years after the date of grant. Incentive stock options granted to stockholders who own more than 10% of the outstanding stock of the Company at the time of grant must be issued at an exercise price no less than 110% of the fair value of the stock on the date of grant. The 2011 Plan has been replaced by the Company's 2019 Plan as defined below with respect to future equity awards.

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. On August 4, 2020, the Company's board of directors approved an increase of shares available for grant under the 2019 Plan by 4,293,616 shares.

Employee Stock Purchase Plan

In connection with the Company's initial public offering, the Company adopted the Employee Stock Purchase Plan (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 plan is considered compensatory and, as such, the purchase discount from market price purchased by employees will be recorded as compensation expense. 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. On August 4, 2020, the Company's board of directors approved an increase in the shares available for grant under the ESPP by 858,723 shares. The initial offering period runs from May 15, 2020 to November 14, 2020. There were no shares purchased by employees under the ESPP during the three months and nine months ended September 30, 2020 and 2019. The Company selected the Black-Scholes option-pricing model as the method for determining the estimated fair value for the Company's 2019 ESPP. As of September 30, 2020, total unrecognized compensation costs related to the 2019 ESPP was \$0.1 million which will be amortized over a weighted average period of 0.1 years.

Stock-based Compensation

Total stock-based compensation expense, excluding compensation expense related to stock sales by current and former employees, by function was as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Marketing	\$ 705	\$ 145	\$ 1,228	\$ 287
Operations and technology	2,892	1,098	7,222	2,064
Selling, general and administrative	3,775	1,277	8,461	2,565
Total	\$ 7,372	\$ 2,520	\$ 16,911	\$ 4,916

The amounts presented in the above table exclude compensation expense related to the stock sales by current and former employees. In March 2019, executives of the Company sold an aggregate of 382,477 shares of the Company's common stock at a price of \$12.72 per share for an aggregate amount of \$4.9 million to certain of the Company's existing investors. The Company determined that the purchase price was in excess of the fair value of such shares. As a result, during the three months ended March 31, 2019, the Company recorded the excess of the purchase price above fair value of \$0.8 million as compensation expense within selling, general and administrative in the statement of operations and a corresponding credit to additional paid-in capital.

Note 9. Leases

The Company leases its corporate offices, retail spaces and merchandising and fulfillment facilities under various noncancelable operating leases with terms ranging from one year to fourteen years.

The Company adopted ASU 2016-02 on January 1, 2020. At adoption, the Company measured the lease liability at the present value of the future lease payments as of January 1, 2020, using the Company's incremental borrowing rate for each lease. The Company derived the incremental borrowing rate by developing its own synthetic credit rating, corresponding yield curve, and the terms of each lease at the adoption date. The corresponding right-of-use asset is valued at the amount of the lease liability adjusted for the remaining balance of unamortized lease incentives, prepaid rent and deferred rent as of the adoption date.

The Company recorded operating lease costs of \$6.2 million and \$18.4 million for the three and nine months ended September 30, 2020, respectively. The Company also incurred \$1.1 million and \$3.1 million, respectively, of variable lease costs for the three and nine months ended September 30, 2020. The variable lease cost is comprised primarily of the Company's proportionate share of operating expenses, property taxes and insurance. Rent expense under ASC 840 was \$4.8 million and \$13.4 million for the three and nine months ended September 30, 2019, respectively.

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

Fiscal Year	Amount
Remainder of 2020	\$ 5,054
2021	24,205
2022	21,548
2023	20,168
2024	19,759
Thereafter	71,924
Total future minimum payments	\$ 162,658
Less: Imputed interest	(35,715)
Present value of operating lease liabilities	\$ 126,943

As of December 31, 2019, the Company's future minimum lease payments under the noncancelable operating leases were as follows (in thousands):

<u>Year ending December 31,</u>	<u>Amount</u>
2020	\$ 20,530
2021	22,059
2022	19,610
2023	18,307
2024	17,957
Thereafter	67,208
Total future minimum payments	\$ 165,671

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

	<u>Nine Months Ended September 30, 2020</u>
Operating cash flows used for operating leases	\$ 6,113
Operating lease assets obtained in exchange for operating lease liabilities	\$ 16,671

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

	<u>September 30, 2020</u>
Weighted average remaining lease term	7.3 years
Weighted average discount rate	7.0%

The Company has leases for certain vehicles that are classified as finance leases. The finance lease right-of-use asset and finance lease liabilities for these vehicle leases are immaterial as of September 30, 2020.

Note 10. Commitments and Contingencies

Noncancelable Purchase Commitments

The Company has commitments for cloud services and other services in the ordinary course of business with varying expiration terms through 2022. As of September 30, 2020, there were no material changes to the Company's noncancelable purchase commitments disclosed in the financial statements in the Annual Report on Form 10-K.

Other Commitments

In January 2018, the Company and the University of Arizona Foundation entered into an endowment agreement (the "Endowment Agreement") to establish a fund (the "Fund") to create and grow a gemology degree program in the Department of Geosciences at the University of Arizona (the "University"). The Company agreed to donate a total of \$2.0 million, payable in four annual installments of \$0.5 million starting in January 2018.

There are no conditions that the University must meet to receive the funds nor any penalties to the University for nonperformance. The Endowment Agreement directs the use of the funds but contains no binding restrictions on the use of the funds. On the execution of the Endowment Agreement, the Company recognized \$1.7 million expense for the estimated fair value of the grant, using a discount rate of 10%, to selling, general and administrative expenses in the statements of operations. The Company recognized a corresponding liability for the remaining installment payments and will recognize accretion of the liability as interest expense over the remaining term of the Endowment Agreement.

Interest expense related to the accretion of the grant liability was not material in the three and nine months ended September 30, 2020 and 2019. As of September 30, 2020, the outstanding liability was \$0.5 million, which is included in other accrued and current liabilities. As of December 31, 2019, the outstanding liability was \$0.9 million, of which \$0.5 million is included in other accrued and current liabilities on the condensed balance sheets and \$0.4 million is included in other noncurrent liabilities on the condensed balance sheets.

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. (“Chanel”) filed a lawsuit against the Company 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. Chanel alleges, among other things, that the Company has misrepresented certain counterfeit Chanel products as authentic Chanel products, that the Company’s resale of Chanel products confuses consumers into believing that Chanel is affiliated with the Company and involved in authenticating consignors’ goods and that only Chanel is capable of authenticating second-hand Chanel goods. The Court issued an Opinion & Order on March 30, 2020 denying in part and granting in part the Company’s motion to dismiss. The Company filed its answer and affirmative defenses on May 29, 2020. Chanel’s claims are now in the discovery phase. On October 30, 2020, the Company sought leave to file a motion to amend its answer to add counterclaims against Chanel alleging anticompetitive conduct in violation of the federal and state antitrust laws as well as tortious interference. On the same day, the court ordered that the Company would be permitted to file its motion or, by stipulation with Chanel, its amended answer. This litigation is in its early stages and the final outcome, including the Company’s liability, if any, with respect to Chanel’s claims, is uncertain. Chanel could in the future assert additional trademark and advertising or other claims against the Company in this or other proceedings. 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.

On September 10, 2019, a purported shareholder class action complaint was filed against the Company, its officers and directors and the underwriters of its IPO in the Superior Court of the State of California in the County of San Mateo. Three additional purported class actions, also alleging claims arising from the IPO were subsequently filed in Marin County and San Francisco County Superior Courts. The San Mateo case was voluntarily dismissed, refiled in Marin County Superior Court and consolidated with the cases there. On January 10, 2020, the Marin County plaintiffs filed a consolidated amended complaint. The plaintiffs in the San Francisco Superior Court case have filed a request for dismissal. Separately an additional purported class action was filed in the United States District Court for the Northern District of California on November 25, 2019. On February 12, 2020, a lead plaintiff was appointed in the federal action and an Amended Consolidated Complaint was filed on March 31, 2020. Defendants’ filed a demurrer and motion to strike in the state court action on March 13, 2020 and filed a motion to stay the proceedings in favor of the federal action on May 1, 2020. On August 4, 2020, the court granted defendants’ motion to stay the state court action and deferred ruling on the demurrer and motion to strike pending the outcome of the federal court action. A motion to dismiss the federal court action was filed on May 15, 2020, which motion remains pending. The state and federal complaints each allege claims under the Securities Act of 1933 on behalf of a purported class of shareholders who acquired the Company’s stock pursuant to or traceable to the registration statement for the Company’s IPO. The federal complaint also alleges claims under the Securities Exchange Act of 1934 on behalf of a purported class of shareholders who purchased the Company’s stock from June 27, 2019 through November 20, 2019. The complaints allege, among other things, that the defendants violated federal securities laws by issuing false or misleading statements in the registration statement regarding certain of the Company’s key financial and operating metrics, and related to the Company’s authentication processes. The complaints seek, among other things, damages and interest, rescission, and attorneys’ fees and costs. On September 10, 2020, a purported shareholder filed a putative derivative action in the United States District Court for the District of Delaware. The derivative complaint alleges factual allegations largely tracking the above referenced lawsuits. The derivative case has been stayed pending a ruling on the motion to dismiss in the federal securities case. While the Company intends to vigorously defend against the litigation described above, the cases are at a very early stage and there can be no assurance that the Company will be successful in its defense. For this same reason, the Company cannot currently estimate the loss or the 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 11. Income Taxes

The quarterly income tax provision reflects an estimate of the corresponding quarter's state taxes in the United States. The Company has reviewed all positive and negative evidence associated with the realizability of its deferred tax assets, and continues to maintain a full valuation allowance as of September 30, 2020.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act") was signed into law. The Act provides various forms of income tax relief to companies including additional carryback opportunities for net operating losses (NOLs), and the potential offset of 100% of taxable income with NOLs (as opposed to only 80% before the Act's enactment). The Act also temporarily increases the interest deductibility threshold from 30% to 50% of adjusted taxable income. Further, some companies can immediately expense qualified improvement property, instead of depreciating those costs over 39 years, for income tax purposes. Additionally, if improvement property is capitalized, the life to be used for amortization has been reduced from 39 years to 15 years.

Given the Company's tax attributes, specifically large net operating loss carryforwards, the Act and related provisions do not create immediate material tax relief. However, the Company continues to monitor the various tax provisions.

Note 12. Net Loss Per Share

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):

	<u>Three Months Ended September 30,</u>		<u>Nine Months Ended September 30,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
Numerator				
Net loss attributable to common stockholders	<u>\$ (43,305)</u>	<u>\$ (25,274)</u>	<u>\$ (124,489)</u>	<u>\$ (78,726)</u>
Denominator				
Weighted-average common shares outstanding used to calculate net loss per share attributable to common stockholders, basic and diluted	<u>87,869,321</u>	<u>84,634,956</u>	<u>87,176,677</u>	<u>34,556,485</u>
Net loss per share attributable to common stockholders, basic and diluted	<u>\$ (0.49)</u>	<u>\$ (0.30)</u>	<u>\$ (1.43)</u>	<u>\$ (2.28)</u>

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, except the Convertible Senior Notes):

	<u>September 30,</u>	
	<u>2020</u>	<u>2019</u>
Options to purchase common stock	6,444,997	9,417,490
Restricted stock units	4,625,248	551,549
Estimated shares issuable under the Employee Stock Purchase Plan	93,853	—
Assumed conversion of the Convertible Senior Notes	9,705,454	—
Total	<u>20,869,552</u>	<u>9,969,039</u>

The Notes issued in June 2020 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 income per share is computed using the treasury stock method.

Note 13. Subsequent Events

Leases

In November 2020, the Company signed a new noncancelable operating lease for its fifth warehouse in Arizona. The lease term is through May 31, 2031 with an option to extend for up to ten years. The minimum lease payments for the initial lease term total \$31.0 million.

Item 2. 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 condensed financial statements and related notes thereto included elsewhere in this Quarterly Report on Form 10-Q and our audited financial statements and related notes and our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 11, 2020. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. See the discussion under “Note Regarding Forward-Looking Statements” elsewhere in this Quarterly Report on Form 10-Q for more information. 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 particularly in the section titled “Risk Factors” and elsewhere in this Quarterly Report on Form 10-Q. Our historical results are not necessarily indicative of the results that may be expected for any period in the future, and our interim results are not necessarily indicative of the results we expect for the full calendar year or any other period.

Overview

We are the world’s largest online marketplace for authenticated, consigned 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. Over the past nine years, we have cultivated a loyal and engaged consignor and buyer base through continuous investment in our technology platform, logistics infrastructure and people. We aggregate and curate unique, pre-owned luxury supply that is exclusive to The RealReal across multiple categories, including women’s, men’s, kids’, jewelry and watches, and home and art. 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 provide White Glove in-home consultation and pickup, drop off at one of our ten luxury consignment offices (“LCOs”) four of which are located in our retail stores, or complimentary shipping directly to our merchandising and fulfillment facilities. We leverage our proprietary transactional database and market insights 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, individual stock keeping unit (“single-SKU”) inventory model and merchandising operations.

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

- **Consignment and service revenue.** When we sell goods through our online marketplace 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 the three months ended September 30, 2020 and 2019, our overall take rate on consigned goods was 35.4% and 36.8%, respectively. In the nine months ended September 30, 2020 and 2019, our overall take rate on consigned goods was 35.9% and 36.3%, respectively. Additionally, we earn revenue from shipping fees and 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.** In certain cases, such as when we accept out of policy returns from buyers, we take ownership of goods and retain 100% of the proceeds when the goods subsequently resell through our online marketplace.

We generate revenue from orders processed through our website, mobile app, LCOs, and four retail stores located in New York, Los Angeles, and San Francisco. Our omni-channel experience enables buyers to purchase anytime and anywhere. We have a global base of more than 19.3 million members as of September 30, 2020. 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.

Our gross merchandise value (“GMV”) decreased by 3% to \$245.4 million from \$252.8 million in the three months ended September 30, 2020 and 2019, respectively. Our GMV decreased by 3% to \$685.7 million from \$705.4 million in the nine months ended September 30, 2020 and 2019, respectively. However, NMV increased slightly as returns decreased year over year primarily due to a higher mix of non-returnable items, including handbags and certain promoted items. Our total revenue decreased by 4% to \$78.1 million from \$81.5 million in the three months ended September 30, 2020 and 2019, respectively. Our total revenue decreased by 5% to \$213.7 million and \$224.3 million in the nine months ended September 30, 2020 and 2019, respectively. The decrease in revenue for both periods was driven primarily by the decreases in GMV and take rate. In the three months ended September 30, 2020 and 2019, our gross profit was \$49.8 million and \$52.2 million, respectively, representing a decrease of 5%. In the nine months ended September 30, 2020 and 2019, our gross profit was \$134.8 million and \$140.7 million, respectively, representing a decrease of 4%. See “—Impact of COVID-19 on our Business” below.

Impact of COVID-19 on Our Business

In March 2020, the World Health Organization categorized the outbreak of a novel coronavirus (COVID-19) as a pandemic. The COVID-19 pandemic has adversely impacted our business operations and results of operations in 2020 as described in more detail under “Comparison of the Three and Nine months ended September 30, 2020 and 2019” below. Operations in the Company’s fulfillment facilities were initially limited in accordance with shelter-in-place orders resulting in operations below full capacity. However, operations capacity was no longer limited by restrictions related to COVID-19 during the three months ended September 30, 2020. Additionally, our retail stores and luxury consignment offices were temporarily closed for varying periods of time, but have been open during the entirety of three months ended September 30, 2020. In-person white glove consignment appointments were temporarily suspended and augmented with virtual appointments but remain an option for our consignor base. GMV was negatively impacted due to adverse impacts of the COVID-19 pandemic on our business, but GMV trends have improved significantly. In March 2020, when many shelter-in-place directives went into effect, and continuing through mid-April 2020, GMV declined approximately 40%-45% year over year. In the three months ended September 30, 2020, GMV declined approximately 3% year over year. With the GMV recovery, we continued to invest in marketing and resumed hiring during the three months ended September 30, 2020.

We expect the evolving COVID-19 pandemic to continue to have a materially adverse impact on our business operations and results of operations, including our net revenues, earnings and cash flows, including as a result of further spread of the disease, potential disruption in our fulfillment centers, further temporary closures of retail stores and luxury consignment offices, disruption to our supply acquisition, decreased productivity due to shelter-in-place orders, changes in buyer and consignor behaviors, and a slowdown in the U.S. economy and uncertain global economic outlook. It may result in changes in customer behaviors, including a potential reduction in consumer discretionary spending on our e-commerce site and in our retail stores. Travel and border closures do not significantly affect our business as we operate a U.S. focused marketplace.

We have taken actions to help ensure that our business will continue uninterrupted through the COVID-19 pandemic, including enforcing social distancing in our fulfillment centers, enabling virtual consignment appointments, implementing curbside pick-up of products from our consignors, and implementing steps to enable employees to work remotely. The impact of these actions on our workforce are difficult to assess. However, we do not believe that these remote work arrangements have adversely affected our ability to maintain our financial reporting systems, internal control over financial reporting and disclosure controls and procedures. In addition, we do not expect to encounter any significant challenges to our ability to maintain these systems and controls.

We also do not expect the pandemic to affect the assets on our condensed balance sheet and our ability to timely account for those assets. We evaluate our estimates and assumptions used in preparing our financial statements on an ongoing basis. We do not anticipate any material impairments with respect to long-lived assets, right-of-use assets or investments, or changes in accounting judgments that would have a material impact on our financial statements.

Other Factors Affecting Our Performance

Other key business and marketplace factors, independent of the health and economic impact of the COVID-19 pandemic, 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.

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 within the home, including women’s, men’s, kids’, jewelry and watches, and home and art. We leverage our proprietary transactional database and market insights based on more than 15.8 million item sales since inception to deliver consignors optimal pricing and rapid sell-through.

Our growth has been driven in significant part by repeat sales by existing consignors concurrent with growth of our consignor base. The percentage of GMV from repeat consignors in the three and nine months ended September 30, 2020 was 83% as compared to 81% for both the three and nine months ended September 30, 2019.

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 high buyer satisfaction, as evidenced by our buyer net promoter score of 71 in 2019.

We believe there is substantial opportunity to grow our business by having buyers also become consignors and vice versa. As of September 30, 2020, 13% of our buyers had become consignors and 55% of our consignors had become buyers. If we fail to continue to attract and retain our buyer base to our online marketplace, our operating results would be adversely affected.

Scaling operations and technology. To support the future growth of our business, we plan to expand our capacity through investments in physical infrastructure, talent and technology over the long term. We principally conduct our intake, authentication, merchandising and fulfillment operations in our four leased merchandising and fulfillment facilities located in California and New Jersey comprising an aggregate of approximately 1 million square feet of space. The market for real estate to support operations centers such as ours is competitive, and we plan to continue to secure and efficiently bring online additional capacity to support future growth. The opening of our retail stores in New York in late 2017 and Los Angeles in mid-2018 significantly contributed to the increase in operations and technology expense in 2018. We opened a second retail store in New York in May 2019. We opened our fourth retail store in San Francisco in March 2020, and we intend to open additional retail stores in the future. After postponing the opening due to the negative impacts of COVID-19 to our business, our Chicago retail store opened in October 2020. 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 invest substantially in technology to automate our operations and support growth. We continue to strategically invest in technology despite the difficult operating environment resulting from COVID-19, as innovation positions us to scale and support growth once the economy normalizes.

Seasonality. Before the COVID-19 pandemic, 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. We also incur higher operating expenses in the last four months of the year as we increase advertising spend to attract consignors and buyers and increase headcount in sales and operations to handle the higher volumes. However, the adverse impacts of COVID-19 on our business has made it difficult to evaluate the impact of seasonality in our business. While we expect supply will continue to be negatively impacted by COVID-19, we believe its growth will accelerate in the fourth quarter. Additionally, we expect higher advertising spend and demand increases 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 the three and nine months ended September 30, 2020 and 2019.

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
	(In thousands, except AOV and percentages)			
GMV	\$ 245,355	\$ 252,766	\$ 685,732	\$ 705,358
NMV (1)	\$ 189,059	\$ 186,617	\$ 513,481	\$ 511,937
Number of Orders	550	577	1,562	1,581
Take Rate	35.4%	36.8%	35.9%	36.3%
Active Buyers	617	543	617	543
AOV	\$ 446	\$ 438	\$ 439	\$ 446

(1) The basis for calculation of NMV has been consistently applied for all reporting periods, however the definition of the NMV operating metric was modified to clarify the manner in which it was determined. The modification of the definition does not materially change the reported operating metric.

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. GMV includes amounts paid for both consigned goods and our inventory net of platform-wide discounts and excludes the effect of certain buyer incentives, shipping fees and sales tax. Buyer incentives consist of coupons or promotions that offer credits in connection with purchases on our platform. We believe this is the primary measure of the scale and growth of our online marketplace and the 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 and Service Revenue.

NMV

NMV, or net merchandise value, represents the value of sales from both consigned goods and our inventory net of platform-wide discounts less product returns and order cancellations and does not take into account the effect of certain 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.

Number of Orders

Number of orders means the total number of orders placed across our online marketplace 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 GAAP consignment and service revenue, excluding certain buyer incentives, shipping and subscription service revenue, and other adjustments. The denominator is equal to the numerator plus consignor commissions. 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. See the subsection titled “—Components of our Operating Results—Revenue” for further discussion of consignment and service revenue and 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. Our take rate structure is a tiered commission structure for consignors, where the more they sell the higher percent commission they earn. Consignors start at a 55% commission (which equals a 45% take rate for us) and can earn up to a 70% commission. This tiered structure applies unless it is overridden by a commission exception.

Commission exceptions are used to incentivize our sales team, optimize supply and drive take rate changes. Examples of current commission exceptions include a flat 40% commission on all items under \$145, and an 85% commission on watches over \$2,500. 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, excluding shipping fees and sales taxes. Our focus on luxury goods across multiple categories drives a consistently high AOV. Our AOV reflects both the average price of items sold as well as the number of items per order. Our high AOV is a key driver of our operating leverage.

Adjusted EBITDA

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 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 do not believe are indicative of our core operating performance. Adjusted EBITDA is a non-GAAP measure. The following table provides a reconciliation of net loss to Adjusted EBITDA (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Adjusted EBITDA Reconciliation:				
Net loss	\$ (43,305)	\$ (25,274)	\$ (124,489)	\$ (75,371)
Depreciation and amortization	4,917	3,545	13,673	9,537
Stock-based compensation	7,372	2,520	16,911	4,916
Legal settlement	—	—	1,110	—
Restructuring charges	72	—	514	—
Compensation expense related to stock sales by current and former employees	—	—	—	819
Interest income	(448)	(1,902)	(2,350)	(2,918)
Interest expense	2,406	60	2,810	572
Other expense, net	—	119	89	2,106
Provision (benefit) for income taxes	(17)	(8)	38	51
Adjusted EBITDA	\$ (29,003)	\$ (20,940)	\$ (91,694)	\$ (60,288)

Components of our Operating Results

Revenue

Our revenue is comprised of consignment and service revenue and direct revenue.

- *Consignment and service revenue.* We generate the substantial majority of our revenue from the sale of pre-owned luxury goods through our online marketplace 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 and certain buyer incentives. Additionally, we generate revenue from shipping fees we charge to buyers. We also generate service 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 returns from buyers after title has transferred for returned goods from the consignor to the buyer. As such, growth in direct sales is generally a byproduct of growth in our consignment business. We recognize direct revenue based on the gross purchase price paid by buyers, net of allowances for product returns and certain buyer incentives.

Cost of Revenue

Cost of consignment and services revenue consists of shipping costs, credit card fees, packaging, customer service personnel-related costs, and website hosting services. Cost of direct revenue consists of the cost of goods sold, credit card fees, packaging, customer service personnel-related costs, and website hosting services.

Marketing

Marketing expense comprises the cost of acquiring new 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.

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, 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 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. While we have implemented cost saving measures to address the challenges from the COVID-19 pandemic, we expect operations and technology expense to increase over the long term to support our growth, including bringing on additional merchandising and fulfillment facilities and continuing to invest in automation and other technology improvements to support and drive efficiency in our operations. 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

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.

Provision for Income Tax

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. We expect to maintain this full valuation allowance for the foreseeable future.

Results of Operations

The following tables set forth our results of operations (in thousands) and such data as a percentage of revenue for the periods presented:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenue:				
Consignment and service revenue	\$ 64,407	\$ 69,245	\$ 176,570	\$ 184,890
Direct revenue	13,645	12,271	37,111	39,417
Total revenue	78,052	81,516	213,681	224,307
Cost of revenue:				
Cost of consignment and service revenue	16,304	19,446	47,253	52,592
Cost of direct revenue	11,964	9,842	31,678	31,056
Total cost of revenue	28,268	29,288	78,931	83,648
Gross profit	49,784	52,228	134,750	140,659
Operating expenses:				
Marketing	15,186	13,390	37,747	36,838
Operations and technology	40,578	37,407	117,858	103,271
Selling, general and administrative	35,384	28,436	103,047	76,110
Total operating expenses	91,148	79,233	258,652	216,219
Loss from operations	(41,364)	(27,005)	(123,902)	(75,560)
Interest income	448	1,902	2,350	2,918
Interest expense	(2,406)	(60)	(2,810)	(572)
Other income (expense), net	—	(119)	(89)	(2,106)
Loss before provision for income taxes	(43,322)	(25,282)	(124,451)	(75,320)
Provision (benefit) for income taxes	(17)	(8)	38	51
Net loss	\$ (43,305)	\$ (25,274)	\$ (124,489)	\$ (75,371)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenue:				
Consignment and service revenue	82.5%	84.9%	82.6%	82.4%
Direct revenue	17.5	15.1	17.4	17.6
Total revenue	100.0	100.0	100.0	100.0
Cost of revenue:				
Cost of consignment and service revenue	20.9	23.9	22.1	23.4
Cost of direct revenue	15.3	12.0	14.8	13.9
Total cost of revenue	36.2	35.9	36.9	37.3
Gross profit	63.8	64.1	63.1	62.7
Operating expenses:				
Marketing	19.5	16.4	17.7	16.4
Operations and technology	52.0	45.9	55.2	46.1
Selling, general and administrative	45.3	34.9	48.2	33.9
Total operating expenses	116.8	97.2	121.1	96.4
Loss from operations	(53.0)	(33.1)	(58.0)	(33.7)
Interest income	0.6	2.3	1.1	1.3
Interest expense	(3.1)	(0.1)	(1.3)	(0.3)
Other income (expense), net	—	(0.1)	(0.1)	(0.9)
Loss before provision for income taxes	(55.5)	(31.0)	(58.3)	(33.6)
Provision (benefit) for income taxes	—	—	—	—
Net loss	(55.5)%	(31.0)%	(58.3)%	(33.6)%

Comparison of the Three and Nine Months Ended September 30, 2020 and 2019

Consignment and Service Revenue

Consignment and service revenue decreased by \$4.8 million, or 7%, in the three months ended September 30, 2020 compared to the three months ended September 30, 2019. The decrease in revenue was driven primarily by the decreases in GMV and take rate. Supply was negatively impacted in New York City and Los Angeles, our largest markets. Decreased traffic at our retail stores and LCOs also negatively impacted consignment levels during the three months ended September 30, 2020.

Consignment and service revenue decreased by \$8.3 million, or 4% in the nine months ended September 30, 2020 compared to the nine months ended September 30, 2019. At the beginning the pandemic, limited operations in our fulfillment facilities and the temporary closures of our luxury consignment offices and retail stores in accordance with shelter-in-place directives significantly impacted GMV. Both supply and demand were adversely impacted by limited operations in our fulfillment facilities, the temporary closures of our luxury consignment offices and retail stores, and disruption in our New York City and Los Angeles markets. In March 2020, when many shelter-in-place directives went into effect, and continuing through mid-April 2020, GMV declined approximately 40%-45% year over year. Since then, GMV trends have improved significantly. GMV declined approximately 3% in the three months ended September 30, 2020 compared to the same period last year.

Our take rate decreased to 35.4% from 36.8% in the three months ended September 30, 2020 compared to the same period last year. Take rate decreased due to the higher sales mix of lower take rate categories such as handbags and jewelry, and a higher mix of consignors earning higher commissions. Our take rate decreased to 35.9% from 36.3% in the nine months ended September 30, 2020 compared to the same period last year.

Constraints on our ability to source supply consequently negatively impacted consumer demand. The continuation of the outbreak may result in changes in customer behaviors, including a potential reduction in consumer discretionary spending on our e-commerce site and in our retail stores.

Direct Revenue

Direct revenue increased by \$1.4 million, or 11%, in the three months ended September 30, 2020 compared to the three months ended September 30, 2019. The increase was driven by the higher sales mix of company-owned inventory and higher sales of aged inventory. Direct revenue decreased by \$2.3 million, or 6%, in the nine months ended September 30, 2020 compared to the nine

months ended September 30, 2019. The decrease was driven in part by COVID-19 adverse impacts to our business noted above. We recognize direct revenue on a gross basis upon shipment of the purchased good to the buyer. We expect direct revenue as a percent of total revenue to vary from period to period.

Cost of Consignment and Service Revenue

Cost of consignment and service revenue decreased by \$3.1 million, or 16%, in the three months ended September 30, 2020 compared to the three months ended September 30, 2019 and by \$5.3 million, or 10%, in the nine months ended September 30, 2020 compared to the same period last year. The decrease was primarily due to lower revenue in connection with COVID-19 related business interruptions. Gross margin increased by 2.8% in the three months ended September 30, 2020 compared to the three months ended September 30, 2019 and increased by 1.7% in nine months ended September 30, 2020 compared to the nine months ended September 30, 2019. The increase was primarily attributable to an overall improvement in shipping costs relating to more favorable terms with our shipping carrier.

Cost of Direct Revenue

Cost of direct revenue increased by \$2.1 million, or 22%, in the three months ended September 30, 2020 compared to the three months ended September 30, 2019 and by \$0.6 million, or 2%, in the nine months ended September 30, 2020 compared to the nine months ended September 30, 2019. Gross margin decreased by 7.5% and 6.6% for the three and nine months ended September 30, 2020 compared to the same periods last year, primarily due to lower product margins on sales of aged inventory.

Marketing

Marketing expense increased by \$1.8 million, or 13%, in the three months ended September 30, 2020 compared to the three months ended September 30, 2019 as we increased our marketing investments with the improving GMV trends. Marketing expense increased by \$0.9 million, or 2%, in the nine months ended September 30, 2020 compared to the nine months ended September 30, 2019 primarily due to higher stock-based compensation expense.

As a percent of revenue, marketing expense increased to 19.5% from 16.4% in the three months ended September 30, 2020 and 2019, respectively. As a percent of revenue, marketing expense increased to 17.7% from 16.4% in the nine months ended September 30, 2020 and 2019, respectively. Our marketing efficiency was offset by the significant adverse impact of COVID-19 on our revenue. We will continue to evaluate our marketing strategy during the COVID-19 pandemic.

Operations and Technology

Operations and technology expense increased by \$3.2 million, or 8%, in the three months ended September 30, 2020 compared to the three months ended September 30, 2019. The increase was primarily due to higher employee compensation related expenses, including stock-based compensation expense and higher occupancy costs.

Operations and technology expense increased by \$14.6 million, or 14%, in the nine months ended September 30, 2020 compared to the nine months ended September 30, 2019. The increase was primarily due to higher employee compensation related expenses, including stock-based compensation, higher occupancy costs, and higher technology costs. While there were employee furloughs, the average headcount was higher year over year primarily in our authentication, merchandising and technology teams.

As a percent of revenue, operations and technology expense increased to 52.0% from 45.9% in the three months ended September 30, 2020 and 2019, respectively and to 55.2% from 46.1% in the nine months ended September 30, 2020 and 2019, respectively. This increase is primarily due to higher fixed occupancy costs compared to lower revenue as a result of COVID-19's negative impact on revenue during the three and nine months ended September 30, 2020. While we have implemented cost saving measures to address the challenges from the COVID-19 pandemic, we continued to invest in automation, consignor services including virtual appointments and self-scheduling, and other technology improvements to support and drive efficiency in our operations and to support our growth.

Selling, General and Administrative

Selling, general and administrative expense increased by \$6.9 million, or 24%, in the three months ended September 30, 2020 compared to the three months ended September 30, 2019. The increase was primarily due higher employee compensation related expenses, including stock-based compensation expense, increased COVID-19 related expenses to implement health and safety measures, and higher legal and accounting fees.

Selling, general and administrative expense increased by \$26.9 million, or 35%, in the nine months ended September 30, 2020 compared to the nine months ended September 30, 2019. The increase was primarily due to higher employee compensation related

expenses, including stock-based compensation due to an increase in average headcount, increased COVID-19 related expenses to implement health and safety measures, and higher accounting and legal fees including legal settlement charges of \$1.1 million. Additionally, there were higher occupancy related expenses for our administrative and sales offices.

As a percent of revenue, selling, general and administrative expense increased to 45.3% from 34.9% in the three months ended September 30, 2020 and 2019, respectively and to 48.2% from 33.9% in the nine months ended September 30, 2020 and 2019, respectively as we invested in the growth of the sales organization and expanded our finance and administrative functions as a public company. This increase is primarily due to higher fixed general and administrative costs compared to lower revenue as a result of COVID-19's negative impact on revenue, which we expect will continue to some extent until the COVID-19 pandemic has ended and our operations normalize.

Interest Income

Interest income decreased \$1.4 million, or 76%, for the three months ended September 30, 2020 as compared to the three months ended September 30, 2019. Interest income decreased \$0.6 million, or 19%, in the nine months ended September 30, 2020 as compared to the nine months ended September 30, 2019 due to lower rates and lower average investment balances.

Interest Expense

Interest expense increased \$2.3 million, or 3910%, for the three months ended September 30, 2020 compared to the three months ended September 30, 2019 and increased \$2.2 million, or 391%, in the nine months ended September 30, 2020 as compared to the nine months ended September 30, 2019, primarily due to the contractual interest expense and amortization of the debt discount related to the 3.00% convertible senior notes issued in June 2020.

Other Income (Expense), Net

Other expense decreased \$0.1 million, or 100%, in the three months ended September 30, 2020 as compared to the three months ended September 30, 2019 due to a franchise tax charge in 2019. Other expense decreased \$2.0 million, or 96%, in the nine months ended September 30, 2020 as compared to the nine months ended September 30, 2019, primarily due to remeasurement of the warrant liability in 2019 as there were no warrants outstanding after the Company's IPO in July 2019.

Liquidity and Capital Resources

As of September 30, 2020, we had unrestricted cash, cash equivalents and short-term investments of \$395.2 million and an accumulated deficit of \$479.0 million. In March 2019, the Company issued Series H redeemable convertible preferred stock and convertible preferred stock to new and existing investors for aggregate net proceeds of \$69.8 million. 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 3% convertible senior notes due 2025 and the related cap call transactions. Since inception, we have generated negative cash flows from operations and have primarily financed our operations through several rounds of venture capital financing. In addition, proceeds from our IPO and convertible senior notes will be used to finance our operations.

We expect that operating losses and negative cash flows from operations could continue in the foreseeable future as we navigate the challenges presented by COVID-19 and invest in expansion activities in the longer term. At the beginning of the pandemic, we implemented measures to realign our cost structure and preserve liquidity including deferring certain capital investments, renegotiating certain vendor contracts, and reducing payroll costs, including through headcount reductions, employee furloughs and reduced executive salaries. With improving GMV trends we began to strategically reinvest in growth; however, we continue to monitor opportunities to strengthen our financial flexibility and preserve liquidity. The Company believes that its financial resources, along with managing discretionary expenses, will allow us to manage the anticipated impact of COVID-19 on the Company's business operations for the foreseeable future. We believe our existing cash and cash equivalents and short-term investments as of September 30, 2020 will be sufficient to meet our working capital and capital expenditures needs for at least the next 12 months.

Our future capital requirements will depend on many factors, including, but not limited to, our ability to grow our revenues and the timing of investments to support growth in our business, such as the build-out of new fulfillment 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.

Cash Flows

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

	Nine Months Ended September 30,	
	2020	2019
Net cash provided by (used in):		
Operating activities	\$ (96,017)	\$ (58,119)
Investing activities	134,544	(952)
Financing activities	150,119	378,439
Net increase in cash, cash equivalents and restricted cash	<u>\$ 188,646</u>	<u>\$ 319,368</u>

Net Cash Used in Operating Activities

During the nine months ended September 30, 2020, net cash used in operating activities was \$96.0 million, which consisted of a net loss of \$124.5 million, adjusted by non-cash charges of \$44.4 million and cash outflows due to a net change of \$16.0 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 \$8.7 million in operating lease liability, a decrease of \$8.3 million in accrued consignee payable, an increase of \$4.6 million in prepaid and other current expenses, partially offset by a decrease of \$4.4 million in inventory.

During the nine months ended September 30, 2019, net cash used in operating activities was \$58.1 million, which consisted of a net loss of \$75.4 million, adjusted by non-cash charges of \$18.7 million and cash outflows due to a net change of \$1.4 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 \$2.6 million increase in accounts receivable driven by the timing of settlement of credit card purchases relative to year-end sales and a \$3.5 million increase in inventory, and a \$3.4 million increase in prepaid expenses and other current assets partially offset by a \$4.6 million increase in accrued consignee payable and a \$1.4 million increase in other noncurrent liabilities, and a \$1.4 million increase in accounts payable.

Net Cash Used in Investing Activities

During the nine months ended September 30, 2020, net cash provided by investing activities was \$134.5 million, which consisted of \$222.2 million proceeds from maturities on short-term investments and \$7.9 million in sales of short-term investments partially offset by \$73.3 million for purchases of short-term investments, \$15.7 million for purchases of property and equipment, net, including leasehold improvements and \$6.6 million for capitalized proprietary software development costs.

During the nine months ended September 30, 2019, net cash used in investing activities was \$1.0 million, which consisted of \$34.0 million proceeds from maturities on short-term investments partially offset by \$16.1 million for purchases of property and equipment, net, including leasehold improvements, \$12.2 million for purchases of short-term investments, and \$6.7 million for capitalized proprietary software development costs.

Net Cash Provided by Financing Activities

During the nine months ended September 30, 2020, net cash provided by financing activities was \$150.1 million, which primarily consisted of proceeds of \$166.3 million from the issuance of the convertible senior notes, net of issuance costs, \$7.1 million from the exercise of stock options and warrants partially offset by \$22.5 million for the purchase of capped calls related to the Notes issuance.

During the nine months ended September 30, 2019, net cash provided by financing activities was \$378.4 million, which primarily consisted of proceeds of \$315.5 million from the initial public offering, net of issuance costs, \$69.8 million from the issuance of redeemable convertible preferred stock and convertible preferred stock, net of issuance costs, and proceeds of \$2.4 million from the exercise of stock options and warrants partially offset \$9.3 million for repayment of debt.

Convertible Senior Notes

As of September 30, 2020, we had 3.00% convertible senior notes due 2025 outstanding in an aggregate principal amount of \$172.5 million. A portion of the net proceeds from the sale of these convertible senior notes was used to fund the net cost of entering into the capped call transactions described below. We intend to use the remainder of the net proceeds for general corporate purposes.

The convertible senior notes are convertible into cash, shares of our common stock or a combination of cash and shares of our common stock, at the our election, at an initial conversion rate of 56.2635 shares of our common stock per \$1,000 principal amount of the convertible senior notes, which is equivalent to an initial conversion price of approximately \$17.77 per share of our common stock. The initial conversion price of the notes represents a premium of approximately 27.5% over the \$13.94 closing price of our common stock on June 10, 2020.

In connection with the convertible senior notes, we entered into privately negotiated capped call transactions, with certain of the initial purchasers or their affiliates. The capped call transactions cover, subject to anti-dilution adjustments, the number of shares of common stock underlying the convertible senior notes sold in the offering. The capped call transactions are generally expected to reduce potential dilution to our common stock upon any conversion of the notes and/or offset any cash payments we are required to make in excess of the principal amount of converted notes, as the case may be, with such reduction and/or offset subject to a cap. The cap price of the capped call transactions is initially \$27.88 per share, which represents a premium of 100.0% over the closing price of our 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.

For additional details related to our convertible senior notes, please see “Note 6 – Debt and Convertible Preferred Stock Warrants” to the condensed financial statements included in this report.

Contractual Obligations and Commitments

As of September 30, 2020, there have been no material changes from the contractual obligations and commitments previously disclosed in our Annual Report on 10-K.

Term Loans

We were party to a loan and security agreement that included a term loan facility, which consisted of a \$7.5 million term loan with a maturity date of January 1, 2020 and a \$7.5 million term loan maturing at January 31, 2021 (together the “Term Loans”). On July 26, 2019, we fully repaid the principal amount of our term loans.

The Term Loans bear interest on the outstanding daily balance thereof at a variable annual rate equal to 0.35% above the prime rate then in effect. As of September 30, 2020 and December 31, 2019, we had zero outstanding under the Term Loans. The Term Loans were secured by liens on substantially all of our present and future assets.

The Term Loans included affirmative, negative and financial covenants that restrict our ability to, among other things, incur additional indebtedness, make investments, sell or otherwise dispose of assets, pay dividends or repurchase stock. With the repayment of the term loans, we were no longer subject to the debt covenants as of September 30, 2020.

Off-Balance Sheet Arrangements

We did not have during the periods presented, and we do not currently have, any off-balance sheet financing arrangements or any relationships with unconsolidated entities or financial partnerships, including entities sometimes referred to as structured finance or special purpose entities, that were established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Critical Accounting Policies and 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. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management’s judgments and estimates.

Revenue Recognition

Consignment and Service Revenue

We generate the majority of our revenue from consignment services for the sale of pre-owned luxury goods on behalf of consignors through our online consignment marketplace. For consignment sales, we retain a portion of the proceeds received, which we refer to as our take rate, and remit the balance to the consignors. We recognize consignment revenue upon purchase of the goods by the buyer based on our take rate, net of allowances for product returns and order cancellations and certain incentives.

Direct Revenue

We also generate revenue from the sales of company-owned inventory. We recognize direct revenue upon shipment of the goods through our online marketplace, based on the gross purchase price net of allowances for product returns and certain buyer incentives.

Recent Accounting Pronouncements

For more information on recently issued accounting pronouncements, see Note 2 to our unaudited condensed financial statements “Summary of Significant Accounting Policies” in this Quarterly Report on Form 10-Q.

JOBS Act Accounting Election

We are an “emerging growth company,” as defined in the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We have elected to use this extended transition period to enable us to comply with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date we (1) are no longer an emerging growth company or (2) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates. Because the market value of the Company’s common stock held by non-affiliates exceeded \$700 million as of June 30, 2020, the Company will be deemed a “large accelerated filer” under the Exchange Act and will lose emerging growth company status as of December 31, 2020.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

We are exposed to market risks in the ordinary course of our business, including fluctuations in interest rates. Such fluctuations to date have not been significant. The COVID-19 pandemic presents new and emerging uncertainty in the financial markets. See further discussion in Part I, Item 2. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and Part II, Item 1A “Risk Factors.”

As of September 30, 2020, we had unrestricted cash, cash equivalents and short-term investments of approximately \$395.2 million, which carry a degree of interest rate risk. A hypothetical 10% change in interest rates would not have a material impact on our financial condition or results of operations due to the short-term nature of our investment portfolio.

In addition, we have no direct financial statement risk associated with changes in interest rates with respect to our convertible senior notes, which bear interest at fixed rates. However, the fair market value of the convertible senior notes will fluctuate primarily as a result of changes in interest rates or the market price of our stock.

We do not believe that inflation has had a material effect on our business, results of operations or financial condition. Nonetheless, if our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs. Our inability or failure to do so could harm our business, results of operations or financial condition.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (“Exchange Act”), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our principal executive officer and principal financial officer have concluded that, as of such date, our disclosure controls and procedures were effective at a reasonable assurance level.

Changes in Internal Control

There were no changes in our internal control over financial reporting identified in management's evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the period covered by this Quarterly Report on Form 10-Q that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

Our management, including our principal executive officer and principal financial officer, do 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 designed 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 collusion of two or more people or by management override of the 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. Due to inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Item 1. Legal Proceedings.

We are from time to time subject to, and are presently involved in, litigation and other legal proceedings and from time to time, we receive inquiries from government agencies. See “Note 10—Commitments and Contingencies” in the notes to the audited financial statements. This item should be read in conjunction with the Legal Proceedings disclosures in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and Quarterly Report on Form 10-Q for the quarter ended March 31, 2020.

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. Chanel alleges, among other things, that we have misrepresented certain counterfeit Chanel products as authentic Chanel products, that our resale of Chanel products confuses consumers into believing that Chanel is affiliated with us and involved in authenticating consignors’ goods and that only Chanel is capable of authenticating second-hand Chanel goods. The Court issued an Opinion & Order on March 30, 2020 denying in part and granting in part the Company’s motion to dismiss. The Company filed its answer and affirmative defenses on May 29, 2020. Chanel’s claims are now in the discovery phase. On October 30, 2020, the Company sought leave to file a motion to amend its answer to add counterclaims against Chanel alleging anticompetitive conduct in violation of the federal and state antitrust laws as well as tortious interference. On the same day, the court ordered that the Company would be permitted to file its motion or, by stipulation with Chanel, its amended answer. This litigation is in its early stages and the final outcome, including our liability, if any, with respect to Chanel’s claims, is uncertain. Chanel could in the future assert additional trademark and advertising or other claims against us in this or other proceedings. An unfavorable outcome in this or similar litigation could adversely affect our business and could lead to other similar lawsuits.

On September 10, 2019, a purported shareholder class action complaint was filed against us, our officers and directors and the underwriters of our IPO in the Superior Court of the State of California in the County of San Mateo. Three additional purported class actions, also alleging claims arising from the IPO were subsequently filed in Marin County and San Francisco County Superior Courts. The San Mateo case was voluntarily dismissed, refiled in Marin County Superior Court and consolidated with the cases there. On January 10, 2020, the Marin County plaintiffs filed a consolidated amended complaint. The plaintiffs in the San Francisco Superior Court case have filed a request for dismissal. Separately an additional purported class action was filed in the United States District Court for the Northern District of California on November 25, 2019. On February 12, 2020, a lead plaintiff was appointed in the federal action and an Amended Consolidated Complaint was filed on March 31, 2020. Defendants’ filed a demurrer and motion to strike in the state court action on March 13, 2020 and filed a motion to stay the proceedings in favor of the federal action on May 1, 2020. On August 4, 2020, the court granted defendants’ motion to stay the state court action and deferred ruling on the demurrer and motion to strike pending the outcome of the federal court action. A motion to dismiss the federal court action was filed on May 15, 2020, which motion remains pending. The state and federal complaints each allege claims under the Securities Act of 1933 on behalf of a purported class of shareholders who acquired our stock pursuant to or traceable to the registration statement for our IPO. The federal complaint also alleges claims under the Securities Exchange Act of 1934 on behalf of a purported class of shareholders who purchased our stock from June 27, 2019 through November 20, 2019. The complaints allege, among other things, that the defendants violated federal securities laws by issuing false or misleading statements in the registration statement regarding certain of our key financial and operating metrics, and related to the Company’s authentication processes. The complaints seek, among other things, damages and interest, rescission, and attorneys’ fees and costs. On September 10, 2020, a purported shareholder filed a putative derivative action in the United States District Court for the District of Delaware. The derivative complaint alleges factual allegations largely tracking the above referenced lawsuits. The derivative case has been stayed pending a ruling on the motion to dismiss in the federal securities case. While we intend to vigorously defend against the litigation described above, the cases are at a very early stage and there can be no assurance that we will be successful in our defense. For this same reason, we cannot currently estimate the loss or the range of possible losses we may experience in connection with this litigation.

We are currently involved in, and may in the future be involved in, legal proceedings in the ordinary course of business. While it is not possible to determine the outcome of any legal proceedings brought against us, we believe that, except for the matters described above, the resolution of all such matters will not have a material adverse effect on our financial position or liquidity, but could be material to our results of operations in any one accounting period. Regardless of final outcomes, however, any such legal proceedings may nonetheless impose a significant burden on management and employees and may come with costly defense costs or unfavorable preliminary and interim rulings. There are inherent uncertainties in these legal matters, some of which are beyond management’s control, making the ultimate outcomes difficult to predict. Moreover, management’s views and estimates related to these matters may change in the future, as new events and circumstances arise and as the matters continue to develop.

Item 1A. Risk Factors.

The Company has reviewed and updated its risk factors as previously disclosed in its 2019 Annual Report on Form 10-K and Quarterly Report on Form 10-Q for the quarter ended June 30, 2020. 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 Quarterly Report on Form 10-Q, our 2019 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

The operations of our facilities and our retail stores have been adversely affected by the COVID-19 pandemic and may continue to be adversely affected.

We currently have four merchandising and fulfillment facilities, one in California and three in New Jersey. In addition, we operate retail stores in California and New York. Our business depends on the uninterrupted operation of these facilities. In response to the COVID-19 pandemic, the state and local governments have imposed significant limitations on business operations. As of the date of this filing, our fulfillment facilities, luxury consignment offices and four retail stores are all operating subject to certain restrictions, such as modified operating models and hours at our fulfillment facilities, enhanced safety and cleaning protocols. In-person White Glove consignment appointments were temporarily suspended and augmented with virtual appointments but remain an option, in certain circumstances, for our consigner base. We have also taken certain actions to facilitate the continued operation of our business through the COVID-19 pandemic, including social distancing in our fulfillment centers, enabling virtual consignment appointments, implementing curbside pick-up of products from our consignors, and implementing steps to enable employees to work remotely to the extent possible. It is unclear whether further limitations will be imposed in the near future due to the current resurgence of the COVID-19 virus. The COVID-19 pandemic also directly threatens the health of our employees, our consignors and our customers. The operation of all of our facilities and stores is critically dependent on our employees who staff these locations.

The nature, scope and duration of the effects of the COVID-19 pandemic on our operations, the public health and welfare and the US and global economies is highly uncertain and could have a material adverse effect on our business and operating results.

If we fail to generate a sufficient amount of new and recurring supply of pre-owned luxury goods by attracting and retaining consignors, our business would be harmed.

Our success depends on our ability to cost-effectively attract, retain and grow relationships with consignors, and in turn, our supply of luxury goods sold through our online marketplace. 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 four retail stores, utilizing our luxury consignment offices (“LCOs”), paid advertising, referral programs, organic word-of-mouth and other methods of discovery, such as mentions in the press, Internet search engine results and through our partnerships with Gucci, Stella McCartney and Burberry. We recently increased our paid marketing expenses by investing more in television advertising and digital marketing and we expect to increase our spending on these and other paid marketing channels in the future. We cannot be certain that these efforts will yield more consignors or be cost-effective. Moreover, new consignors may not choose to consign with us a second time or consign 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. In addition, a significant number of our new and existing consignors greatly prefer our White Glove consultation method for consigning luxury goods, which involves our sales professionals meeting with our consignors in their homes. Due to the COVID-19 pandemic, we have modified our White Glove consultation method for consigning luxury goods to operate on a “no contact” basis. It is unclear what impact this modified “no contact” White Glove consultation method will have on our operations and these new and existing consignors may not be as willing, or willing at all, to utilize our other methods for consignment. If we fail to attract new consignors or drive repeat consignments, our ability to grow our business would be adversely affected.

Our ability to drive growth also depends on our success in continuing to generate a high volume of consigned items from new and existing consignors. To accomplish this, we rely on our sales professionals to drive our supply of luxury goods by identifying, developing and maintaining relationships with our consignors. Our sales professionals source high-quality, coveted luxury goods from consignors through a variety of methods including White Glove consultation, meeting with potential consignors in one of our ten LCOs or shipping consigned goods to us from remote locations. 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. Any shortage in sales professionals or delay in identifying and hiring quality sales professionals could have a negative impact on the business. 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.

We may not be able to attract, train and retain specialized personnel and skilled employees to effectively manage the merchandising operations required to authenticate, process and sell consigned luxury goods or identify and lease merchandising and fulfillment facilities in geographic regions that enable us to effectively scale our operations.

We lease facilities to store and accommodate the logistics infrastructure required to merchandise and ship the pre-owned luxury goods we sell through our online marketplace. 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 inspection, evaluation, authentication, photography, pricing, copywriting, application of a unique single-SKU and fulfillment. Prior to the COVID-19 pandemic, we had rapidly increased our operations employee headcount to support the growth of our business. However, due to the impacts of the COVID-19 pandemic on our operations, we have recently implemented a number of measures to realign our cost structure and preserve liquidity, which included the reduction of our overall headcount and furloughing of employees. Prior to the COVID-19 pandemic, the market for employees had been increasingly competitive and was 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 need to increase our headcount after the COVID-19 pandemic has subsided, and 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.

Our ability to successfully grow our business also depends on the availability and cost of leasing additional merchandising and fulfillment facilities that meet our criteria for a geographic location with access to a large, qualified talent pool, square footage, cost and other factors. We currently have four merchandising and fulfillment facilities—one in California and three in New Jersey. Optimal space is becoming increasingly scarce, and where it is available, the lease terms offered by landlords are increasingly competitive. Incentives currently offered by local, state and federal entities to offset operating expenses may be reduced or become unavailable. 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 merchandising and fulfillment facilities could have an adverse effect on our business and 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 negatively influence consumer spending on luxury goods include economic downturns, including economic recession or depression, high levels of unemployment, higher consumer debt levels, reductions in net worth, and declines in asset values and related market uncertainty, home foreclosures and reductions in home values, fluctuating interest rates and credit availability, fluctuating fuel and other energy costs, fluctuating commodity prices and general uncertainty regarding the overall future political and economic environment. Many of these factors have occurred, and may continue to become more prevalent, as a result of the COVID-19 pandemic. Economic conditions in certain regions may also be affected by natural disasters, such as earthquakes, hurricanes, wildfires, and threats to public health, such as the current outbreak of COVID-19 pandemic. Consumer purchases of new luxury goods have declined during periods of economic uncertainty, when disposable income is reduced or when there is a reduction in consumer confidence. 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 but not limited to: 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 Average Order Volume 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.

The COVID-19 pandemic has adversely impacted, and is expected to continue to adversely impact, our business, results of operations, financial condition and liquidity.

The COVID-19 pandemic and related measures to contain the spread of COVID-19, such as government mandated business closures and shelter in-place guidelines, have created significant market volatility, uncertainty and economic disruption. The extent to which the COVID-19 pandemic impacts 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 pandemic; government, business and individual actions that have been and continue to be taken in response to the pandemic; the impact of the pandemic on national and global economic activity; unprecedented unemployment levels; disruption of the financial 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 customers; and the ability of our customers to pay for products. The COVID-19 pandemic could decrease consumer spending and

have an adverse impact on our business through reduced customer demand for our products. Additionally, under current state and local government orders, employees who are not required to perform their duties in-person, are required to work remotely for an indefinite period of time, which could introduce additional operational risk, such as an increased vulnerability to cyber-attacks, and harm productivity and collaboration. Our ability to return to normalized operations and the timing of such a return cannot be predicted at this time.

The extent of the impact of the COVID-19 pandemic on our operations and financial performance, including our ability to execute and fund our short-term and long-term business strategies and initiatives, will depend on future developments, including the duration and severity of the COVID-19 pandemic, which are uncertain and cannot be predicted. In addition, the risks and uncertainties described elsewhere in this “Risk Factors” section may be heightened as a result of the impacts of the COVID-19 pandemic. At this point in time, we cannot reasonably estimate the full extent of impact of the COVID-19 pandemic on our business, operations and financial results.

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

We experienced net losses of \$52.3 million, \$75.8 million, \$96.7 million, and \$124.5 million in 2017, 2018, 2019 and the nine months ended September 30, 2020, respectively, and as of September 30, 2020 we had an accumulated deficit of \$478.9 million. Due to the impacts of the COVID-19 pandemic on our operations, we have recently implemented a number of measures to realign our cost structure and preserve liquidity, which included reducing marketing investments, deferring certain capital investments and reducing discretionary investments across our business. However, we continue to believe there is substantial opportunity for growth in our business and our market and, once the COVID-19 pandemic crisis has abated, we intend to align our strategy to capitalize on such opportunity. If our investments do not prove successful or our market does not develop as we expect, we 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.

We may not be able to sustain our revenue growth rate or effectively manage growth or new opportunities.

Our revenue growth in 2019 should not be considered indicative of our future performance. Aside from the negative impact the COVID-19 pandemic has had and may continue to have on our revenues, as we grow our business, our future revenue growth rates may slow due to a number of factors, including the maturation of our business, increased market adoption against which future growth will be measured, increasing competition or our failure to capitalize on growth opportunities, such as increasing company-owned inventory. Additionally, consignors may opt to consign less with us to the extent we take steps, such as increasing our take rates, that make our online marketplace appear less attractive to them. Alternatively, the emergence of direct competitors may force us to decrease our take rates to remain competitive to attract consignors, which will have a negative impact on our financial performance.

Our rapid growth has placed significant demands on our management and our operational and financial infrastructure. Continued growth could also 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 or manage our company-owned inventory would negatively affect our reputation and brand, business, financial condition and operating results.

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

National retailers and brands set pricing for new luxury goods. Promotional pricing by these parties may adversely affect the value of products consigned with us and our inventory, and, in turn, GMV and operating results. In order to attract buyers to our online marketplace, the prices for the pre-owned luxury goods sold through our online marketplace may need to be lowered in order to compete with these pricing strategies, which could negatively affect gross merchandise value and in turn, our revenue. We have experienced a reduction in our GMV and AOV in the past due to fluctuations in the price of new luxury goods sold by retailers and brands, and we anticipate similar reductions and fluctuations in the future. However, the timing and magnitude of such discounting can be difficult to predict. Any of the foregoing risks could adversely affect our business, financial condition and operating results.

We have a relatively short operating history in an evolving industry and, as a result, our past results may not be indicative of future operating performance.

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. Our relatively short operating history and the 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.

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

- Recover from the negative impacts of the COVID-19 pandemic and return to normal operations,
- cost-effectively acquire and engage with new and existing consignors and buyers and grow our supply of high-quality, coveted luxury goods for sale through our online marketplace;
- scale our revenue and achieve the operating efficiencies necessary to achieve and maintain profitability;
- increase consignor and buyer awareness of our brand;
- anticipate and respond to changing consignor and buyer preferences;
- manage and improve our business processes in response to changing business needs;
- anticipate and respond to macroeconomic changes generally, including changes in both the primary and secondary market for luxury goods;
- effectively scale our operations while maintaining high service quality and consignor and buyer satisfaction;
- hire, train and retain talented people at all levels of our business;
- avoid or manage interruptions in our business from information technology downtime, cybersecurity breaches and other factors affecting our physical and digital infrastructure;
- fulfill and deliver orders in a timely manner and in accordance with customer expectations, which may change over time;
- maintain the quality of our technology and operations infrastructure;
- develop new technology or services to enhance the consignor and buyer experience; and
- comply with regulations applicable to our business.

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

As an online marketplace for pre-owned luxury goods, our success depends on the accuracy of our authentication process. Failure by us to identify counterfeit goods could adversely affect our reputation, subject us to adverse publicity, and expose us to liability for the sale of counterfeit goods.

Our success depends on our ability to accurately and cost-effectively determine whether an item offered for consignment is an authentic product, a genuine gemstone or piece of jewelry or a 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 we reject any goods we believe to be counterfeit, we cannot be certain that we will identify every counterfeit item that is consigned to us. 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 and buyers. Additionally, we have been and may in the future be subject to public allegations that our authentication processes are inadequate. Such controversy could negatively impact our reputation and brand and harm our business and operating results. Any material failure or perceived failure in our authentication operations 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, which could have an adverse effect on our business and future growth.

We believe that maintaining The RealReal brand is critical to driving consignor and buyer engagement. An important goal of our brand promotion strategy is establishing trust with our consignors and buyers. Maintaining 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. Our success depends in part on the quality of our sales professionals who represent our brand to new and existing consignors. Sales professionals cultivate relationships with our consignor base by making in-home visits to evaluate the luxury goods that our consignors want to consign. While we require that all sales professionals undergo a background check, this may not prevent illegal, improper or otherwise inappropriate actions by such employees, such as theft or physical assault, from occurring in connection with our services. Any negative publicity related to the foregoing could adversely affect our reputation and brand or public perception of our model of luxury consignment, which could negatively affect demand for our services and harm our business, financial condition and operating results.

For buyers, maintaining our brand requires that we foster trust through authentication, timely and reliable fulfillment of orders, and responsive and effective customer service. 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 online marketplace services, merchandise, delivery times or customer support, whether justified or not, the value of our brand would be harmed and our business may suffer.

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 through television and digital advertising, other paid marketing, press coverage, referral programs, organic word of mouth and other methods of discovery, such as converting consignors to buyers. We expect to continue investing heavily 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.

We are currently, and may be in the future, party to lawsuits and other claims that are expensive and time consuming, could lead to adverse publicity, and, if resolved adversely, could have a significant impact on our business, financial condition or operating results.

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. Chanel alleges, among other things, that we have misrepresented certain counterfeit Chanel products as authentic Chanel products, that our resale of Chanel products confuses consumers into believing that Chanel is affiliated with us and involved in authenticating consignors' goods and that only Chanel is capable of authenticating second-hand Chanel goods. The Court issued an Opinion & Order on March 30, 2020 denying in part and granting in part the Company's motion to dismiss. The Company filed its answer and affirmative defenses on May 29, 2020. This litigation is in its early stages and the final outcome, including our liability, if any, with respect to Chanel's claims, is uncertain. Chanel could in the future assert additional trademark and advertising or other claims against us in this or other proceedings. An unfavorable outcome in this or similar litigation could adversely affect our business and could lead to other similar lawsuits.

We are also at risk of claims by others that we have infringed their copyrights, trademarks or patents or improperly used or disclosed their trade secrets. In particular, third parties may allege that goods consigned to us are counterfeit or that by offering goods of a particular brand we are suggesting that we are sponsored by or affiliated with that brand. The costs of resolving any litigation or disputes related to these claims can be considerable, and we cannot assure you that we will achieve a favorable outcome of any such claim.

In addition, the Company, its officers and directors and the underwriters of the Company's initial public offering ("IPO") have been 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 but not limited to general discrimination, privacy, wage and hour, labor and employment, ERISA and disability claims. Further, the comprehensive safety measures and protocols that we have implemented in response to the COVID-19 pandemic may not be successful in preventing the spread of the virus among our employees 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.

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. As a result, it 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. 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 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 the 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.

If we are unable to successfully leverage technology to automate and drive efficiencies in our operations, our business could be adversely affected.

We are building automation, 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 are increasing our investment in technology to support these efforts but they may not be effective in driving productivity, maintaining or improving the experience for buyers and consignors or providing a positive return on investment. We have created our own purpose-built technology to operate our business, but we also rely on technology from third parties. If these technologies do not perform in accordance with our expectations, third parties change the terms and conditions that govern their relationships with us, or if competition increases for the technology and services provided by third parties, our business may be harmed. In addition, if we are unable to add automation to our operations, we may be unable to reduce the costs of processing consignments and fulfilling orders, which could cause delays in buyers receiving their purchases. Any of these outcomes could harm our reputation and our relationships with our consignors and buyers.

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

Our future growth and profitability will depend in large part upon the effectiveness and efficiency of our advertising, promotion, public relations and marketing programs and we are investing heavily in these activities. These brand promotion activities may not yield increased revenue and the efficacy of these activities will depend on a number of factors, including our ability to do the following:

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

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 to optimize the effectiveness of these activities. We expect to increase advertising spend in future periods to continue driving our growth. Increases in the pricing of one or more of our marketing and advertising channels could increase our marketing and advertising expenses or cause us to choose less expensive but possibly less effective marketing and advertising channels. If we implement new marketing and advertising strategies, we may incur significantly higher costs than our current channels, which, in turn, could adversely affect our operating results.

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

We may experience damage or destruction to our merchandising and fulfillment facilities or retail stores in which we store all of the consigned luxury goods we offer through our online marketplace which may materially adversely impact our business and operating results.

We store the majority of the luxury goods we offer through our online marketplace in our merchandising and fulfillment facilities in California and New Jersey, with a small portion of luxury goods offered for sale in our four retail stores. Our merchandising and fulfillment facilities are located in areas that have a history of natural disasters, such as earthquakes and severe weather events, rendering our merchandising and fulfillment facilities vulnerable to damage. Any large scale damage to or catastrophic loss of goods stored in such merchandising and fulfillment facilities or retail stores, due to natural disasters or man-made disasters such as arson or theft or otherwise 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. 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 merchandising and fulfillment facilities, the number of carriers which provide for such insurance has declined, which has resulted in increased premiums and deductibles. The insurance we do carry may not continue to be available on commercially reasonable terms and, in any event, may not be adequate to cover all possible losses that our business could suffer. In the event that we suffer a catastrophic loss of any or all of our merchandising and fulfillment facilities and the consigned luxury goods stored in such facilities, our liabilities may exceed the maximum insurance coverage amount which would materially adversely impact our business and operating results.

We have experienced seasonal and quarterly variations in our revenue and operating results and, as a result, our quarterly results may fluctuate and could be below expectations.

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. In anticipation of increased activity during the fourth quarter, we incur significant additional expenses, including additional marketing 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-shippments and additional long-zone shipments necessary to ensure timely delivery for the holiday season. At peak periods, there could also be further delays in processing consigned goods or fulfilling buyer orders, which could lead to lower consignor and/or buyer satisfaction. As a result of increased expenses or delays in shipping, 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. Any factors that harm our fourth quarter operating results, including disruptions in our consignors' willingness to consign or unfavorable economic conditions, or adverse weather in our geographic locations could have a disproportionate effect on our operating results for our entire fiscal year. In the future, our seasonal sales patterns may become more pronounced, may strain our personnel and may cause a shortfall in revenue related to expenses in a given period, which could substantially harm our business, operating results and financial condition.

Our industry is highly competitive and if we do not compete effectively our operating results could be adversely affected.

The resale market for luxury goods is highly competitive. 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 these 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. We believe our ability to compete depends on many factors within and beyond our control, including:

- engaging and enhancing our relationships with existing consignors and buyers and attracting new consignors and buyers;
- further developing our data science capabilities;
- maintaining favorable brand recognition and effectively delivering our online marketplace to consignors and buyers;
- identifying and delivering authentic luxury goods;

- maintaining and increasing the amount, diversity and quality of brands and luxury goods that we or our competitors offer;
- our ability to expand the categories of luxury goods our consignors consign and sell;
- the price at which consigned, authenticated luxury goods through our online marketplace are offered;
- the speed and cost at which we can authenticate and make available consigned luxury goods and deliver purchased goods to our buyers; and
- the ease with which our consignors and buyers can consign, purchase and return goods.

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

Many of our competitors have longer operating histories, larger fulfillment infrastructures, greater brand recognition and technical capabilities, faster shipping times, lower-cost shipping, larger databases, greater financial, marketing, institutional and other resources and larger buyer bases than we do. As the market evolves, competitors may emerge. For example, Farfetch Ltd recently announced the launch of a new consignment service. 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 or respond more quickly than we can to new or emerging technologies and changes in consumer shopping behavior. These competitors may engage in more extensive research and development efforts, enter the business of online luxury consignment, undertake more far-reaching marketing campaigns and adopt more aggressive pricing policies, which may allow them to build larger consignor or buyer bases or generate revenue from their existing buyer bases more effectively than we do. If we fail to compete effectively, our business and operating results may be adversely affected.

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

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. We have experienced, and expect that in the future we will experience, interruptions, delays and outages in service and availability from time to time due to a variety of factors, including infrastructure changes, human or software errors, website hosting disruptions and capacity constraints which could affect the availability of services on our platform and prevent or inhibit the ability of buyers to access our online marketplace or complete purchases on our website and app. We currently host our platform and support our operations using Amazon Web Services (“AWS”). We do not have control over the operations of the facilities of AWS that we use. AWS’ facilities may experience damage or interruption from natural disasters, cybersecurity attacks, terrorist attacks, public health threats such as the ongoing COVID-19 pandemic, power outages and similar events or acts of misconduct. The continuing and uninterrupted performance of our online marketplace is critical to our success. 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 also use Google services for our business emails, file storage and communications. Any disruption or failure in the services we receive from Google could harm our ability to run our business.

We rely on third-party payment processors to process payments made by buyers or to consignors on our online marketplace. If our third-party payment processors terminate their relationships with us or refuse to renew their agreements with us on commercially reasonable terms, we would need to find an alternate payment processor and may not be able to secure similar terms or replace such payment processors in an acceptable timeframe. Further, the software and services provided by our third-party payment processors may not meet our expectations, contain errors or vulnerabilities, be compromised or experience outages. Any of these risks could cause us to lose our ability to accept online payments, make payments to 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.

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 requirements. Lead times relating to these changing preferences may make it difficult for us to respond rapidly to new or changing trends. We have begun to expand our offerings and the impact on our business from these new offerings is not clear as it is difficult to accurately predict consignor and buyer preferences. To the extent we do not accurately predict the evolving preferences of our consignors and buyers, our ability to grow our business and our operating results would be adversely affected.

Failure to comply with applicable laws or regulations, including those relating to the sale of secondhand goods, may subject us to fines, penalties, loss of licensure, registration, facility closures and approval 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 monitor these laws and regulations and adjust our business practices as warranted to comply. 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, python, 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 the States of 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 or reduce revenues, such as prohibiting or otherwise restricting the sale or shipment of certain items in some locations. We could also be subject to business interruption, fines or other penalties which in the aggregate could harm our business. 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.

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

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

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

Greater than expected product returns could have a negative impact on our revenue.

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 to us from the sale of goods on our online marketplace in calculating revenue. We estimate this reserve based on historical return trends. The introduction of new products in the retail market, changes in consumer confidence or other competitive and general economic conditions may also cause actual returns to exceed our reserve for returns. We believe adverse economic conditions in the past have resulted in an increase in our returns, and we have also experienced higher than expected returns in connection with fourth quarter holiday buying. Additionally, most of the consigned luxury goods are 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. Any significant increase in returns that exceeds our reserves could adversely affect our revenue and operating results.

Compromises of our data security could cause us to incur unexpected expenses, compromise our data assets and may materially harm our reputation and operating results.

In the ordinary course of our business, we collect, process and store certain personal 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, tools and monitoring to provide security for our processing, transmission and storage of personal information and other confidential information. We or our vendors could be the subject of hacking, social engineering, phishing attacks or other attacks. Due to these or other causes, we or our vendors may suffer a data breach or other security incident, which may allow hackers or other unauthorized parties to gain access to personal information or other data, including payment card data or confidential business information, and we might not discover such issues for an extended period. 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. As a result, we and our vendors may be unable to anticipate these techniques or to implement adequate preventative measures. In addition, our employees, contractors, vendors or other third parties with whom we do business may attempt to circumvent security measures in order to misappropriate such personal information, confidential information or other data, or may inadvertently release or compromise such data. 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. We may incur additional costs in the event of a security breach or other security-related incident. Any actual or perceived compromise of our systems or data security measures or those of third parties with whom we do business, or any failure to prevent or mitigate the loss of personal or other confidential information and delays in detecting or providing notice of any such compromise or loss could disrupt our operations, harm the perception of our security measures, damage our reputation, cause some 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.

We cannot be certain that our insurance coverage will be adequate for data handling or data security liabilities, that insurance will continue to be available to us on economically reasonable terms, or at all, or that any insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could have a material and adverse effect on our business, including our financial condition, operating results and reputation.

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

Numerous state, federal and international laws, rules and regulations govern privacy, data protection and the collection, use and protection of personal information and other types of data we collect, use, disclose and otherwise process. These laws, rules and regulations are constantly evolving, and we expect that there will continue to be new proposed laws, regulations and industry standards concerning privacy, data protection and information security in the United States, the EU and other jurisdictions. For example, California enacted legislation that came into effect January 2020, the California Consumer Privacy Act (the “CCPA”), that requires covered companies to provide new disclosures to California consumers and afford such consumers qualified new privacy rights, such as rights of access, deletion and to opt-out of the sales of their personal information. The CCPA includes provisions that sunset at the end of 2020, may be amended or replaced, and Attorney General regulations have not yet been finalized. It remains unclear what, if any, modifications will be made to the CCPA or how it will be interpreted. 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, the European Commission adopted a General Data Protection Regulation that became fully effective on May 25, 2018, imposing stringent EU data protection requirements.

We cannot yet fully determine the impact these or future laws, rules and regulations may have on our business or operations. These laws, rules and regulations may be inconsistent from one jurisdiction to another, subject to differing interpretations and may be interpreted to conflict with our practices. Additionally, we may be bound by contractual requirements applicable to our collection, use, processing and disclosure of various types of data, including personal information, and may be bound by, or voluntarily comply with, self-regulatory or other industry standards relating to these matters.

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

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

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

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 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. In particular, our Founder and Chief Executive Officer, Julie Wainwright, has unique and valuable experience from creating and leading our company from its inception through today. If she were to depart or otherwise reduce her focus on The RealReal, our business may be disrupted.

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 materially adversely affect our business, financial condition or results of operations.

Expansion of our operations internationally will require management attention and resources, involves additional risks and may be unsuccessful.

We have members from outside the United States who purchase items from our online marketplace, but we have not expanded our physical operations outside the United States. If we choose to expand our physical operations internationally, we would need to adapt to different local cultures, languages, standards, laws and regulations and policies. The online marketplace consignment 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 merchandising and fulfillment facilities 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. We may not be successful in expanding into international markets or in generating revenue from foreign operations for a variety of reasons, including:

- our failure to localize our luxury consignment business model, including translation into foreign languages and adaptation for local cultures and customs;
- different buyer demand dynamics, which may make our model and the merchandise we offer less successful compared to the United States;
- competition from local firms that understand the local market and may operate more effectively;
- regulatory requirements, taxes, trade laws, trade sanctions and economic embargoes, tariffs, export quotas, import laws and regulations, custom duties, shipping of pre-owned goods from or into the U.S. or other trade restrictions or any unexpected changes thereto;
- differing labor regulations where labor laws may be more advantageous to employees as compared to the United States and increased labor costs;
- more stringent regulations relating to privacy and data security and access to, or use of, commercial and personal information, particularly in Europe;
- changes in a specific country's or region's political or economic conditions; and
- risks resulting from changes in currency exchange rates.

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 inability to replicate our business model for newer categories of consigned luxury goods in a timely and cost-effective manner may damage our business, financial condition and operating results.

Our women's category accounted for approximately 66% of our GMV in 2019. We intend to deepen our penetration in other high-value categories such as men's, jewelry and watches, and home and art. We continue to explore additional categories of luxury goods to serve our existing consignors and buyers and to attract new consignors and buyers. These additional category offerings may not have the same success, or gain traction with consignors and buyers as quickly, as our women's offerings. If these additional categories of pre-owned luxury goods are not accepted by our existing consignors or buyers, or if such categories 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 these additional categories, and these categories of goods may also have a different range of margin profiles than the goods currently sold through our online marketplace. 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 greater competition in specific categories from companies that are more focused on 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.

Our business, including our costs and supply of consigned goods, is subject to risks associated with sourcing, processing, warehousing and shipping.

Nearly all 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 White Glove consultation method for consigning luxury goods, which involves our sales professionals meeting with our consignors in their homes. Due to the COVID-19 pandemic, we have modified our White Glove consultation method for consigning luxury goods to operate on a "no contact" basis. It is unclear what impact this modified "no contact" White Glove consultation method will have on our operations and these new and existing consignors may not be as willing, or willing at all, to utilize other methods for consignment. Our operating results could be negatively impacted by these fluctuations and may be impacted by limitations on our consignment methods. In addition, as we expand into new categories of luxury goods, our payments to our consignors may rise relative to our existing categories, which could also adversely affect our operating results.

We can make no assurance that goods we receive from consignors will be of sufficient quality or free from damage, or that such goods will not be damaged during shipping, while stored in one of our merchandising and fulfillment facilities or when shipped to buyers. 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 in our merchandising and fulfillment facilities. 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 the goods stored in our merchandising and fulfillment facilities or while shipping to buyers. If we are unable to detect and quarantine such contaminants at the time such goods are initially received in our merchandising and fulfillment facilities, some or all of the goods stored in such facilities could be contaminated. We may incur additional expenses and our reputation could be harmed if clients and potential clients believe that the luxury goods we offer on behalf of our consignors is not of high-quality or may be damaged or contain contaminants.

We could be liable for fraudulent or unlawful activities of consignors.

We may fail to prevent consignors from consigning stolen 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 other protective measures to detect such products. If these measures prove inadequate, we may be required to spend substantial resources to take additional protective measures which could negatively impact our operations. Any costs incurred as a result of potential liability relating to the alleged or actual sale of stolen goods could harm our business. In addition, negative publicity relating to the actual or perceived listing or sale of stolen goods using our services could damage our reputation, and make our consignors and buyers reluctant to use our services. To the extent any of this occurs, it could harm our business or damage our reputation and we could face liability for such unlawful activities. Despite measures taken by us to detect stolen goods, to cooperate fully with law enforcement, and to respond to inquiries regarding potentially stolen goods, any resulting claims or liabilities could harm our business.

Shipping is a critical part of our business and any changes in our shipping arrangements or any interruptions in shipping could adversely affect our operating results.

We currently rely on major vendors for our shipping. If we are not able to negotiate acceptable pricing and other terms with these vendors or they experience performance problems or other difficulties, including as a result of the COVID-19 pandemic, it could negatively impact our operating results and our consignors' and buyers' experience. In addition, our ability to receive inbound consignments efficiently and ship luxury goods to buyers may be negatively affected by inclement weather, fire, flood, power loss, earthquakes, labor disputes, acts of war or terrorism and similar factors. Because of the seasonality of our business, we tend to ship more goods in the fourth quarter than any other quarter. Disruption to delivery services due to winter weather in the fourth quarter could result in delays that could adversely affect our reputation or operational results. If our goods are not delivered 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 incur significant losses from fraud.

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. In addition to the direct costs of such losses, if the fraud is related to credit card transactions and becomes excessive, it could result in us paying higher fees or losing the right to accept credit cards for payment. Under current credit card practices, we are liable for fraudulent credit card transactions because we do not obtain a cardholder's signature. Our failure to adequately prevent fraudulent transactions could damage our reputation, result in litigation or regulatory action or lead to expenses that could substantially impact our operating results.

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

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, consumers or others. Information concerning us or our consignors and brands, whether accurate or not, may be posted on social media platforms at any time and may have an adverse impact on our brand, reputation or business. The harm may be immediate without affording us an opportunity for redress or correction and could have a material adverse effect on our reputation, business, operating results, financial condition and prospects.

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

We rely on constant replenishment of consigned goods to sustain and grow our revenue, and our revenue in a given period can be difficult to predict. Additionally, our business is affected by general economic and business conditions. A downturn in the United States or global economies may result in decreased consumer disposable income and decreased purchases. We make certain assumptions when planning our expenses based on our expected revenue. These assumptions are partly based on historical results. Because our operating expenses are relatively fixed in the short term, any failure to achieve our revenue expectations would have a direct, adverse effect on our operating results. If actual results differ from our estimates, the trading price of our common stock may be adversely affected.

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. 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. If we are unable to protect our trademarks or domain names, our brand recognition and reputation would suffer, we would incur significant expense establishing new brands and our operating results would be adversely impacted. Further, to the extent we pursue patent protection for our innovations, patents we may apply for may not issue, and patents that do issue or that we acquire may not provide us with any competitive advantages or may be challenged by third parties. There can be no assurance that any patents we obtain will adequately protect our inventions or survive a legal challenge, as the legal standards relating to the validity, enforceability and scope of protection of patent and other intellectual property rights are uncertain. We may be required to spend significant resources to monitor and protect our intellectual property rights, and the efforts we take to protect our proprietary rights may not be sufficient.

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

An increasing number of states have considered or adopted laws that impose tax collection obligations on out-of-state sellers of goods. Additionally, the Supreme Court of the United States recently 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 collect and remit sales taxes in every state that requires sales taxes to be collected, including states where we do not have a physical presence, the adoption of new laws by, or a successful assertion by the taxing authorities of, one or more state or local governments requiring us to collect taxes where we presently do not do so, or to collect more taxes in a jurisdiction in which we currently do collect some taxes, could result in substantial tax liabilities, including taxes on past sales, as well as penalties and interest. The imposition by state governments and taxing authorities of sales tax collection obligations on out-of-state ecommerce businesses could also create additional administrative burdens for us, put us at a competitive disadvantage if they do not impose similar obligations on our competitors and decrease our future sales, which could have a materially adverse impact on our business and 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.

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

Many of the underlying laws, rules and regulations imposing taxes and other obligations were established before the growth of the Internet and ecommerce. 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.

The Tax Cuts and Jobs Act of 2017 made a number of significant changes to the current U.S. federal income tax rules, including reducing the generally applicable corporate tax rate from 35% to 21%, imposing additional limitations on the deductibility of interest, placing limits on the utilization of net operating losses and making substantial changes to the international tax rules. Many of the provisions of the Tax Cuts and Jobs Act still require guidance through the issuance and/or finalization of regulations by the U.S. Department of the Treasury in order to fully assess their effect, and there may be substantial delays before such regulations are promulgated and/or finalized, increasing the uncertainty as to the ultimate effect of the Tax Cuts and Jobs Act on us and our stockholders. There also may be technical corrections legislation or other legislative changes proposed with respect to the Tax Cuts and Jobs Act, the effect of which cannot be predicted and may be adverse to us or our stockholders.

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

We have incurred substantial net operating losses (“NOLs”), during our history. Unused NOLs may carry forward to offset future taxable income if we achieve profitability in the future, unless such NOLs expire under applicable tax laws. However, under the rules of Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the “Code”), if a corporation undergoes an “ownership change,” generally defined as a greater than 50% 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. During 2019, we analyzed whether any of the reported net operating losses would be limited because of these rules. Based on our analysis we believe \$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. 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 recent legislation may limit our ability to use our NOLs to offset any future taxable income.

We may require additional capital to support business growth, and this capital might not be available or may be available only by diluting existing stockholders.

We may require additional funds to support our growth and respond to business challenges, including the difficulties we have experienced as a result of the COVID-19 pandemic. To support our future growth, we may need to further develop our online marketplace services, 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. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing secured by us in the future could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities. In addition, we may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, and our business and prospects could fail or be adversely affected.

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

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

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

We are required to comply with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), following the later of the date we are deemed to be an “accelerated filer” or a “large accelerated filer,” each as defined in the Exchange Act, or the date we are no longer an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012. Because the market value of the Company’s common stock held by non-affiliates exceeded \$700 million as of June 30, 2020, the Company will be deemed a “large accelerated filer” under the Exchange Act and will lose emerging growth company status as of December 31, 2020. 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 management and our independent public accounting firm to report on the effectiveness of our internal control over financial reporting. Our testing, or the subsequent testing by our independent public accounting firm, may reveal deficiencies in our internal control over financial reporting that are deemed to be material weaknesses. If we are not able to comply with the requirements of Section 404 of the Sarbanes-Oxley Act in a timely manner, or if we or our registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, 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.

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

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. You may not be able to resell your shares at or above the price you paid and may lose all or part of your investment.

If you purchase shares of our common stock, you may not be able to resell those shares at or above the price you paid. We cannot assure you that the market price of our shares will equal or exceed prices in privately negotiated transactions of our shares that have occurred from time to time before our IPO. 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;
- 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;
- actions of securities analysts who initiate or maintain coverage of us, changes in financial estimates by any securities analysts who follow our company or our failure to meet these estimates or the expectations of investors;
- additional shares of our common stock being sold into the market by us or our existing stockholders, or the anticipation of such sales, including if existing stockholders sell shares into the market when the applicable “lock-up” periods associated with our IPO ends;
- hedging activities by market participants;
- 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 overall stock market, including as a result of trends in the economy as a whole;
- 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, such as the current COVID-19 pandemic.

In addition, price and volume fluctuations in the stock markets have affected and 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. In the past, stockholders have filed securities class action litigation 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. Securities litigation against us could result in substantial costs and divert our management’s attention from other business concerns, which could harm our business. See the risk factor entitled “*We are currently, and may be in the future, party to lawsuits and other claims that are expensive and time consuming, could lead to adverse publicity, and, if resolved adversely, could have a significant impact on our business, financial condition or operating results.*”

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 with the intention of buying identical securities at a later date to return to the lender. A short seller hopes to profit from a decline in the value of the securities between the sale of the borrowed securities and the purchase of the replacement shares, as the short seller expects to pay less in that purchase than it received in the sale. As it is therefore in the short seller's interest for the price of the stock to decline, some short sellers publish, or arrange for the publication of, opinions or characterizations regarding the relevant issuer, its business prospects and similar matters calculated to or which may create negative market momentum, which may permit them to obtain profits for themselves as a result of selling the stock short. 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. The publication of such commentary has, and may in the future, cause a temporary, or possibly long term, decline in the market price of our common stock. 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 commentary by short sellers or otherwise.

If securities or industry analysts either do not publish research about us or publish inaccurate or unfavorable research about us, our business or our market, or if they change their recommendations regarding our common stock adversely, the trading price or trading volume of our common stock could decline.

The trading market for our common stock is influenced in part by the research and reports that securities or industry analysts may publish about us, our business, our market or our competitors. If one or more analysts initiate research with an unfavorable rating or downgrade our common stock, provide a more favorable recommendation about our competitors or publish inaccurate or unfavorable research about our business, our common stock price would likely decline. If any analyst who covers us, or may cover us, were to cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause the trading price or trading volume of our common stock to decline.

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 members of our board of 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, which requires all stockholder actions to be taken at a meeting of our stockholders;
- provide that the board of directors is expressly authorized to make, alter or repeal our bylaws;
- 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, which could limit our stockholders' ability to choose the judicial forum for disputes with us or our directors, officers or employees.

Our certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for (1) any derivative action or proceeding brought on our behalf under Delaware law, (2) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders, (3) any action arising pursuant to any provision of the Delaware General Corporation Law ("DGCL"), our certificate of incorporation or our bylaws, (4) any other action asserting a claim that is governed by the internal affairs doctrine shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware) or (5) any other action asserting an "internal corporate claim," as defined in Section 115 of the DGCL, in all cases subject to the court having jurisdiction over indispensable parties named as defendants. These exclusive-forum provisions do not apply to claims under 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, which may discourage lawsuits against us and our directors, officers and other employees. If a court were to find the exclusive-forum provision in our certificate of incorporation 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 in the future incur additional indebtedness. We may not have sufficient cash flow from our business to make payments on our substantial debt when due.

In June 2020, we issued \$172.5 million in aggregate principal amount of 3.00% Convertible Senior Notes due 2025 (the "Notes") 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. Our ability to make payments of the principal of, to pay interest on or to refinance the Notes, or future indebtedness, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. 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 for working capital, capital expenditures, expansion plans and other investments, 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. Our business may not be able to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity on terms that may be onerous or highly dilutive. 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 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. Additionally, anticipated conversion of such Notes into shares of our common stock could depress the price of our common stock.

The conditional conversion feature 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 convertible debt securities that may be settled in cash, such as the Notes, could have a material effect on our reported financial results.

Under Accounting Standards Codification 470-20, Debt with Conversion and Other Options (“ASC 470-20”), an entity must separately account for the liability and equity components of the convertible debt instruments (such as the Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer’s economic interest cost. The effect of ASC 470-20 on the accounting for the Notes is that the equity component is required to be included in the additional paid-in capital section of stockholders’ equity on our condensed balance sheet at the issuance date and the value of the equity component would be treated as debt discount for purposes of accounting for the debt component of the Notes. As a result, we will be required to record a greater amount of non-cash interest expenses as a result of the amortization of the discounted carrying value of the Notes to their face amount over the term of the Notes. We will report larger net losses (or lower net income) in our financial results because ASC 470-20 will require interest to include both the amortization of the debt discount and the instrument’s nonconvertible coupon interest rate, which could adversely affect our reported or future financial results, the trading price of our common stock and the trading price of the Notes.

In addition, under certain circumstances, convertible debt instruments (such as the Notes) that may be settled entirely or partly in cash may be accounted for by utilizing the treasury stock method, the effect of which is that the shares issuable upon conversion of the Notes are not included in the calculation of diluted earnings per shares except to the extent that the conversion of such Notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess, if we elected to settle such excess in shares, are issued. We cannot be sure that the accounting standards in the future will continue to permit the use of the treasury stock method. If we are unable or otherwise elect not to use the treasury stock method in accounting for the share issuable upon conversion of the Notes, then our diluted earnings per share could be adversely affected.

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, subject to customary adjustments, 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 concurrently with or shortly after the pricing of the Notes, including with certain investors in the Notes.

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. We do not make any representation or prediction as to the direction or magnitude of any potential effect that the transactions described above may have on the price of shares of our common stock.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Use of proceeds from our IPO

The offer and sale of the shares in the IPO was registered under the Securities Act pursuant to a registration statement on Form S-1 (File No.333-231891), which was declared effective by the SEC on June 27, 2019. The remainder of the information required by this item regarding the use of our initial public offering proceeds has been omitted pursuant to SEC rules because such information has not changed since our last periodic report was filed.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Not applicable.

Item 6. Exhibits.

Furnish the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

Exhibit Number	Description
10.1*#	Lease Agreement dated as of November 2, 2020 by and between The RealReal, Inc. and Liberty Property Limited Partnership.
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

* Filed herewith.

Portions of the exhibit have been excluded because it both (i) is not material and (ii) would be competitively harmful if publicly disclosed.

PROLOGIS CLEAR LEASE

Simplify your lease. Simplify your business.

Exhibit 10.1

THIS LEASE AGREEMENT is made between Landlord and Tenant as of the Effective Date below.

1. General Defined Terms.

a)Effective Date:	02 November 2020		
b)Landlord:	Liberty Property Limited Partnership		
c)Landlord Notice Address:	Prologis 2525 East Camelback Rd, Suite 400 Phoenix, Arizona 85016	<i>With copy to:</i>	Prologis 1800 Wazee Street Suite 500 Denver, Colorado 80202 Attn: General Counsel
d)Tenant:	The RealReal, Inc., a Delaware corporation		
e)Tenant Notice Address:	55 Francisco Street Suite 600 San Francisco, CA 94133 Attn: Chief Financial Officer	<i>With copy to:</i>	55 Francisco Street Suite 600 San Francisco, CA 94133 Attn: Legal Department
f)Premises:	The Building containing approximately 593,600 rentable square feet as shown on <u>Exhibit A</u> .		
g)Building:	Prologis Estrella at 63rd Avenue 563 South 63rd Avenue Phoenix, AZ 85044		
h)Project:	Prologis Estrella at 63rd Avenue		
i)Tenant's Proportionate Share:	100.00%		
j)Lease Term:	Beginning on the Commencement Date and ending on the day which is 125 full calendar months following the Commencement Date (the "Expiration Date").		
k)Commencement Date:	The date that is the later of (a) January 1, 2021, and (b) that date that Landlord delivers the Premises to Tenant in the " <u>Delivery Condition</u> " (as defined in Paragraph 3) which is estimated to be January 1, 2021 (the " <u>Scheduled Commencement Date</u> ").		
l)Monthly Base Rent:	<u>Period</u>		<u>Monthly Base Rent</u>
	[***]	through	[***] *USD\$[***]
	[***]	through	[***] USD\$[***]
	[***]	through	[***] USD\$[***]
	[***]	through	[***] USD\$[***]
	[***]	through	[***] USD\$[***]
	[***]	through	[***] USD\$[***]
	[***]	through	[***] USD\$[***]
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	[***]	through	[***] USD\$[***]
	[***]	through	[***] USD\$[***]
	[***]	through	[***] USD\$[***]
	[***]	through	[***] USD\$[***]
m)Monthly Fixed Operating Expenses:	*Plus, City of Phoenix privilege tax of 2.9% of gross receipts.		
	Operating Expenses:		USD \$[***]
	Capital Repairs/Replacements:		USD \$[***]
	Total Monthly Fixed Operating Expenses:		USD \$[***]

- n) **Annual Fixed Operating Expenses Increase:** [***]%
- o) **Initial Estimated Monthly Taxes:** USD\$[***]
- p) **Security Deposit:** USD\$[***] in the form of Letter of Credit
- q) **Landlord Broker:** Jones Lang LaSalle Americas, Inc. (Lydon, Hertzberg, Gilbert)
- r) **Tenant Broker:** Cornish & Carey Commercial Inc.
Newmark Grubb Knight Frank
- s) **Guarantor:** None
- t) **Exhibits:**
- Exhibit A-** Site Plan
 - Exhibit B-** Project Rules and Regulations
 - Exhibit C-** Form of Commencement Date Certificate
 - Exhibit D-** Move-out Conditions
 - Exhibit E-** Two Renewal Options at Market
 - Exhibit F-** Letter of Credit Form
 - Exhibit G-** Dock Equipment Maintenance
 - Exhibit H-** Landlord's Work
 - Exhibit I-** Satellite Dish

2. **Granting Clause.** In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises, to have and to hold for the Lease Term, subject to the terms, covenants and conditions of this Lease.
3. **Acceptance of Premises.** Subject to Landlord's obligation to deliver the Premises in the Delivery Condition with the Initial Improvements detailed on Exhibit H Substantially Completed, and Landlord's express repair and maintenance obligations set forth in this Lease, Tenant shall accept the Premises in its condition as of the Commencement Date, subject to all applicable laws, ordinances, regulations, covenants and restrictions. Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises are suitable for Tenant's intended purposes. Except as provided herein otherwise, in no event shall Landlord have any obligation for any defects in the Premises or any limitation on its use. No later than 10 days after written demand is made by Landlord of Tenant, Tenant shall execute and deliver to Landlord a Commencement Date Certificate in the form of Exhibit C attached to and made a part of this Lease. [***]

Tenant acknowledges that as of the date of this Lease, the Premises are occupied by an existing tenant (the "Existing Tenant"). Tenant acknowledges and agrees that Landlord shall not deliver possession of the Premises to Tenant until Landlord has obtained lawful possession of the Premises from the Existing Tenant.

Landlord represents and warrants that as of the Commencement Date the Premises' HVAC, electrical, plumbing, sprinkler, and other mechanical systems are in good working order and Landlord warrants such systems for a period of twelve (12) months from the Commencement Date; provided, however, that such warranty shall not be effective for any maintenance, repairs or replacements necessitated due to the misuse of, or damages caused by, Tenant, its employees, contractors, agents, subtenants, or invitees. Furthermore, Landlord shall deliver the Premises to Tenant as of the Commencement Date vacant and in broom clean condition, with any existing signage, furniture and fixtures removed, and with all Initial Improvements described on Exhibit H attached hereto Substantially Completed (collectively, the "Delivery Condition").

[***]

Subject to the vacation of the Premises by the existing tenant, if any, Landlord shall allow Tenant access to the Premises upon vacation of the Premises by the existing tenant, if any, for purposes of preparing the Premises for the commencement of Tenant's normal business operations, subject to applicable ordinances and building codes governing Tenant's right to occupy or perform in the Premises ("Early Occupancy"). During such Early Occupancy period prior to the Commencement Date, Tenant shall be bound by its obligations under the Lease, including the obligation to provide evidence of insurance, but shall not be obligated to pay the Monthly Base Rent or Operating Expenses payable by Tenant to Landlord as set forth in the Lease.

Landlord shall reasonably cooperate, at no additional charge to Tenant but at no cost to Landlord, to the extent Landlord's cooperation or participation is required in Tenant's efforts to receive a grant or other financial

assistance from the City of Phoenix, Arizona and/or the State of Arizona in an amount reasonably acceptable to Tenant.

4. **Use.** The Premises shall be used only for the purpose of receiving, inspecting, photographing, order fulfillment and returns, storing, shipping and selling (but specifically excluding retail selling) products such as garments, furniture, art and other associated products, materials and merchandise and for such other lawful purposes as may be incidental thereto. Subject to Legal Requirements (as hereinafter defined) during the Lease Term, Tenant shall be entitled to access of the Premises 24 hours per day, seven days per week, 365 days per year. Tenant shall not conduct any auction, liquidation, or going out of business sale on the Premises. Tenant will use the Premises, Building, and Project in a safe manner and will not commit waste, overload the floor or structure of the Premises, or subject the Premises to use that would damage the Premises. Tenant shall not permit any nuisance or objectionable odors, noise, or vibrations to emanate from the Premises. Outside storage is prohibited at the Project. Tenant, at its sole expense, shall use the Premises in compliance with all federal, state, local, and municipal laws, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises (collectively, "Legal Requirements"). The Premises shall not be used as a place of public accommodation under the Americans With Disabilities Act or similar state statutes or local ordinances or any regulations promulgated thereunder, all as may be amended from time to time. The Premises shall not be used for residential purposes. Tenant shall, at its expense, make any alterations or modifications, at the Premises or Project, that are required by Legal Requirements related to Tenant's specific use or occupation of the Premises as opposed to general warehouse and distribution use. Landlord represents and warrants that, as of the Commencement Date, no written notice has been received by Landlord of non-compliance with any Legal Requirements in connection with the Premises. In the event that Landlord receives notice, or is otherwise informed, that the Premises is not in compliance with applicable Legal Requirements existing as of the Commencement Date, or which come into effect after the Commencement Date, and such non-compliance is not related to Tenant's specific use of the Premises or Tenant-Made Alterations to the Premises performed by Tenant, Landlord shall make such modifications as may be required by order or directive of applicable governmental authority, or otherwise brought to Landlord's knowledge, in order to bring the Premises into compliance with such applicable Legal Requirements without cost or expense to Tenant. Any occupation of the Premises by Tenant prior to the Commencement Date shall be subject to all obligations of Tenant under this Lease, except for the payment of Monthly Base Rent, Fixed Operating Expenses and Taxes.

Notwithstanding anything contained herein to the contrary, Tenant shall provide notice to Landlord that Tenant, or Tenant's agents, contractors, or employees, requires access to the roof of the Building, along with the date such access is required, prior to accessing the roof of the Building. Tenant shall follow all Legal Requirements, including, but not limited to, OSHA requirements when employees, contractors, or agents access the roof of the Building and shall use reasonable and appropriate safety precautions in order to ensure such employees, contractors, or agents are not subject to injury or death.

Notwithstanding anything to the contrary set forth elsewhere in this Lease, Tenant shall have the right to place and maintain at all times, at Tenant's sole cost and expense, during the Lease Term in a dock position serving the Premises, one generator that shall be utilized by Tenant in connection with its business operations and subject to Landlord's approval of the plans and specification therefor in accordance with Paragraph 13, supplemental HVAC units on the roof of the Building (the "Supplemental Units"). Subject to Paragraph 10, Landlord shall have no liability whatsoever in connection with such generator, and Tenant shall be liable for any damage arising from Tenant's installation, use and maintenance of such generator, except to the extent caused by the negligence or willful misconduct of Landlord or any Landlord Parties. Notwithstanding anything to the contrary contained herein, Tenant shall be required to comply with the obligations set forth in Exhibit I for any installations involving the roof of the Building.

5. **Base Rent.** The first month's Base Rent, Taxes, and Monthly Fixed Operating Expenses shall be due and payable upon execution of this Lease. Tenant shall pay to Landlord in advance, without demand, subsequent monthly installments of Base Rent on, or before, the first day of each calendar month succeeding the Commencement Date as set forth in Paragraph 1 (prorated for any fractional calendar month). All payments required to be made by Tenant to Landlord hereunder (or to such other party or at such location as Landlord may from time to time specify in writing) shall be made by Electronic Fund Transfer ("EFT") or Automated Clearing House ("ACH"). The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any amounts due and payable hereunder except as may be expressly provided in this Lease. If Tenant is delinquent in any monthly installment of Base Rent, Taxes, the Monthly Fixed Operating Expenses, or other amount due and payable herein for more than 5 days, in addition to all of Landlord's other rights and remedies (and not as a penalty), Tenant shall pay to Landlord on demand a late charge equal to six percent (6%) of such delinquent sum.
6. **Fixed Operating Expenses.** In addition to the Base Rent, during each month of the Lease Term, on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to the Monthly Fixed Operating

Expenses provided in Paragraph 1 of the Lease, which Landlord and Tenant agree shall be reimbursement for Landlord's obligations with respect to the maintenance, repairs, and replacements as provided in Paragraph 11, of the Lease, as well as the insurance premiums incurred by Landlord as provided in Paragraph 10. Landlord hereby acknowledges that the Monthly Fixed Operating Expenses provided in Paragraph 1 of this Lease includes the anticipated cost to maintain the Supplemental Units Tenant intends to install for the office area of the Premises as well as the anticipated costs savings resulting from the planned removal of evaporated coolers serving the warehouse portions of the Premises. For avoidance of doubt, Landlord shall be under no obligation to approve modifications to the heating, ventilation, and air conditioning system serving the Premises that would increase the cost of Landlord's maintenance obligations beyond what is reasonably anticipated as of the Effective Date. Effective on each annual anniversary of the Commencement Date during the Lease Term (or, if the first annual anniversary occurs on a date other than the first day of a calendar month, then on the first day of the immediately subsequent calendar month and on each annual anniversary date thereafter), the Monthly Fixed Operating Expenses shall be automatically increased by the percentage set forth as the Annual Fixed Operating Expenses Increase provided in Paragraph 1 over the Monthly Fixed Operating Expenses due and payable under this Lease immediately prior to such increase. Landlord and Tenant agree that except for the increases in the Monthly Fixed Operating Expenses as provided above, the Monthly Fixed Operating Expenses shall not be reconciled against the actual operating expenses incurred by Landlord at any time during the Lease Term. Notwithstanding the foregoing, in the event the Lease Term is extended in any manner, whether via an option to extend or otherwise, Landlord shall have the right to amend the Monthly Fixed Operating Expenses due and payable by Tenant during such extension of the Lease Term, as well as the Annual Fixed Operating Expense Increase, each as determined in Landlord's reasonable determination based on the actual operating expenses applicable to the Project prior to such increase and Landlord's projected annual increase of such operating expenses, upon delivery of written notice to Tenant of Landlord's intent to amend such terms. For the purpose of Landlord's determination of the Fixed Operating Expenses during any extension of the Lease Term as provided herein only, the actual operating expenses shall mean all costs and expenses incurred by Landlord with respect to the ownership, maintenance, and operation of the Project (excluding Taxes) including, but not limited to costs of: insurance; utilities; maintenance, repair and replacement of all portions of the Building, Premises, and Project, including without limitation, paving and parking areas, roads, the roof, alleys, and driveways, mowing, landscaping, snow removal, exterior painting, utility lines, fire sprinklers and fire protection systems, heating, ventilation and air conditioning systems, lighting, electrical systems and other mechanical and building systems; amounts paid to contractors and subcontractors for work or services performed in connection with any of the foregoing; charges or assessments of any association to which the Project is subject; a property management or administration fee payable to a property manager, including Landlord, or any affiliate of Landlord; security services, if any; trash collection, sweeping and debris removal; and additions or alterations made by Landlord to the Project or the Building in order to comply with Legal Requirements (other than those expressly required herein to be made by Tenant).

Notwithstanding anything in this Lease to the contrary, in no event shall Monthly Fixed Operating Expenses be calculated to include (a) reserves for future expenditures; (b) costs incurred by Landlord for repair or restoration to the extent that Landlord is reimbursed by insurance or condemnation proceeds or that is covered by warranty; (c) costs incurred due to the negligence or misconduct of Landlord or its agents, contractors, licensees and employees or the violation by Landlord of the terms and conditions of this Lease; (d) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for services to the extent the same exceeds the costs of such services rendered by other first-class unaffiliated third parties on a competitive basis; (e) any costs relating to hazardous materials, asbestos and the like not resulting from actions of tenant; (f) charges for depreciation of the Building or equipment; (g) taxes of any kind; and (h) marketing, promotions or advertising of any kind.

7. **Security Deposit.** The Security Deposit shall be due and payable to Landlord upon execution of this Lease, and the Security Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease and is not an advance rental deposit, or a measure of Landlord's damages in case of Tenant's default. Upon any Event of Default, Landlord may use all, or part of, the Security Deposit to pay delinquent payments due under this Lease, and the cost of any damage, injury, expense or liability caused by such Event of Default, without prejudice to any other remedy provided herein or provided by law. Tenant shall pay Landlord on demand the amount that will restore the Security Deposit to its original amount. Landlord's obligation respecting the Security Deposit is that of a debtor, not a trustee. The Security Deposit shall be the property of Landlord, but and shall be paid to Tenant when Tenant's obligations under this Lease have been completely fulfilled. Landlord shall not be required to keep all or any part of the Security Deposit separate from its general accounts, and no interest shall accrue thereon. Provided Landlord actually transfers the Security Deposit to any person or entity assuming Landlord's obligations under this Lease, Landlord shall be released from any obligation with respect to the Security Deposit upon transfer of this Lease, the Premises and the Security Deposit to a person or entity assuming Landlord's obligations under this Lease.

The Security Deposit under the Lease shall be USD\$[***], in the form of an unconditional, irrevocable letter of credit from a bank reasonably acceptable to Landlord and in compliance with the material terms shown in Exhibit F attached hereto ("Letter of Credit"). The Letter of Credit shall either provide that it does not expire until 60 days following the Expiration Date or, if it is for less than the full Lease Term, shall be automatically renewed for an additional year unless Landlord receives notice from the issuing bank at least 60 days prior to its expiration that it will not be extended. The Letter of Credit shall provide that it may be drawn down upon by Landlord in whole or in part at any time Landlord delivers to the bank its site draft and a drawing request in the form attached hereto as Annex 2 to Exhibit F. If Landlord sells or conveys the Premises, Tenant shall, at Landlord's request, cooperate in having the Letter of Credit transferred to the purchaser and Landlord agrees to notify Tenant in the event of such transfer. If the Letter of Credit is ever drawn upon by Landlord pursuant to the terms of the Lease, Tenant shall within ten (10) business days thereafter cause the Letter of Credit to be restored to the then existing amount at the time immediately prior to the draw down, or supply Landlord with an additional Letter of Credit equal to the amount drawn upon such that Landlord has one or more letters of credit in the aggregate amount required by the terms of this Lease.

Notwithstanding anything contained herein to the contrary, in the event Landlord receives notice from the issuing bank that the Letter of Credit will not be renewed in accordance with the terms and conditions as set forth in this Paragraph 7, or Tenant fails to renew such Letter of Credit, or in the event that Tenant shall commence any proceeding for relief, as defined in Paragraph 24(b) of the Lease, the Letter of Credit shall provide, and Tenant agrees, that Landlord, without the requirement of notice or opportunity to cure, may immediately draw down on the full amount of the Letter of Credit, holding the proceeds of same as a cash Security Deposit.

[***]

8. **Utilities.** Tenant shall pay directly for all separately metered, or contracted public and private utilities including, but not limited to, water, gas, electricity, telephone, sewer, refuse and trash collection, and other utilities and services used on the Premises, along with any taxes, penalties, or surcharges with respect thereto. Landlord may cause at Tenant's expense any jointly metered utilities to be separately metered or charged directly to Tenant by the provider. Interruptions or failures of utilities shall not result in a default by Landlord under this Lease, or the termination of this Lease, or the abatement of rent. Tenant agrees to limit use of water and sewer to amounts consistent with normal restroom and office use.
9. **Taxes.** Subject to reimbursement as provided below, Landlord shall pay all taxes, assessments, governmental charges, and fees payable to tax consultants and attorneys for consultation and contesting taxes (collectively referred to as "Taxes") that accrue against the Building or Project during the Lease Term. Landlord may contest the amount, validity, or application of any Taxes or liens thereof. If Landlord fails to contest Taxes, Tenant shall have the right to request Landlord to contest such Taxes, and Landlord shall so contest, at Tenant's sole cost and expense (including, without limitation, Landlord's reasonable attorneys' fees and reasonable fees payable to tax consultants and attorneys for consultation and contesting Taxes), if, in Landlord's reasonable judgment, such contest is warranted; provided, however, Tenant's request of such contesting of Taxes shall be limited to one request in a calendar year. Landlord shall cooperate in the institution and prosecution of any such proceedings of contesting Taxes and will execute any documents reasonably required therefor. All reductions, refunds, or rebates of Taxes paid or payable by Tenant shall belong to Tenant whether as a consequence of a Tenant proceeding or otherwise. All capital levies or other taxes assessed or imposed on the Landlord upon the rents payable to Landlord under this Lease and any franchise tax, any excise, use, margin, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof shall be paid by Tenant to Landlord upon demand as additional rent; provided, however, in no event shall Tenant be liable for any late fees, interest or penalties resulting from Landlord's failure to timely pay the same, or any gift tax, estate tax, inheritance tax, transfer fee, conveyance fees, or net income taxes imposed on Landlord unless such fees and taxes are in substitution for any Taxes otherwise payable hereunder. Notwithstanding anything in the foregoing sentence to the contrary, Tenant shall be responsible pursuant to the terms hereof for any increase in the Taxes payable hereunder caused by a reassessment or otherwise resulting from Landlord selling or conveying the Building to a third party. If any tax or excise is levied or assessed directly against Tenant, or the Premises, or results from any Tenant-Made Alterations (defined below), then Tenant shall pay such tax or excise as required by the taxing authority. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Premises by Tenant even if levied or assessed against the Landlord.

During each month of the Lease Term, on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to 1/12 of the annual cost (prorated for any fractional calendar month), as estimated by Landlord, of Tenant's Proportionate Share (hereinafter defined) of Taxes for the Project or Building. Within ninety (90) days of the conclusion of each calendar year during the Lease Term, Landlord shall provide Tenant with a copy of the tax bill and a statement reconciling Tenant's Proportionate Share of Taxes for such just concluded

calendar year. If Tenant's total payments of Taxes for any year are less than Tenant's Proportionate Share of actual Taxes for such year, then Tenant shall pay the difference to Landlord within thirty (30) days after demand, and if more, then Landlord shall pay such refund to Tenant within thirty (30) days of the date Landlord provides Tenant with the annual accounting. Any payment required to be paid by Landlord shall be delivered to the most recent address Tenant has provided to Landlord. "Tenant's Proportionate Share" shall be the percentage set forth in Paragraph 1 of this Lease as reasonably adjusted by Landlord in the future for changes in the physical size of the Premises, Building, or Project. The Taxes set forth in Paragraph 1 of this Lease is only an estimate and Landlord makes no guaranty as to the accuracy of such estimate.

- 10. Insurance.** Landlord shall maintain all risk property insurance covering the full replacement cost of the Building and commercial general liability insurance on the Project in forms and amounts customary for properties substantially similar to the Project. The Project or Building may be included in a blanket policy or captive insurance program. Tenant will not use the Premises in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any insurance credits. If any increase in the cost of any insurance on the Premises or the Project is caused by Tenant's use of the Premises, then Tenant shall pay the amount of such increase to Landlord. Landlord represents and warrants that the use of the Premises for the general purpose of warehousing of non-Hazardous Materials or highly flammable materials and general office space will not (i) void Landlord's insurance, or (ii) increase the insurance risk or cause the disallowance of any insurance credits.

Tenant, at its sole expense, shall maintain during the Lease Term the following insurance: (1) commercial general liability insurance, on an occurrence basis, covering Tenant, and its activities at the Project, having a minimum limit of \$[***] per occurrence (which requirement may be satisfied by a combination of primary and excess policy limits); (2) all risk property insurance covering the full replacement cost of all property and improvements placed in the Premises by, or on behalf of, Tenant, including any property of Tenant's customers or which is otherwise not owned by Tenant; (3) workers' compensation insurance as required by the applicable state statute (or equivalent coverage reasonably acceptable to Landlord in the event there is no such statutory requirement) which shall include a waiver of subrogation in favor of Landlord, Prologis, Inc., its affiliates, and property manager (Landlord and such parties are collectively referred to herein as the "Landlord Parties"); (4) employers liability insurance of at least \$[***], (5) provided Tenant uses its own automobiles as part of the business being conducted from the Premises, business automobile liability insurance having a combined single limit of not less than \$[***] per occurrence which can be satisfied by a combination of primary and excess policy limits insuring Tenant against liability arising out of the ownership maintenance or use of any owned, hired or non-owned automobiles, and (6) business interruption insurance covering at least 6 months of income. Tenant's insurance companies shall have an A.M. Best rating of not less than A-VIII and provide primary and non-contributory coverage to the Landlord Parties (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant's policies). All commercial general liability policies shall name the Landlord Parties as additional insureds. The limits and types of insurance maintained by Tenant shall not limit Tenant's liability under this Lease. Tenant shall provide Landlord with certificates of such insurance in forms reasonably acceptable to Landlord as required under this Lease prior to the date Tenant is provided with possession of the Premises, and thereafter at least 15 days prior to the expiration of the insurance coverage, and 15 days following Tenant's receipt of Landlord's request for such certificates. Acceptance by Landlord of delivery of any certificates of insurance does not constitute approval or agreement by Landlord that the insurance requirements of this paragraph have been met. In the event any of the insurance policies required to be carried by Tenant under this Lease shall be cancelled prior to the expiration date of such policy, or if Tenant receives notice of any cancellation of such insurance policies from the insurer prior to the expiration date of such policy, Tenant shall promptly replace such insurance policy in order to assure no lapse of coverage shall occur.

The all-risk property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, their officers, directors, employees, managers, agents, invitees and contractors, in connection with any insured loss or damage. Neither party, nor its officers, directors, employees, managers, agents, invitees or contractors, shall be liable to the other for loss or damage caused by any risk coverable by all risk property insurance, and each party waives any claims against the other party, and its officers, directors, employees, managers, agents, invitees and contractors for such loss or damage. The failure of a party to insure its property shall not void this waiver. Neither party, nor its officers, directors, employees, managers, agents, or contractors, shall be liable to the other for any business interruption loss incurred, and each party waives any claims against the other party, and its officers, directors, employees, managers, agents, and contractors for such business interruption loss from any cause whatsoever, including, but not limited to damage caused in whole or in part, directly or indirectly, by the negligent acts of the other party at the Premises or the Project.

- 11. Landlord's Repairs and Maintenance.** Landlord shall maintain, repair, and replace, at Landlord's expense, the exterior and structural elements of the Building, including the roof (including the roof membrane), walls, the structural integrity of the foundation, the structural elements of the floor slab, parking areas, truck apron,

driveways, alleys, landscaping, lighting, the Building fire sprinkler system, fire pump, all components of the heating, ventilation, and air conditioning (the "HVAC") units serving the office portion of the Premises, any exterior louvers or ventilation fans for typical warehouse air changes, and any heating and/or evaporative cooler systems serving the warehouse portion of the Premises which may exist (the "Warehouse Units"), and the below slab water and sewer lines, in good working order, excluding reasonable wear and tear and uninsured damages caused by Tenant, its employees, agents, contractors, invitees, subtenant's and assignees. Notwithstanding the foregoing to the contrary, Landlord's obligation with respect to the HVAC and Warehouse Units as provided above shall expressly exclude any heating, ventilation, or air conditioning systems installed by Tenant in the Premises, any specialty HVAC systems (including but not limited to IT room supplemental HVAC or which are necessary for temperature controlled product), and any air conditioning systems serving the warehouse portion of the Premises other than the evaporative cooler systems as provided above. In addition to the foregoing, if customary in the market where the Project is located, Landlord, at Landlord's expense, shall provide snow removal for the Project to the extent applicable under the local conditions, and parking lot sweeping at the Project in a manner consistent with owners of similar buildings and projects in the market where the Building is located. The term "walls" as used in this Paragraph shall not include windows, glass or plate glass, doors or overhead doors, dock doors, dock bumpers, or dock plates or levelers. Tenant shall use commercially reasonable efforts to promptly give Landlord written notice of any repair required by Landlord pursuant to this Paragraph.

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12. **Tenant's Repairs.** Subject to Landlord's obligations in Paragraphs 3 and 11, and subject to Paragraphs 10 and 16, Tenant, at its expense, shall repair, replace and maintain in good condition the Premises and all areas, improvements and systems exclusively serving the Premises including, without limitation, dock and loading areas, truck doors, plumbing, above slab water and sewer lines up to points of common connection, entries, doors, ceilings, windows, and interior walls. [***]

13. **Tenant-Made Alterations and Trade Fixtures.** Tenant shall have the right to make alterations, additions, or improvements to the Premises ("Tenant-Made Alterations"), which are interior, do not impact the structure of the Building, and the cost of which does not exceed \$[***] in each instance, without Landlord's consent; provided Tenant provides Landlord with a written notice of such Tenant-Made Alterations containing reasonably sufficient and complete information regarding such Tenant-Made Alterations. All other Tenant-Made Alterations shall require Landlord's prior written consent, and approval of the plans, not to be unreasonably withheld, delayed or conditioned provided such alteration does not adversely impact the structure of the Building, modify the exterior of the Building, or modify the utility or mechanical systems of the Project. Landlord shall either approve or disapprove, as the case may be, Tenant's Tenant-Made Alterations to the Premises within 10 business days after receipt of Tenant's plans and specifications for such Tenant-Made Alterations, provided that such plans and specifications, in Landlord's commercially reasonable judgment, contain sufficient and complete information to effectuate Landlord's approval hereunder. In the event that Landlord fails to provide its approval or disapproval within such 10-business day period, subject to Landlord's receipt of sufficient and complete information as described in the preceding sentence, then Landlord's approval shall be deemed given for purposes hereunder. Tenant shall cause, at its expense, all Tenant-Made Alterations to: (a) be constructed in a good and workmanlike manner by contractors reasonably acceptable to Landlord using only good grades of materials, and (b) comply with Landlord's insurance requirements set forth in this Lease and Legal Requirements. Tenant shall reimburse Landlord for its reasonable out-of-pocket costs in reviewing plans and specifications and for monitoring construction. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with Legal Requirements. Tenant shall provide Landlord with the names and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall cause its contractor to provide certificates of insurance for worker's compensation, including a waiver of subrogation in favor of the Landlord Parties, and commercial general liability in an amount equal to USD\$[***] from an insurance company reasonably satisfactory to Landlord, including a provision of additional insured status for the Landlord Parties, from any contractor completing work on Tenant-Made Alterations. Upon completion of any Tenant-Made Alterations, Tenant shall deliver to Landlord all final lien waivers from all contractors and subcontractors who did work on the Tenant-Made Alterations. Upon surrender of the Premises all Tenant-Made Alterations and any leasehold improvements constructed by Landlord or Tenant shall remain on the Premises as Landlord's property, except to the extent Landlord requires removal in accordance with this Paragraph 13, in which case, at Tenant's expense, Tenant shall repair any damage caused by such installation or removal. By written notice to Tenant at the time Landlord approves the plans and specifications for requested Tenant-Made Alterations, Landlord shall provide Tenant a list of which of the requested Tenant-Made Alterations Landlord will require Tenant to remove upon surrender of the Premises. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be required to remove any demising walls constructed within the Premises as part of the Tenant-Made Alterations made hereunder, any generator or the Supplemental Units installed pursuant to this Lease, or any other Tenant-Made Alterations

other than those identified by Landlord at the time Landlord consents in writing to such Tenant-Made Alterations.

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14. **Signs.** Tenant shall not install any decorations, flags, pennants, banners, window or door lettering, placards, advertising media, lights or signs to the exterior of the Building, or interior window blinds, draperies, bars, or other window treatments which are visible from the exterior of the Building, without Landlord's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed provided such signage is consistent with Legal Requirements and Landlord's signage criteria. Tenant shall remove all signs and repair, paint, and/or replace the building facia surface to which its signs may be attached. Tenant shall obtain all applicable governmental permits and approvals for any sign. Provided that Tenant otherwise complies with the terms of this Paragraph 14, and subject to Landlord's prior approval of the plans and specifications for such signage as contemplated herein, Tenant shall have the right to install a monument and building signage at the Project.
15. **Parking.** Tenant shall be entitled to the exclusive use of the automobile and truck parking areas at the Building. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties.
16. **Restoration.** If at any time during the Lease Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within 60 days after such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is reasonably estimated to exceed 6 months from the date of the casualty event, either Landlord or Tenant may elect to terminate this Lease upon notice to the other party given no later than 30 days after Landlord's notice. If neither party elects to terminate this Lease, or if Landlord estimates that the restoration will take less than 6 months from the date of such damage, then Landlord shall, subject to delays arising from the collection of insurance proceeds or from events of Force Majeure, restore the Premises, excluding any Tenant-Made Alterations. Tenant at Tenant's expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from Force Majeure events, all repairs or restoration not required to be done by Landlord. Notwithstanding the foregoing, either party may terminate this Lease if the Premises are damaged during the last year of the Lease Term and Landlord reasonably estimates that it will take more than one month to repair such damage, provided, however, Tenant may nullify Landlord's termination notice by exercising its right to the First Extension Term (as defined in Exhibit E) within ten (10) days of its receipt of Landlord's notice of termination. With respect to any damage to the Premises attributable to Tenant, Tenant shall pay Landlord's deductible with respect to its insurance policy not to exceed USD\$[***] no later than thirty (30) days following receipt of an invoice for such amount. Base Rent, Taxes, and the Monthly Fixed Operating Expenses shall be abated for the period of repair and restoration commencing on the date of such casualty event in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

Notwithstanding the terms and conditions of this Paragraph, if the Premises are not restored by Landlord on, or prior to, the date which is the later of 6 months of the date of the casualty event (subject to Force Majeure and Tenant-caused delays) or the date Landlord estimated completion of the restoration as described above (subject to Force Majeure and Tenant-caused delays), Tenant may terminate the Lease upon thirty (30) days written notice to Landlord; provided, however, if Landlord completes the restoration in said thirty (30) day notice period, Tenant's notice of termination shall be null and void and this Lease shall continue in full force and effect.

17. **Condemnation.** If any part of the Premises or the Project should be taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "Taking" or "Taken"), and the Taking is a Taking of the entire Building or Project, or would result in the Project no longer being operational for the uses provided herein, then upon written notice by Landlord this Lease shall terminate and Base Rent shall be apportioned as of said date. In the event (i) more than twenty percent (20%) of the Premises is involved in a Taking as described in this Paragraph 17, or (ii) more than thirty percent (30%) of the parking spaces for the Building are Taken and not replaced by Landlord with other parking spaces in the Project proximate to the Building, and in either case the Taking, in Tenant's reasonable judgment, would materially interfere with or impair Tenant's operations at the Premises, then in any such event Tenant shall have the right to terminate this Lease by giving written notice of termination to Landlord within thirty (30) days of such Taking. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, the Base Rent, Operating Expenses and Taxes payable hereunder during the unexpired Lease Term shall be

reduced to such extent as may be fair and reasonable under the circumstances. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's Trade Fixtures.

18. **Assignment and Subletting.** Except as expressly provided herein otherwise, Tenant shall not assign this Lease or sublease the Premises or any part thereof, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, and any attempt to do any of the foregoing without Landlord's consent shall be void and of no effect. Furthermore, Tenant shall not mortgage, or pledge, its leasehold interest in this Lease under any circumstances. Landlord shall notify Tenant whether the proposed assignment or sublease is approved or reasonably disapproved within 30 days after Landlord's receipt of Tenant's request (provided that, if Landlord disapproves of any such proposed assignment or sublease, Landlord will include in such notice a reasonable factual explanation to Tenant of the reasons for such disapproval). It shall be reasonable for the Landlord to withhold, delay or condition its consent to any assignment or sublease if the intended use of the Premises by the assignee or sublessee is not receiving, storing, shipping and selling (but specifically excluding retail selling) products. Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease. Tenant shall provide to Landlord all information concerning the assignee or sublessee as Landlord may reasonably request. Landlord may revoke its consent immediately if there is an Event of Default. For purposes of this Paragraph, for so long as Tenant, or Tenant's parent company as the case may be, is a traded on a public stock exchange, the trading of shares of Tenant or Tenant's parent company, as applicable, on such public stock exchange shall not constitute an assignment of this Lease or a transfer requiring Landlord's consent pursuant to this Paragraph. In the event the preceding sentence does not apply, a transfer of ownership interest controlling Tenant shall be deemed an assignment of this Lease. Notwithstanding the foregoing to the contrary, provided no uncured default exists under this Lease, and subject to the provisions herein, Tenant may, without Landlord's prior written consent, assign this Lease to any entity into which Tenant is merged or consolidated, or to any entity to which substantially all of Tenant's assets are transferred, provided the following conditions are met: (x) such merger, consolidation, or transfer of assets is not principally for the purpose of transferring Tenant's leasehold estate, (y) either such merger, consolidation, or transfer of assets does not adversely affect the legal existence of the Tenant hereunder or such resulting entity agrees to assume all obligations and liabilities of Tenant under the Lease, including those which may have accrued prior to the effective date of such transfer in a form acceptable to Landlord, and (z) such merger, consolidation, or transfer of assets of Tenant does not reduce the tangible net worth of Tenant after giving effect to such transfer below [***] Dollars ("Permitted Transfer"). Tenant hereby agrees to give Landlord written notice thirty (30) days prior to such merger, consolidation, or transfer of assets along with any documentation reasonably requested by Landlord related to the required conditions as provided above. Notwithstanding the above, Tenant may assign or sublet the Premises, or any part thereof, to any entity controlling Tenant, controlled by Tenant or under common control with Tenant (a "Tenant Affiliate"), without the prior written consent of Landlord. Tenant shall reimburse Landlord an amount equal to USD\$[***] in connection with any assignment or sublease for which Landlord's consent is required. This Lease shall be binding upon Tenant and its successors and permitted assigns. Upon Landlord's receipt of Tenant's written notice of a desire to assign the Lease or sublet the entire Premises for the remainder of the Lease Term (other than to a Tenant Affiliate), Landlord may, by giving written notice to Tenant within 30 days after receipt of Tenant's notice, terminate this Lease as of the date specified in Tenant's notice for the commencement of the proposed assignment or sublease. Landlord and Tenant shall be relieved of all obligations accruing under this Lease after the effective date of such termination but not any obligations accruing under the Lease prior to the effective date of such termination.

Notwithstanding any assignment or subletting, Tenant and any guarantor of Tenant's obligations shall remain liable for the payment of the Base Rent, Taxes, the Monthly Fixed Operating Expenses and other amounts due under this Lease, and compliance with all of Tenant's obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such assignments or sublettings). In the event that the rent due by a sublessee or assignee (or a combination of the rent plus any bonus or other consideration therefor) exceeds the rental payable under this Lease, then Tenant shall pay to Landlord fifty percent (50%) of such excess, after subtracting all reasonable and customary expenses incurred by Tenant in connection with such sublease or assignment, including, but not limited to, brokerage commissions, attorney's fees, the cost of demising the Premises, and any improvement allowance or free rent period given the subtenant or assignee, as additional rent within 10 days following receipt by Tenant.

If this Lease is assigned or if the Premises are subleased (whether in whole or in part), or if the Premises are occupied by anyone other than Tenant, then upon an Event of Default Landlord may collect rent from any occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next rent payable hereunder.

19. **Indemnification.** Except for the negligence of the Landlord Parties, their agents, employees or contractors, Tenant agrees to indemnify, defend and hold harmless the Landlord Parties from and against all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Project and arising from the use and occupancy of the Premises or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or due to any other act or omission of Tenant, its subtenants, assignees, invitees, employees, contractors and agents. The furnishing of insurance required hereunder shall not be deemed to limit Tenant's obligations under this Paragraph.

Except for the negligence of Tenant, its agents, employees or contractors, and to the extent permitted by law, Landlord agrees to indemnify, defend and hold harmless Tenant, and Tenant's agents, employees and contractors, from and against any and all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Project and arising from any activity, work, or thing done, permitted or suffered by Landlord in or about the Project and arising from any other act or omission of Landlord, its assignees, invitees, employees, contractors and agents. The furnishing of insurance required hereunder shall not be deemed to limit Landlord's obligations under this Paragraph 19.

If a claim under the foregoing indemnity is made against the indemnitee which the indemnitee believes to be covered by an indemnitor's indemnification obligations hereunder, the indemnitee shall promptly notify the indemnitor of the claim and, in such notice shall offer to the indemnitor the opportunity to assume the defense of the claim within 10 business days after receipt of the notice (with counsel reasonably acceptable to the indemnitee). If the indemnitor timely elects to assume the defense of the claim, the indemnitor shall have the right to settle the claim on any terms it considers reasonable and without the indemnitee's prior written consent, as long as the settlement shall not require the indemnitee to render any performance or pay any consideration, and the indemnitee shall not have the right to settle any such claim. If the indemnitor fails to timely elect to assume the defense of the claim or fails to defend the claim with diligence, then the indemnitee shall have the right to take over the defense of the claim and to settle the claim on any terms the indemnitee considers reasonable. Any such settlement shall be valid as against the indemnitor. If the indemnitor assumes the defense of a claim, the indemnitee may employ its own counsel but such employment shall be at the sole expense of the indemnitee. If any such claim arises out of the negligence of both Landlord and Tenant, responsibility for such claim shall be allocated between Landlord and Tenant based on their respective degrees of negligence. This indemnity does not cover claims arising from the presence or release of Hazardous Materials.

20. **Inspection, Data and Access.** Landlord and its agents, representatives, and contractors may enter the Premises at any reasonable time and upon reasonable advance verbal notice to Tenant to inspect the Premises, for any business purpose, and, during the last year of the Lease Term, to show the Premises to prospective tenants. Landlord may erect a suitable sign on the Project stating the Premises are available to lease or that the Project is available for sale. Landlord may grant easements, make public dedications, designate and modify common areas and create restrictions affecting the Project, provided that no such easement, dedication, designation, modification or restriction materially interferes with Tenant's use or occupancy of the Premises. At Landlord's request, Tenant shall execute such instruments as may be reasonably necessary for such easements, dedications or restrictions.

Except in case of emergency, Landlord shall be subject in entering the Premises to reasonable security conditions, if any, set forth by Tenant in writing to Landlord, which such security conditions may involve commercially reasonable protective measures put in place to combat the effects of the Covid-19 pandemic existing as of the Effective Date of this Lease. Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use and occupancy in connection with any such entry.

21. **Quiet Enjoyment.** Absent any Event of Default subject to the terms of this Lease, Tenant shall have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

22. **Surrender.** Upon the expiration of the Lease Term or 10 days following its earlier termination or of Tenant's right of possession as a result of an Event of Default, subject to Paragraph 13, Tenant shall surrender the Premises to Landlord in the same condition as received, ordinary wear and tear, casualty loss and condemnation covered by Paragraphs 16 and 17 excepted and otherwise in accordance with the Move-Out Conditions attached hereto as Exhibit D. Any Trade Fixtures, Tenant-Made Alterations that Tenant is required to remove pursuant to Paragraph 13 and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property. All outstanding Tenant obligations hereunder shall survive the termination of the Lease Term,

including without limitation, indemnity obligations, payment of Taxes, and all obligations concerning the condition and repair of the Premises.

23. **Holding Over.** If Tenant retains possession of the Premises after the Expiration Date, such possession shall be subject to immediate termination by Landlord, and all terms of this Lease shall be applicable during such holdover period except (i) any expansion, renewal, or similar right or option, and (ii) Base Rent for the holdover period shall be [***]% for the first [***] following the Expiration Date, and [***]% thereafter, of the then-effective Base Rent. All other amounts payable under this Lease shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. Holding over by Tenant (with or without consent of Landlord) shall not extend this Lease except as otherwise expressly provided, and this Paragraph shall not be construed as consent for Tenant to retain possession of the Premises. For purposes of this Paragraph, "possession of the Premises" shall continue until Landlord has complete control over the Premises, all keys have been delivered, and Tenant has fulfilled all required obligations upon termination of the Lease concerning the condition and repair of the Premises.
24. **Events of Default.** Each of the following shall be an event of default ("Event of Default") by Tenant:
- a) Tenant shall fail to pay any installment of Base Rent, Taxes, the Monthly Fixed Operating Expenses, or any other payment required herein when due, and such failure shall continue for a period of 5 days from Tenant's receipt of written notice from Landlord that same is past due.
 - b) Tenant or any guarantor or surety of Tenant's obligations hereunder shall (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "proceeding for relief"); (C) become the subject of any proceeding for relief which is not dismissed within 60 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).
 - c) Any insurance required to be maintained by Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease or Tenant fails to timely deliver to Landlord any certificate of insurance as required under Paragraph 10 of the Lease, and said failure is not cured within five (5) business days of Tenant's receipt of written notice of such failure from Landlord.
 - d) Tenant shall vacate the Premises and fail to make arrangements reasonably acceptable to Landlord to ensure that (a) Tenant's insurance for the Premises will not be voided or cancelled, (b) the Premises are secured and not subject to vandalism, and (c) the Premises will be properly maintained and maintaining the utility services. Tenant shall inspect the Premises at least monthly and report to Landlord in the event the condition of the Premises has adversely changed.
 - e) Tenant assigns, subleases or transfers Tenant's interest in this Lease except as permitted in this Lease.
 - f) Tenant shall fail to discharge any lien placed upon the Premises or Building in violation of this Lease within 20 days after receipt of actual notice any such lien or encumbrance is filed against the Premises.
 - g) Tenant shall fail to provide Landlord with an estoppel certificate within 10 days of receipt of written notice that same has not been provided within the time period required by Paragraph 29 below.
 - h) Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Paragraph, and such default shall continue for more than thirty (30) days after Landlord has given Tenant written notice of such default (said notice being in lieu of, and not in addition to, any notice required as a prerequisite to a forcible entry and detainer or similar action for possession of the Premises); provided, however, that Tenant shall not be in default under the circumstances described in this Paragraph 24 if Tenant has made diligent efforts to cure such default within the thirty (30) day period described therein, and thereafter proceeds continuously and diligently to cure such default within a commercially reasonable time.
25. **Landlord's Remedies.** Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time elect to: (a) terminate this Lease or Tenant's right of possession, (but Tenant shall remain liable as hereinafter provided), and/or (b) pursue any other remedies at law or in equity. Upon the termination of this Lease or termination of Tenant's right of possession, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove Tenant and all persons and property therefrom. If Landlord re-enters the Premises, Landlord shall have the right to keep in place and use, or remove and store, all property at the Premises.

If Landlord terminates this Lease, Landlord may recover from Tenant the sum of: all Base Rent, Monthly Fixed Operating Expenses, Taxes, and all other amounts accrued hereunder to the date of such termination; the value

of the Base Rent for any periods of abated Monthly Base Rent based on the Monthly Base Rent amount that immediately follows such period of abatement; the cost of reletting the whole or any part of the Premises, including without limitation brokerage fees and/or leasing commissions incurred by Landlord, and costs of removing and storing property, repairing or altering the Premises for a new tenant(s), and all reasonable expenses incurred by Landlord in pursuing its remedies, including reasonable attorneys' fees and court costs; and the excess of the then present value of the Base Rent, Monthly Fixed Operating Expenses, Taxes, and other amounts payable by Tenant under this Lease applicable during the period following the termination of this Lease to the Expiration Date stated in this Lease, over the present value of any net amounts which Tenant establishes Landlord can reasonably expect to recover by reletting the Premises for such period, taking into consideration the availability of acceptable tenants and other market conditions affecting leasing. Such present values shall be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of such termination.

If Landlord terminates Tenant's right to possession (but not this Lease) without terminating the Lease after an Event of Default, Landlord shall use commercially reasonable efforts to mitigate its damages by reletting the Premises without thereby releasing Tenant from any liability hereunder and without demand or notice of any kind to Tenant; provided, however, (a) Landlord shall not be obligated to accept any tenant proposed by Tenant, (b) Landlord shall have the right to lease any other space controlled by Landlord first, and (c) any proposed tenant shall meet all of Landlord's leasing criteria. Any reletting of the Premises shall be on such terms and conditions as Landlord in its sole discretion may determine (including without limitation a term different than the remaining Lease Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Project before reletting the Premises). Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting. For the purpose of such reletting Landlord is authorized to make any repairs, changes, alterations, or additions in or to the Premises as Landlord deems reasonably necessary or desirable. If the Premises are not relet, then Tenant shall pay to Landlord as damages a sum equal to the amount of the rental reserved in this Lease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit), the unpaid Base Rent, Monthly Fixed Operating Expenses, Taxes, and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Landlord to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting [after first deducting therefrom, for retention by Landlord, the unpaid Base Rent, Monthly Fixed Operating Expenses, Taxes, and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including attorneys' fees and costs of suit), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including without limitation brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom] to satisfy the rent provided for in this Lease to be paid, then Tenant shall immediately satisfy and pay any such deficiency. Any such payments due Landlord shall be made upon demand and Tenant agrees that Landlord may file suit to recover any sums as they become due. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

Except for Landlord's termination of this Lease, Landlord's exercise of any remedies shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord except by written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance the terms hereof shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent Event of Default. Receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. The terms "enter," "re-enter," "entry," or "re-entry," as used in this Lease, are not restricted to their technical legal meanings.

- 26. Tenant's Remedies/Limitation of Liability.** Landlord shall not be in default unless Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days, then after such period of time as is reasonably necessary). All obligations of Landlord shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. Notwithstanding anything contained herein to the contrary, if such default by Landlord shall occur, Tenant may pursue any legal or equitable remedy for which it is entitled. All obligations of Landlord under this Lease will be binding upon Landlord only during the period

of its ownership of the Premises and not thereafter. The term "Landlord" in this Lease shall mean only the then current owner of the Premises, and in the event of a transfer of the Premises, such owner shall be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of Landlord under this Lease shall be limited solely to its interest in the Building, and, except as specifically provided in the next sentence, in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord. Landlord's interest in the Premises shall be deemed to include (i) rent payments and other income and profits derived by and from the Premises, and (ii) the net proceeds of insurance received by Landlord from any casualty loss of all or any portion of the Premises, after Tenant obtains a final judgment against Landlord.

27. **Subordination.** Without the necessity of any further instrument or act of Tenant, this Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any existing or future first mortgage on the Building, and all amendments, modifications, assignments and extensions thereof. Tenant agrees, at the election of the holder of any such mortgage, to attorn to any such holder. Tenant agrees within ten (10) business days of demand to execute, acknowledge and deliver such reasonable instruments, confirming such subordination and such instruments of attornment as shall be requested by any such holder; provided such instruments do not increase, or modify, Tenant's obligations under this Lease. Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant. The term "mortgage" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "holder" of a mortgage shall be deemed to include the beneficiary under a deed of trust. Landlord represents to Tenant that as of the date hereof the Building is not subject to or encumbered by a mortgage. Notwithstanding the preceding provisions of this Paragraph 27, this Lease and Tenant's interest in the Premises shall not be subordinate to any future mortgage or deed of trust on the Building, and Tenant shall not be obligated to execute an instrument subordinating this Lease or Tenant's interest in the Premises to any future mortgage or deed of trust on the Building, unless concurrently with such subordination the holder of such mortgage or deed of trust agrees in such instrument of subordination not to disturb Tenant's possession of the Premises (so long as no default exists under the Lease) in the event such holder acquires title to the Premises through foreclosure, deed in lieu of foreclosure or otherwise.
28. **Mechanic's Liens.** Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or Tenant in, the Premises or this Lease. Tenant covenants and agrees that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of claims or liens asserted against the leasehold estate, the interest of Landlord in the Premises, or under this Lease. Tenant shall give Landlord prompt written notice of any lien or encumbrance placed against the Premises of which it becomes aware and cause such lien or encumbrance to be discharged, or bonded over in a manner satisfactory to Landlord, within 20 days of receipt of actual notice of the filing or recording thereof.
29. **Estoppel Certificates.** Tenant agrees to execute and deliver to Landlord or Landlord's designee, within ten (10) days after request of Landlord, any estoppel certificate containing customary provisions requested by Landlord; provided, however, Tenant shall not be in default hereunder unless Tenant fails to timely deliver an estoppel certificate requested by Landlord within two (2) business days following Landlord's notice of Tenant's failure hereunder.

No other cure or grace period provided in this Lease shall apply to Tenant's obligations to timely deliver an estoppel certificate pursuant to the terms hereof. In the event Tenant fails to timely deliver the estoppel certificate as provided above, Landlord shall have the right to deliver to Tenant a second request for such estoppel certificate, and Tenant shall deliver such estoppel certificate no later than five (5) days from receipt of such second notice. Except as expressly provided otherwise above, no cure or grace period provided in this Lease shall apply to Tenant's obligations to timely deliver an estoppel certificate.

30. **Environmental Requirements.** Except for Hazardous Materials contained in products used by Tenant in de minimis quantities for ordinary cleaning and office purposes, propane used in Tenant's forklifts in the normal course of its business, and contained in products stored and/or distributed during Tenant's normal course of business in their original, sealed, and unopened containers, Tenant shall not permit or cause any party to bring any Hazardous Material upon the Premises or transport, store, use, generate, manufacture or release any Hazardous Material in or about the Premises without Landlord's prior written consent. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remediate in a manner satisfactory to Landlord any Hazardous Materials released on or from the Project by Tenant, its agents, employees, contractors, subtenants or invitees ("Tenant Parties"). Tenant shall complete and certify disclosure statements requested by Landlord relating to Tenant's transportation, storage, use, generation, manufacture or release of Hazardous Materials on the Premises. The term "Environmental

Requirements" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "Hazardous Materials" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "operator" of Tenant's "facility," and the "owner" of all Hazardous Materials brought on the Premises by Tenant, its agents, employees, contractors or invitees, and the wastes, by-products, or residues generated, resulting, or produced therefrom. No cure or grace period provided in this Lease shall apply to Tenant's obligations to promptly commence and diligently pursue its remediation obligations in accordance with the terms and conditions of this Paragraph.

Notwithstanding anything to the contrary in this Paragraph, Tenant shall have no liability of any kind to Landlord as to Hazardous Materials on the Premises existing prior to the Tenant first occupied the Premises, or which were caused or permitted by (i) Landlord, its agents, employees, contractors or invitees; or (ii) any other tenants in the Project or their agents, employees, contractors, subtenants, assignees or invitees.

Tenant shall indemnify, defend, and hold the Landlord Parties harmless from and against any and all losses (including, without limitation, diminution in value of the Premises or the Project and loss of rental income from the Project), claims, demands, actions, suits, damages (including, without limitation, punitive damages), expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees and including, without limitation, removal or management of any asbestos brought into the property or disturbed in breach of the requirements of this Paragraph, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any release of Hazardous Materials for which Tenant is obligated to remediate as provided above or any other breach of the requirements under this Paragraph by Tenant, or Tenant Parties, regardless of whether Tenant had knowledge of such noncompliance. The obligations of Tenant under this Paragraph shall survive any termination of this Lease.

Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this Paragraph, or the environmental condition of the Premises. Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests if such inspections or tests reveal that Tenant has not complied with any Environmental Requirement. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant.

31. **Rules and Regulations.** Tenant shall comply with all reasonable rules and regulations established by Landlord covering use of the Premises and the Project. The current Project rules and regulations are attached hereto as Exhibit B. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project. In the event of an inconsistency between the rules and regulations and the terms of this Lease, the terms of the Lease shall control.
32. **Security Service.** Tenant acknowledges and agrees that, while Landlord may patrol the Project, Landlord is not providing any security services and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises. Tenant shall be permitted to install, at Tenant's expense, a security system in the Premises (including, without limitation, a card reader entry system therefor and security cameras) (the "Security System"). Landlord shall have no obligation to maintain, service or respond to the Security System.
33. **Force Majeure.** Except for monetary obligations, neither Landlord nor Tenant shall be responsible for delays in the performance of its obligations hereunder caused by labor disputes, acts of God, inability to obtain labor or materials, governmental restrictions or regulations or delay in issuance of permits, enemy or hostile governmental action, civil commotion, epidemics or pandemics (such as the events connected with COVID-19), casualty, and other causes beyond the reasonable control of Landlord or Tenant, as the case may be ("Force Majeure").

34. **Entire Agreement.** This Lease constitutes the entire agreement of Landlord and Tenant with respect to the subject matter hereof. Any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may only be amended by an instrument in writing signed by both parties hereto.
35. **Severability.** If any clause of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that such clause be replaced with a valid clause of similar meaning and that the remainder of this Lease shall not be affected thereby.
36. **Brokers.** Each party represents and warrants to the other that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the Landlord Broker and Tenant Broker, if any, set forth in Paragraph 1 of this Lease, and each party agrees to indemnify and hold the other harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with the indemnifying party with regard to this leasing transaction.
37. **Miscellaneous.**
- a) **TIME IS OF THE ESSENCE AS TO THE PERFORMANCE OF TENANT'S AND LANDLORD'S OBLIGATIONS UNDER THIS LEASE.**
 - b) Any payments or charges due from Tenant to Landlord hereunder shall be considered rent for all purposes of this Lease.
 - c) If the term "Tenant," includes more than one person, firm or corporation, each shall be jointly and severally liable for the obligations of Tenant.
 - d) All notices required or permitted to be given under this Lease shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable national overnight courier service, postage prepaid, or by hand delivery addressed to Landlord or Tenant at the applicable notice address as provided in Paragraph 1 of this Lease. Either party may, by the above notice, change its notice address for all subsequent notices or add an additional party to be copied on all subsequent notices. Except where otherwise provided to the contrary, notice shall be deemed given upon delivery.
 - e) Except as otherwise provided in this Lease or as otherwise required by law, Landlord retains the absolute right to withhold any consent or approval.
 - f) In the event of (i) a default by Tenant of its obligations under the Lease, or (ii) a need by Landlord to effectuate a financing transaction or sale of the Building, or (iii) an assignment or subletting of the Lease by Tenant, then at Landlord's request from time to time Tenant shall furnish Landlord with true and complete copies of its most recent annual and quarterly financial statements prepared by Tenant or Tenant's accountants; provided, however, the terms of this clause shall not be applicable if Tenant is a publicly traded company whose financial statements are readily available to Landlord.
 - g) Neither this Lease, nor a memorandum of lease, shall be recorded by or on behalf of Tenant; however, upon request by Landlord, Tenant will execute, and Landlord may record, a memorandum of lease.
 - h) Construction and interpretation of this Lease shall be governed by the laws of the state in which the Project is located, excluding any principles of conflicts of laws.
 - i) The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments to the Lease.
 - j) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.
 - k) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.
 - l) Any amount not paid by Tenant when due shall bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or ten (10%) percent per year.
 - m) All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control.
 - n) In the event either party initiates litigation to enforce the terms and provisions of this Lease, the non-prevailing party in such action shall reimburse the prevailing party for its reasonable attorney's fees, filing fees, and court costs.

- o) Tenant agrees that Landlord shall have the right, without Tenant's consent, to place a solar electric generating system on the roof of the Building or enter into a lease for the roof of the Building whereby such roof tenant shall have the right to install a solar electric generating system on the roof of the Building (provided that the exercise of Landlord's rights does not interfere with or prohibit Tenant's Supplemental Units or other equipment that Tenant is permitted to install and maintain on the roof of the Building in accordance with this Lease and does not adversely affect Tenant's use and occupancy of the Premises, as determined in Tenant's reasonable discretion, or subject Tenant to additional costs). Upon receipt of written request from Landlord, Tenant, at Tenant's sole cost and expense, shall deliver to Landlord data regarding the electricity consumed in the operation of the Premises (the "Energy Data") for purposes of regulatory compliance, benchmarking, energy management, building environmental performance labeling and other related purposes. Tenant agrees and acknowledges that Landlord shall retain the exclusive right to use the exterior of the Building and Project for virtual and augmented reality purposes, and Tenant hereby waives all rights to use the exterior of the Building or Project for virtual or augmented reality purposes (provided that the exercise of Landlord's rights does not adversely affect Tenant's use and occupancy of the Premises or interfere with or prohibit Tenant's right to install and maintain the rooftop equipment or generator pursuant to this Lease).
 - p) This Lease may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one and the same agreement. The signature of a party transmitted electronically (e.g., e-signature) or by facsimile, PDF and/or other electronic image file format shall constitute and have the same force and effect as the original signature of the party. Following execution, a PDF (or similar image file format) scan of this entire Lease (whether signed electronically or in ink) shall be maintained, and considered to be the original Lease for all purposes.
 - q) All references and uses of the term "days" in this Lease shall mean calendar days unless otherwise specified.
 - r) **EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS LEASE (WHICH EXCEPTIONS INCLUDE BUT ARE NOT LIMITED TO AS PROVIDED PARAGRAPH 23 AND PARAGRAPH 30 IN WHICH CASE THE FOLLOWING SHALL NOT APPLY), NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES, WHETHER ARISING IN TORT, CONTRACT, UNDER ANY STATUTE.**
 - s) Landlord hereby acknowledges that Tenant may be required to publicly disclose a redacted version of this Lease pursuant to Legal Requirements applicable to Tenant due to Tenant's status as a publicly-traded company.
 - t) Tenant represents to Landlord and Landlord hereby represents to Tenant that,
 - (i) such entity, nor any person or entity that directly owns a 10% or greater equity interest in it nor any of its officers, directors or managing members is a person or entity (each, a "Prohibited Person") with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury, including those parties names on the OFAC's Specially Designated and Blocked Persons List and those covered pursuant to Executive Order 13224 (the "Executive Order") signed on September 24, 2001, entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action; and
 - (ii) that such entity's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or USA Patriot Act or the regulations or orders promulgated thereunder (as amended from time to time, the "Money Laundering Acts").
38. **WAIVER OF JURY TRIAL. TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (IN CONTRACT, TORT, OR OTHERWISE), BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.**

[Remainder of page is intentionally blank; signature page to follow]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Effective Date.

TENANT:

The RealReal, Inc.,
a Delaware corporation

By: /s/ Matt Gustke

Name: Matt Gustke

Title: Chief Financial Officer

LANDLORD:

Liberty Property Limited Partnership,
a Pennsylvania limited partnership

By: Liberty Property Trust,
a Maryland real estate investment trust

Its: General partner

By: /s/ Megan Creecy-Herman

Name: Megan Creecy-Herman

Title: Senior Vice President, Operations – West Region

PROLOGIS CLEAR LEASE

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EXHIBIT A: SITE PLAN

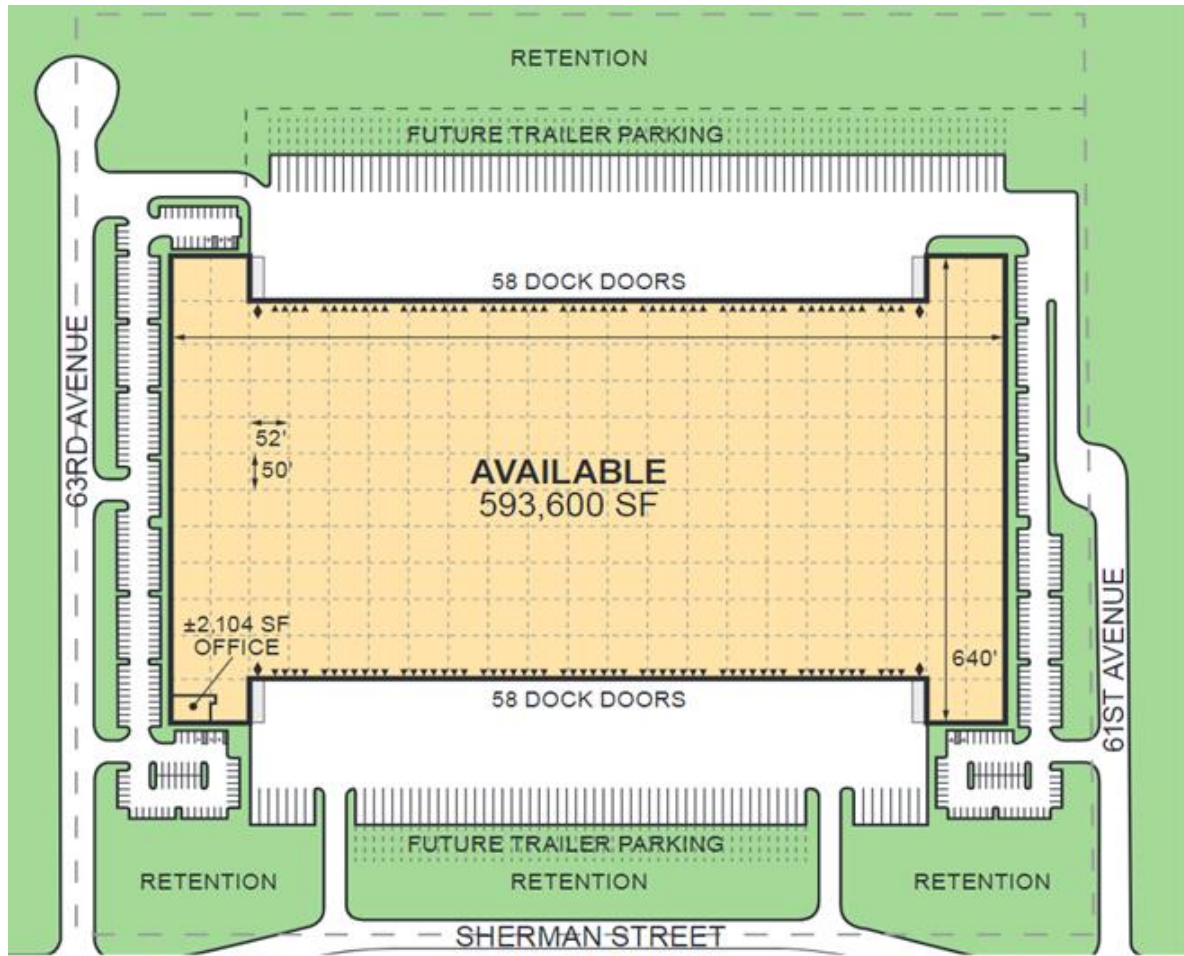


EXHIBIT B: PROJECT RULES AND REGULATIONS

1. The sidewalk, entries, and driveways of the Project shall not be obstructed by Tenant, or its agents, or used by them for any purpose other than ingress and egress to and from the Premises.
2. Tenant shall not place any personal property or objects in the parking areas, landscaped areas or other areas outside of its Premises, or on the roof of the Project.
3. Except for service dogs, no animals shall be allowed in, or on, any part of the Building or the Project.
4. If Tenant desires telegraphic, telephonic or other electric connections in the Premises, Landlord or its agent will direct the electrician as to where and how any conduit or the wires may be introduced; and, without such direction, no boring or cutting of wires or conduit will be permitted. Any such installation or connection shall be made at Tenant's expense.
5. Tenant shall not install or operate any steam or gas engine or boiler except as specifically approved in the Lease. The use of oil, gas or inflammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Project.
6. Parking any type of recreational vehicles is specifically prohibited on or about the Project. Parking any type of trucks, trailers or other vehicles in the Building is specifically prohibited. In no event shall inoperable cars, trucks, or trailers be parked at the Project. There shall be no "For Sale" or other advertising signs on or about any parked vehicle. All vehicles shall be parked in the designated parking areas in conformity with all signs and other markings. All parking will be open parking, and no reserved parking, numbering or lettering of individual spaces will be permitted except as specified by Landlord or in the Lease. There shall be no repair, maintenance or washing of vehicles in the parking lot, drive areas, or truck courts.
7. Tenant shall maintain the Premises free from rodents, insects and other pests.
8. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or should harass or threaten, verbally or physically Landlord's employees, or contractors, or who shall in any manner do any act in violation of the Rules and Regulations of the Project.
9. All moveable trash receptacles provided by the trash disposal firm for the Premises must be kept in the trash enclosure areas provided, and all trash receptacles shall remain closed at all times.
10. The Premises shall not be used for lodging, sleeping or cooking (other than kitchenette or break room use) or for any immoral or illegal purposes or for any purpose other than that specified in the Lease. No gaming devices shall be operated in the Premises.
11. Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage.
12. Tenant shall not permit recreational or medical marijuana to be grown, sold, dispensed, or consumed on the Premises or Project.
13. Tenant shall not permit smoking in any interior area of the Premises.
14. Tenant shall provide advance notice to Landlord of the date Tenant, or Tenant Parties, require access to the roof of the Building. Tenant shall follow all Legal Requirements, including, but not limited to, OSHA requirements, when Tenant or Tenant Parties access the roof of the Building, and shall use reasonable and appropriate safety precautions in order to ensure such employees, contractors, or agents are not subject to injury or death.
15. Tenant shall not use any part of the Premises to store or in any other way handle firearms, firearms accessories, or ammunition.

EXHIBIT C: FORM OF COMMENCEMENT DATE CERTIFICATE

Notice Contact Name

Company Name

Notice Street Address

City, State Zip Code

RE: Lease dated _____, 20__, between Customer & Owner for Premises Address

Dear Salutation Notice Contact Last Name:

Welcome to your new facility. We would like to confirm the terms of the above referenced lease agreement:

Commencement Date: _____ Date

Expiration Date: _____ Date

Base Rent Commencement Date: _____ Date

We are pleased to welcome you as a customer of Prologis and look forward to working with you. Please indicate your agreement with the above changes to your lease by signing and returning the enclosed copy of this letter to me. If I can be of service, please do not hesitate to contact me.

Sincerely,

Property Manager Name

Title

Accepted by: Tenant

Date:

By: _____

Printed: _____

Title: _____

EXHIBIT D: MOVE-OUT CONDITIONS

Subject to Paragraph 13, Tenant shall surrender the Premises in the same condition as received, ordinary wear and tear, casualty loss, and condemnation covered by Paragraphs 16 and 17 excepted.

Before surrendering the Premises, Tenant shall remove all personal property, trade fixtures, and such alterations or additions to the Premises made by Tenant as may be required herein. The following list is designed to assist Tenant with the move-out procedures but is not intended to be all inclusive. Upon Tenant's completion of its surrender obligations as provided in this Lease, please contact Landlord's property manager to coordinate turning in keys, utility and fiberoptic internet changeover, and scheduling an inspection of the Premises. In the event Tenant fails to arrange a joint inspection of the Premises with Landlord upon Tenant's vacating of the Premises, Landlord's inspection at, or subsequent to, Tenant's vacation of the Premises shall be conclusively deemed correct for the purpose of determining Tenant's responsibilities with respect to the repair and restoration of the Premises.

1. Lights:All interior office, warehouse, dock, emergency and exit lights will be fully operational with all bulbs, ballasts and fixtures functioning.
2. Dock Levelers, Service Doors and
Truck Doors:All truck doors, service doors, roll up doors and dock levelers shall be serviced and placed in good operating order, including the replacement of any dented or damaged truck door panels and adjustment of door tension to insure proper operation. All door panels which are replaced must be painted to match the building standard.
3. Dock Seals/Dock Bumpers:Free of tears and broken backboards repaired. All dock bumpers must be left in place and well secured.
4. ColumnsAll columns in the warehouse and office shall be inspected for damage caused by Tenant. Necessary structural repairs must be pre-approved by Landlord prior to implementation. Any markings removed.
5. Warehouse Floor:Free of stains and swept with no racking bolts and other protrusions or holes left in floor. Cracks and racking bolts must be repaired with an mm-80 (or equivalent) epoxy or polymer to match concrete color. All floor striping (including paint or tape) in the Premises shall be removed with no residual staining or other indication that such striping or taping existed.
6. Tenant-Installed Equipment and Wiring:Air lines, conveyor or process electrical distribution, junction boxes, conduit, etc., removed and space returned to the original condition when leased.
7. Walls:Sheetrock (drywall) and/ or plywood damage patched and fire-taped so that there are no holes in either office or warehouse walls. Any damage to perimeter concrete or metal walls similarly repaired.
8. Floor Finishes (Carpet and Tile):The carpet and vinyl tiles should be in a clean condition and should not have any holes or chips in them, ordinary wear and tear on these items is acceptable provided they have been maintained.
9. Roof:Any Tenant-installed equipment must be removed with all roof penetrations properly repaired by a licensed roofing contractor reasonably approved by Landlord. Leaks arising from any Tenant-installed equipment or roof penetrations must be fixed in accordance with Landlord's maintenance and repair recommendations.
10. Signs:All exterior signs must be removed with holes patched and painted to match Building standard paint as necessary. All window or other interior signs must be removed.
11. Electrical & Plumbing:All electrical and plumbing equipment to be returned in good working condition conforming to code.
12. Overall Cleanliness:Clean windows, sanitize bathroom(s), vacuum carpet, and remove any and all debris from office and warehouse. Remove all pallets and debris from exterior of Premises. All trade fixtures, dumpsters,

racking, trash, vending machines and other personal property to be removed.

13.

Odors: Tenant shall remove any odor which may exist in the Premises resulting from Tenant's occupancy of the Premises prior to surrendering or vacating the Premises.

EXHIBIT E: TWO RENEWAL OPTIONS AT MARKET (CLEAR LEASE)

(a) Provided that as of the time of the giving of the First Extension Notice and the Commencement Date of the First Extension Term (as such terms are defined below), [***]; then Tenant shall have the right to extend the Lease Term for an additional term of 60 months (such additional term is hereinafter called the "First Extension Term") commencing on the day following the expiration of the Lease Term (hereinafter referred to as the "Commencement Date of the First Extension Term"). Tenant must give Landlord notice (hereinafter called the "First Extension Notice") of its election to extend the term of the Lease Term at least 9 months, but not more than 12 months, prior to the Expiration Date.

(b) Provided that as of the time of the giving of the Second Extension Notice and the Commencement Date of the Second Extension Term, [***]; then Tenant shall have the right to extend the Lease Term for an additional term of 60 months (such additional term is hereinafter called the "Second Extension Term") commencing on the day following the expiration of the First Extension Term (hereinafter referred to as the "Commencement Date of the Second Extension Term"). Tenant shall give Landlord notice (hereinafter called the "Second Extension Notice") of its election to extend the term of the Lease Term at least 9 months, but not more than 12 months, prior to the scheduled expiration date of the First Extension Term.

(c) The Base Rent payable by Tenant to Landlord during the First Extension Term shall be the greater of:

- (i) [***]
- (ii) [***]

(d) The Base Rent payable by Tenant to Landlord during the Second Extension Term shall be the greater of:

- (i) [***]
- (ii) [***]

(e) [***]

(f) [***]

(g) [***]

(h) [***]

(i) [***]

(h) [***]

(i) [***]

(j) [***]

(k) [***]

EXHIBIT F: LETTER OF CREDIT FORM

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____

BENEFICIARY: APPLICANT:

1800 Wazee Street, Suite 500 _____
Denver, Co 80202 _____
Attn: Legal Department _____

BENEFICIARY:

By order of our client, _____, as tenant (“**Tenant**”) in that certain lease agreement dated _____, 20__ by and between Beneficiary and Tenant for that certain premises located at _____ (the “**Lease Agreement**”), we hereby establish this Irrevocable Transferable Letter Of Credit No. _____ in your favor for an amount up to but not exceeding the aggregate sum of _____ and no/100 U.S. Dollars (\$ _____) (as reduced from time to time in accordance with the terms hereof, the “**Letter Of Credit Amount**”), effective immediately, and expiring on the close of business one year from the date hereof at our office at _____ Attn: _____ unless renewed as hereinafter provided.

Funds under this Letter Of Credit are available to you on or prior to the expiry date against presentation by you of your (i) sight drafts drawn on us in the form of **Annex 1** hereto, indicating this letter of credit number and (ii) request in the form of **Annex 2** hereto (such sight draft and request, together referred to as a “**Drawing Request**”), sight draft(s), completed and signed by an agent of the Beneficiary. Presentation of your Drawing Request may be made by you to us at the address set forth above or may be made by facsimile transmission, to the following facsimile number _____. You may present to us one or more Drawing Request from time to time prior to the expiry date in an aggregate amount not to exceed the Letter Of Credit Amount then in effect (it being understood that the honoring by us of each drawing request shall reduce the Letter Of Credit Amount then in effect). The proceeds of any draw under this Letter of Credit shall be remitted to an account designated by the Beneficiary in the Draw Letter, whether such account is in the name of the Beneficiary or any other named entity.

This Letter Of Credit will be automatically renewed for a one-year period upon the expiration date set forth above and upon each anniversary of such date, unless at least sixty (60) days prior to such expiration date, or prior to any anniversary of such date, we notify both you and the applicant in writing by certified mail that we elect not to so renew the Letter Of Credit. In the event that we elect not to renew the Letter Of Credit, you may immediately draw down on the full amount of the Letter Of Credit by presentation of your drawing request. Further, in the event that the Applicant commences any proceeding for relief as defined in the Lease Agreement, you may immediately draw down on the full amount of the Letter Of Credit by presentation of your drawing request.

This Letter Of Credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Letter Of Credit is referred to or to which this Letter Of Credit relates, and no such reference shall be deemed to incorporate herein by reference any document or instrument.

All bank charges and commission incurred in this transaction are for the Applicant’s account.

This Letter Of Credit is transferable by you and your successors and assigns any number of times in its entirety and not in part, to any successor of the Beneficiary’s interests in the Lease Agreement, but only by delivery to us of a Notice Of Transfer in the form of **Annex 3** hereto. Our transfer fee will be payable by the Applicant.

We hereby agree with the drawers, endorsers, and bona fide holders of drafts drawn under and in compliance with the terms of this Letter Of Credit that such drafts will be duly honored upon presentation to the drawee from our own funds and not the funds of the Applicant and shall be available to such drawers, endorsers, and bona fide holders, as the case may be, on or before 4:00 p.m., _____ time, on the business day (defined below) next following the date on which such drafts are received by us. "Business Day" shall mean any day which is not a Saturday, Sunday or day on which we are required or authorized by law to be closed in _____.

To the extent not inconsistent with the express terms hereof, this Letter Of Credit shall be governed by, and construed in accordance with, the terms of the International Standby Practices 1998 Publication 590 ("ISP 98") and as to matters not governed by the ISP 98, this Letter Of Credit shall be governed by and construed in accordance with the laws of the State of _____.

Very truly yours,

Name: Name:
Title: Title:

Annex 1

Sight Draft

_____, 20__

[Name & address of issuing bank]

For value received, at sight pay to the order of [name of Beneficiary], the sum of [amount in words] [amount in figures] United States Dollars drawn under _____ Irrevocable Transferable Letter Of Credit No. _____ dated _____, 20__.

[Beneficiary]

By: _____

Name: _____

Title: _____

Annex 2
Drawing Request

_____, 20__

[Name & address of bank]

RE: Irrevocable Transferable Letter Of Credit No. _____ (the "**Letter Of Credit**")

The undersigned (the "**Beneficiary**"), hereby certifies to _____ (the "**Issuer**") that:

- (A) The Beneficiary is making a request for payment in lawful currency of the United States Of America under Irrevocable Transferable Letter Of Credit No. _____ (the "**Letter Of Credit**") in the amount of \$_____.
- (B) The Letter Of Credit Amount (as defined in the Letter Of Credit) as of the date hereof and prior to payment of the amount demanded in this drawing request is \$_____. The amount requested by this drawing request does not exceed the Letter Of Credit Amount.
- (C) Demand is made for payment under the Letter Of Credit as a result of the occurrence and continuation of an event of default under the Lease Agreement (as defined in the Letter Of Credit) or as a result of non-renewal of the Letter Of Credit or as a result of the Applicant or Tenant (as defined in said Lease Agreement) commencing a proceeding of relief (as defined in said Lease Agreement).

Please wire the proceeds of the drawing to the following account of the Beneficiary at the financial institution indicated below:

Unless otherwise defined, all capitalized terms used herein have the meanings provided in, or by reference in, the Letter Of Credit.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this drawing request as of the __ day of _____, 20__.

[Beneficiary]

By: _____
Name: _____
Title: _____

Annex 3
Notice Of Transfer

_____, 20__

[Name & address of issuing bank]

RE: Irrevocable Transferable Letter Of Credit No. _____

The undersigned (the "**Beneficiary**"), hereby notifies _____ (the "**Issuer**") that it has irrevocably transferred the above-referenced Letter Of Credit to _____ (the "**Transferee**") with an address at _____ effective as of the date the Issuer receives this Notice Of Transfer. The Transferee acknowledges and agrees that the Letter Of Credit Amount may have been reduced pursuant to the terms thereof, and that the Transferee is bound by any such reduction.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Notice Of Transfer this ____ day of _____, 20__.

[Beneficiary]

By: _____

Name:

Title:

Agreed:

[Transferee]

By: _____

Name: _____

Its: _____

EXHIBIT G: DOCK EQUIPMENT MAINTENANCE

Tenant agrees to enter into and maintain through the Lease Term, a preventative maintenance/service contract for servicing all doors, dock levelers, truck restraints serving the Premises. Landlord requires a qualified door and dock contractor to perform this work. The service contract must become effective within thirty (30) days of occupancy, and service visits should be performed no less than twice per year. Landlord requires that Tenant send the following list to Tenant's contractor to be assured that these items are included in the maintenance contract:

Dock/Overhead/Service Doors:

1. Inspect panels for damage;
2. Inspect dock seals and shelters;
3. Inspect weather seal condition;
4. Inspect tracks and wall for damage/loose attachments;
5. Inspect springs for breaks/weakness; hinges/bearings/rollers
6. Inspect anchors and welds/drums/cables/couplers
7. Inspect shaft for deflection/bending;
8. Inspect chain hoist assembly;
9. Adjust spring tension & track guide wall attachments
10. Adjust door panel/slat curtain closer to seals;
11. Lubricate springs/hinges/rollers/bearings/cables/tracks/guides
12. Clean any debris from operational systems.

If Electrical Door Operators, add:

1. Inspect drive chain/belt/hoist assemblies;
2. Inspect sprockets/bearings/linkages;
3. Inspect brake solenoid/clutch assembly;
4. Inspect mounting bolts/welds/wiring;
5. Inspect drawbar arm/limit, photo eyes and safety switches;
6. Adjust upward/downward limits;
7. Adjust clutch/brake assemblies;
8. Adjust sprockets/belts/chains as required;
9. Adjust drive chain/hoist as required.
10. Lubricate chains/sprockets/bearings/bushings;
11. Lubricate gear reducers and all pivot points.

Dock Levelers:

1. Inspect hold down and sub-frame structure for cracked welds/rusted through steel;
2. Inspect deck surface for any malformation;
3. Inspect lip/rear hinge assembly for cracked/broken spools;
4. Inspect lip extension mechanism;
5. Inspect all chains, linkages, springs, cables, sprockets, rollers;
6. Inspect dock bumper condition/attachment;
7. Inspect safety leg assembly; lip shock/gas spring
8. Inspect pit steel attachment points;
9. Inspect all electrical connections/feeds;
10. Inspect toe guards and weather seal condition;
11. Adjust hold down assembly & snubber chain/cable
12. Adjust activation springs & lip extension mechanism
13. Adjust all low screws/springs/cables;
14. Lubricate front/rear hinge assemblies & activation springs
15. Lubricate all springs/cables/rollers/chains;
16. Lubricate cotter and pins/all pivot points & clean pit

If Hydraulic Dock Levelers, add:

1. Inspect oil level and quality & cylinders/hoses for leaks
2. Inspect and verify panic valve installation;
3. Adjust hydraulic hoses, valves and connections & fill reservoirs as need
4. Adjust hydraulic hoses, valves and connections & fill reservoirs as need

Truck Restraints:

1. Inspect restraint wall attachment points;
2. Inspect locking hook/arm/piston;
3. Inspect electrical/pneumatic lines for leakage/breaks;
4. Inspect interior/exterior safety light packages;
5. Inspect all sensors/activation devices;
6. Inspect control box/interlock connections;
7. Inspect unit for damaged, cracked or missing parts;
8. Adjust all drive chains/belts/cams/roller/spring assemblies
9. Adjust any loose electric/pneumatic connections;
10. Lubricate all springs/pivot points/chains & clean any debris from system

If Hydraulic Restraints, add:

1. Inspect oil level and quality;
2. Inspect all hydraulic cylinders for leaks and damage;
3. Inspect all hydraulic hoses and connections for leaks;
4. Lubricate all fittings;
5. Adjust hydraulic hoses, valves and connections;
6. Fill hydraulic reservoirs as needed.

Hurricane Shutters/Fire Shutters and Fire Doors:

1. See Dock Door maintenance; test annually or as required per code

Hydraulic Scissors Lifts:

1. Inspect all pivot points, cams, structural frame, hydraulic hoses;
2. Inspect hydraulic hoses, pump, and reservoir;
3. Inspect controls and safety rails & clean pit
4. Adjust limit assemblies, hinges, safety rails and chains; Adjust valves & idlers
5. Lubricate all pivot points, lip hinges and shafts;
6. Lubricate fittings and cam followers & fill hydraulic reservoirs

EXHIBIT H: LANDLORD'S WORK

[***]

H-1

EXHIBIT I: SATELLITE DISH

hereby grants Tenant the right to install, maintain and replace a satellite dish or similar antennae device (hereinafter "Satellite Dish") on the roof of the Premises, subject to: (a) applicable Legal Requirements; (b) Landlord's right to supervise any roof penetrations; (c) compliance with any applicable roof warranty requirements; (d) the Satellite Dish not being visible at street level; and (e) Landlord's rights to use or lease the roof for solar electric generating system. Tenant shall be responsible for the repair of any damage to any portion of the Premises caused by Tenant's installation, use or removal of the Satellite Dish. The Satellite Dish shall remain the exclusive property of Tenant, and Tenant shall have the right to remove same at any time during the Lease Term of the Lease so long as there is not Event of Default. Subject to Paragraph 10 of the Lease, Tenant shall be liable for any damage arising out of Tenant's installation, maintenance, use or removal of the Satellite Dish except to the extent caused by the negligence or willful misconduct of Landlord or any Landlord Parties.

**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, Julie Wainwright, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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: November 10, 2020

By: _____ /s/ Julie Wainwright

Julie Wainwright
President and Chief Executive Officer

**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Matt Gustke, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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: November 10, 2020

By: _____ /s/ Matt Gustke

Matt Gustke
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of The RealReal, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 10, 2020

By: _____ /s/ Julie Wainwright
Julie Wainwright
President and Chief Executive Officer

