

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

**FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**Etsy, Inc.**

(Exact Name of Registrant as Specified in its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

5961  
(Primary Standard Industrial  
Classification Code Number)  
55 Washington Street, Suite 512  
Brooklyn, NY 11201  
(718) 855-7955

20-4898921  
(I.R.S. Employer  
Identification Number)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Kristina Salen  
Chief Financial Officer  
Etsy, Inc.  
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Brooklyn, NY 11201  
(718) 855-7955

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

Large accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company)

Accelerated filer   
Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered</b>	<b>Proposed Maximum Aggregate Offering Price<sup>(1)(2)</sup></b>	<b>Amount of Registration Fee</b>
Common Stock, \$0.001 par value	\$100,000,000	\$11,620

(1) Estimated solely for the purpose of calculating the amount of the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.  
(2) Includes the aggregate offering price of additional shares that the underwriters have the option to purchase.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to such Section 8(a), may determine.**

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The information in this preliminary prospectus is not complete and may be changed. We and the selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion. Dated March 4, 2015.

Shares



Common Stock

This is an initial public offering of shares of common stock of Etsy, Inc.

Etsy is offering        shares of common stock to be sold in the offering. The selling stockholders identified in this prospectus are offering an additional        shares of common stock. Etsy will not receive any of the proceeds from the sale of the shares of common stock being sold by the selling stockholders.

Prior to this offering, there has been no public market for the common stock. It is currently estimated that the initial public offering price per share will be between \$        and \$        . Etsy intends to apply to have the common stock listed on the Nasdaq Global Select Market under the symbol "ETSY."

Etsy is an "emerging growth company" as that term is used in the Jumpstart Our Business Startups Act of 2012 and, as such, has elected to comply with certain reduced public company reporting requirements.

See "*Risk Factors*" beginning on page 15 to read about factors you should consider before buying shares of the common stock.

**Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

	<u>Per Share</u>	<u>Total</u>
Initial public offering price	\$	\$
Underwriting discount(1)	\$	\$
Proceeds, before expenses, to Etsy	\$	\$
Proceeds, before expenses, to the selling stockholders	\$	\$

(1) We have agreed to reimburse the underwriters for certain expenses. See "Underwriting."

To the extent that the underwriters sell more than        shares of common stock, the underwriters have the option to purchase up to an additional        shares from Etsy at the initial public offering price less the underwriting discount.

The underwriters expect to deliver the shares against payment in New York, New York on       , 2015.

**Goldman, Sachs & Co.**

**Morgan Stanley**

**Allen & Company LLC**

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Prospectus dated       , 2015

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Connecting  
People

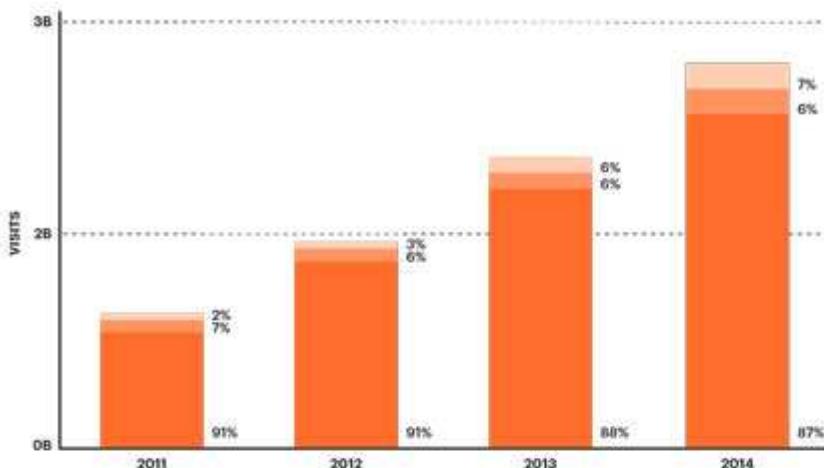
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### Visits by Channel



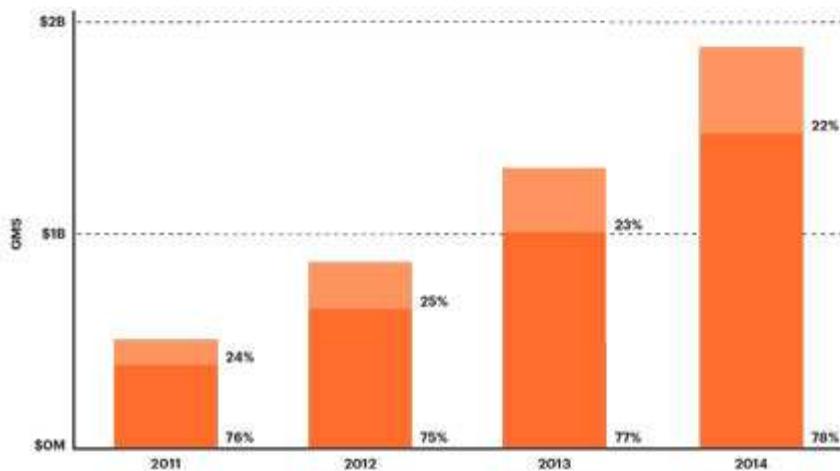
**21.8M**  
app downloads  
as of Dec 31, 2014



### Our Community

Our community is the heart and soul of Etsy. It includes creative entrepreneurs who sell on our platform and thoughtful consumers looking to buy unique goods in our marketplace.

### GMS Contribution by Buyer Type



**216M**  
messages sent  
in 2014

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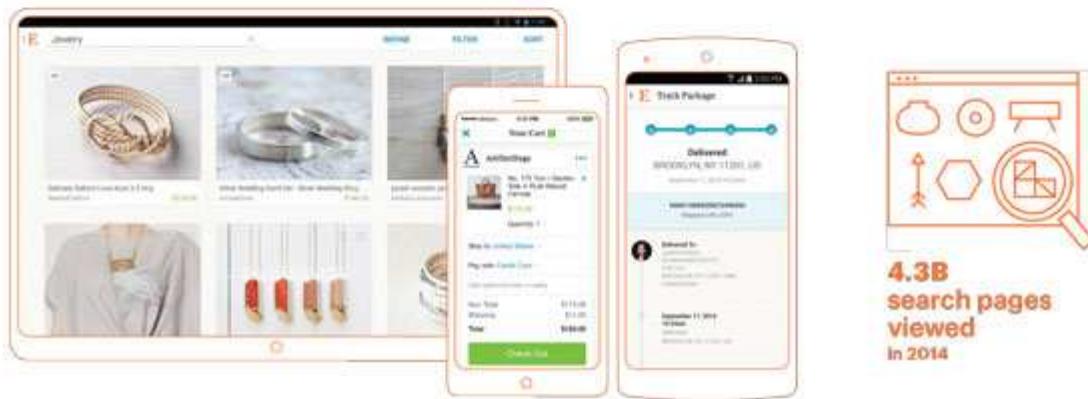
# Our Seller-Aligned Business Model

The more we invest in our platform, the easier we make it for Etsy sellers to pursue their craft and grow their businesses and for Etsy buyers to find unique goods.

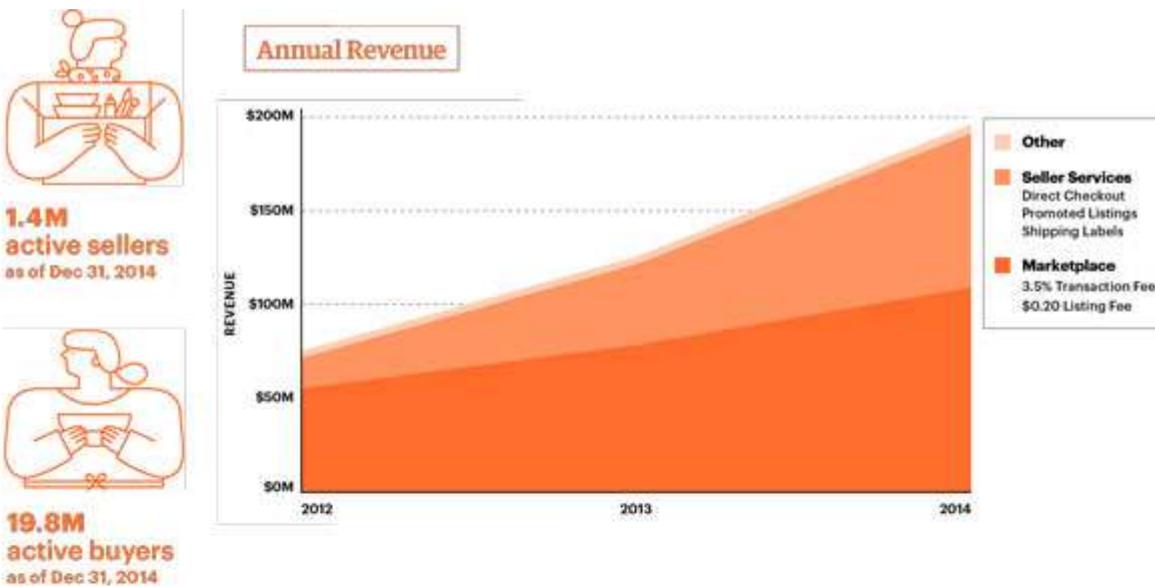


**"By helping the people around me I am becoming the person I want to be in this world. There is no bottom line to good deeds, but they are the best kind of currency in life and in business."**

Brandi Harper, Etsy Shop: purlBknit



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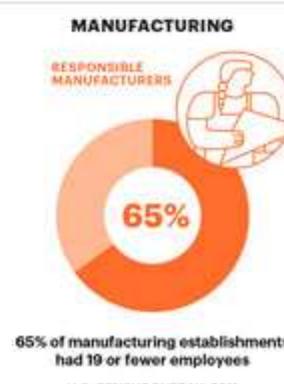
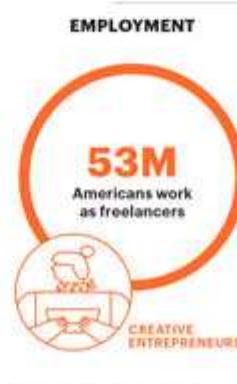
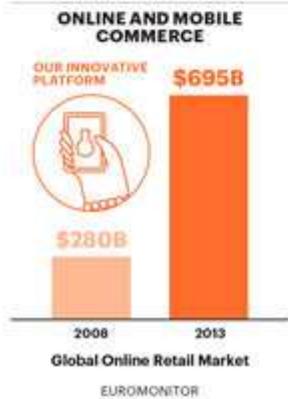


## Our Opportunity

We operate at the center of several converging macroeconomic trends. We believe that in combination these trends will benefit millions of people in our ecosystem around the world.



### Trends in our Favor



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We, the selling stockholders and the underwriters have not authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses prepared by us or on our behalf or to which we have referred you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of the date on the front cover of the prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

For investors outside the United States: We, the selling stockholders and the underwriters have not done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of our common stock and the distribution of this prospectus outside of the United States.

**Through and including                   , 2015 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.**

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# Prospectus Summary

*This summary highlights information contained in this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our common stock, you should carefully read this entire prospectus, including our consolidated financial statements and the related notes thereto and the information in “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”*

*Unless the context otherwise requires, we use the terms “Etsy,” “company,” “we,” “us” and “our” in this prospectus to refer to Etsy, Inc. and, where appropriate, our consolidated subsidiaries. See “—Glossary” for the definitions of the following terms: “active buyer,” “active seller,” “community,” “ecosystem,” “global-local,” “GMS,” “member,” “platform” and “visit.”*

## Our Mission

Our mission is to reimagine commerce in ways that build a more fulfilling and lasting world.

We are building a human, authentic and community-centric global and local marketplace. We are committed to using the power of business to create a better world through our platform, our members, our employees and the communities we serve. These guiding principles are core to our mission:

- Make it easy to find and buy unique goods from real people every day, on any platform, online and offline, anywhere in the world.
- Help creative entrepreneurs start, responsibly scale and enjoy their businesses with Etsy.
- Communicate the power of human connection whenever anyone experiences Etsy.

## Overview

We operate a marketplace where people around the world connect, both online and offline, to make, sell and buy unique goods. Handmade goods are the foundation of our marketplace. Whether crafted by an Etsy seller herself, with the assistance of her team or with an outside manufacturer in small batches, handmade goods spring from the imagination and creativity of an Etsy seller and embody authorship, responsibility and transparency. We believe we are creating a new economy, which we call the Etsy Economy, where creative entrepreneurs find meaningful work and both global and local markets for their goods, and where thoughtful consumers discover and buy unique goods and build relationships with the people who sell them.

Etsy was founded in June 2005 in Brooklyn, New York as a marketplace for handmade goods and craft supplies. From those beginnings, we have built an innovative, technology-based platform that, as of

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December 31, 2014, connected 54.0 million members, including 1.4 million active sellers and 19.8 million active buyers, in nearly every country in the world. In 2014, Etsy sellers generated GMS of \$1.93 billion, of which 36.1% came from purchases made on mobile devices and 30.9% came from an Etsy seller or an Etsy buyer outside of the United States.

Our community is the heart and soul of Etsy. Our community is made up of creative entrepreneurs who sell on our platform, thoughtful consumers looking to buy unique goods in our marketplace, responsible manufacturers who help Etsy sellers grow their businesses and Etsy employees who maintain our platform and nurture our ecosystem.

Our business model is based on shared success: we make money when Etsy sellers make money. Our revenue is diversified, generated from a mix of marketplace activities and the services we provide Etsy sellers to help them create and grow their businesses. Marketplace revenue includes the fee an Etsy seller pays for each completed transaction and the listing fee an Etsy seller pays for each item she lists. Seller Services revenue includes fees an Etsy seller pays for services such as prominent placement in search results via Promoted Listings, payment processing via Direct Checkout and purchases of shipping labels through our platform via Shipping Labels. Other revenue includes the fees we receive from a third-party payment processor.

In 2014, Etsy sellers generated GMS of \$1.93 billion, up 43.3% over 2013. In 2014, we generated revenue of \$195.6 million, up 56.4% over 2013. In 2014, we generated a net loss of \$15.2 million and Adjusted EBITDA of \$23.1 million compared to a net loss of \$0.8 million and Adjusted EBITDA of \$16.9 million in 2013. See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” for more information and for a reconciliation of Adjusted EBITDA to net loss, the most directly comparable financial measure calculated and presented in accordance with generally accepted accounting principles in the United States, or GAAP.

## Our Values

*We are a mindful, transparent and humane business.* We believe that business interests and social and environmental responsibility are interwoven and aligned and that the power of business should be used to strengthen communities and empower people.

*We plan and build for the long term.* We want to build a company that lasts, and we plan to measure our success in years and decades. Etsy sellers in particular depend on us and on our platform to grow their businesses, so we will strive to make decisions that are best for the long-term health of our ecosystem.

*We value craftsmanship in all we make.* Craftsmanship is the marriage of skill and passion. We believe every job at our company should demonstrate our commitment to craft. We are an engineering-driven company, and we think of our code as craft: we are makers of the products and services that our members use, and we approach the work we do with the same care and inspiration as do Etsy sellers.

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*We believe fun should be part of everything we do.* Our mission includes fostering a world in which personal fulfillment is a key element of success. We believe that this way of working is connected and joyful. We strive to do excellent work and bring a sense of humor and playfulness to it.

*We keep it real, always.* We have the courage and the will to do business in ways that are unconventional and impactful. We strive to stay genuine, maintaining integrity, humility and sincerity in everything we do. When we feel that we are not being true to our values or our mission, we are not afraid to stop and change course.

## Our Opportunity

We operate at the center of several converging macroeconomic trends in online and mobile commerce, employment, consumption and manufacturing. We believe that in combination these trends will benefit millions of people in our ecosystem around the world: Etsy sellers engaging in their creative passion, working for themselves and defining success on their own terms; Etsy buyers accessing a diverse, global marketplace of goods that have historically been found in highly fragmented markets; and, increasingly, responsible manufacturers using modern tools to craft goods in partnership with Etsy sellers.

*Trends in Online and Mobile Commerce.* Etsy sellers offer goods in dozens of online retail categories, including jewelry, stationery, clothing, home goods, craft supplies and vintage items. Euromonitor, a consumer market research company, estimated that the global online retail market was \$695 billion in 2013, up from \$280 billion in 2008, representing a compound annual growth rate, or CAGR, of 19.9%. This growth is expected to continue, with the global online retail market becoming a significantly larger portion of the total retail market, reaching \$1.5 trillion by 2018, implying a 16.6% CAGR from 2013. Mobile commerce is also increasingly important in online retail. comScore estimated that since the first quarter of 2013, consumers visiting online commerce sites spent more than half of their browsing time on mobile devices; however, online commerce spending via mobile devices represented only 11% of total online commerce dollars in the third quarter of 2014.

*Trends in Employment.* Whether motivated by economic necessity or personal preference, a growing number of people are turning to self-employment for their livelihoods. In a 2012 survey of middle-class households in the United States by the Pew Research Center, 85% said that it was more difficult to maintain their living standards today than it was ten years ago. A study commissioned in July 2014 by the Freelancers Union and Elance-oDesk estimated that 53 million Americans are working as freelancers. Women are also contributing to the trend towards self-employment. World Bank research shows that, in certain developing nations, over half of the women in the labor force are self-employed. We believe that many of these people have creative skills that could provide a foundation for entrepreneurship, but that they often have little or no experience running their own businesses, and they typically lack the marketing resources, the technological expertise and the manufacturing and logistics capabilities to turn their creativity into a business.

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*Trends in Consumption.* Most large retailers today follow the same formula, emphasizing efficiency and scale and pressuring their suppliers to reduce their costs in order to serve mass-produced goods at the lowest-possible prices. We believe, however, that many consumers want to purchase goods that are unique and that reflect their personality and style, not simply mass-produced, generic goods. Some consumers want their purchases to reflect their values; they want to support retailers and suppliers that have responsible and sustainable policies toward their employees, their communities and the environment. Finding these goods can be difficult, as markets for such goods have historically been highly fragmented across boutiques, consignment stores and other venues and marketplaces.

*Trends in Manufacturing.* Because of advances in manufacturing technologies, individuals and small businesses now have the ability to manufacture goods in their homes and studios using tools such as computer-assisted design, 3D printers, computer-controlled routers and other machines at a fraction of the historical cost. We believe the decrease in the size and the cost of these tools will make it easier for creative entrepreneurs to start new businesses. We also believe that small-batch manufacturers will be able to use these new technologies to provide high-quality manufacturing services so that creative entrepreneurs can scale their own businesses.

## Our Strengths

Our platform connects millions of Etsy sellers and Etsy buyers globally, making it one of the largest online marketplaces in the world. We have achieved our scale because of the following key strengths:

- *Our Authentic, Trusted Marketplace.* We have built an authentic, trusted marketplace that embodies our values-based culture, emphasizing respect, direct communication and fun. We have developed a reputation for authenticity as a result of Etsy sellers' unique offerings and their adherence to our policies for handmade goods. We establish trust in our marketplace by emphasizing the person behind every transaction. We deepen connections among our members, making a personal relationship central to the member experience. The authenticity of our marketplace and the connections among people in our community are the cornerstones of our business.
- *Our Passionate, Engaged and Loyal Members.* Our members are passionate, engaged and loyal—not only to us, but to each other—building a strong community.
- *Our Innovative Technology.* Our widely-respected engineering team has built a sophisticated platform that enables millions of Etsy sellers and Etsy buyers to smoothly transact across borders, languages and devices.
- *Our Scaled, Global-Local Marketplace.* Our marketplace is global-local, meaning that we focus on building local Etsy communities around the world. Etsy sellers and Etsy buyers in these local

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communities, in turn, have global reach and access through our platform. We believe our global-local marketplace creates strong competitive advantages outside the United States because our success is not dependent on scale in any given country.

- *Our Seller-Aligned Business Model.* Etsy sellers are drawn to our platform because we empower them to succeed, and as Etsy sellers succeed, so do we. Our seller-aligned business model creates network effects. The more we invest in our platform, the more we enable Etsy sellers to pursue their craft and grow their businesses and the easier we make it for Etsy buyers to find unique goods. We call this Etsy's Empowerment Loop.

## Our Strategy: The Path Ahead

We plan to continue connecting creative entrepreneurs, thoughtful consumers and responsible manufacturers and expanding the impact of our platform through the following key strategies:

- *Make Etsy an Everyday Experience.* We emphasize relationships, connecting creative entrepreneurs to thoughtful consumers around the world, and we continually strive to make those connections a daily habit for our members. The everyday experience starts with mobile.
- *Build Local Marketplaces, Globally.* Our vision is global and local. We plan to invest in local marketing and content and local payment and shipping solutions in countries around the world. We believe our locally-focused work will broaden the reach of our global platform.
- *Offer High-impact Seller Services.* Seller Services help an Etsy seller spend more time on the pleasures of her craft and less time on the administrative aspects of her business. We intend to enhance existing Seller Services, extend their geographic reach and introduce new ones.
- *Expand the Etsy Economy.* We intend to fulfill our mission to reimagine commerce by expanding the impact of our platform beyond our community. For example, we intend to further develop our manufacturing program, our strategic partnerships and our public-private endeavors to bring the benefit of the Etsy Economy to more people and more communities.
- *Invest in Marketing.* We believe that the rapid growth of our marketplace is a testament to our compelling value proposition for Etsy sellers and Etsy buyers. Etsy sellers and Etsy buyers have been our best marketers, sharing their positive experiences with their own communities. Even so, we plan to increase our marketing spending on traditional and online media to increase awareness of our brand and attract additional members to our ecosystem.

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## Risks Associated With Our Business

Our business is subject to numerous risks described in “Risk Factors” immediately following this prospectus summary and elsewhere in this prospectus. Some of the more significant risks are:

- We have a history of operating losses and we may not achieve or maintain profitability in the future.
- Our quarterly operating results may fluctuate, which could cause our stock price to decline.
- Adherence to our values and our focus on long-term sustainability may negatively influence our short- or medium-term financial performance.
- The authenticity of our marketplace and the connections within our community are important to our success. If we are unable to maintain them, our ability to retain existing members and attract new members could suffer.
- Further expansion into markets outside of the United States is important to the growth of our business but will subject us to risks associated with operations abroad.
- We expect to increase our marketing efforts to help grow our business, but those efforts may not be effective at attracting new members and retaining existing members.
- Our payments system depends on third-party providers and is subject to evolving laws and regulations.
- Our ability to expand our ecosystem is important to the growth of our business.
- We must develop new offerings to respond to our members’ changing needs.
- If the mobile solutions available to Etsy sellers and Etsy buyers are not effective, the use of our platform could decline.
- We face intense competition and may not be able to compete effectively.

See “Risk Factors” immediately following this prospectus summary for a more thorough discussion of these and other risks and uncertainties we face.

## Our Corporate Information

Etsy was incorporated in the state of Delaware in February 2006 as Indieco, Inc., and we changed our name to Etsy, Inc. in June 2006. Our headquarters are located at 55 Washington Street, Suite 512, Brooklyn, New York 11201. Our telephone number is (718) 855-7955. Our website address is [www.etsy.com](http://www.etsy.com). The information contained in, or accessible through, our website is not part of, and is not incorporated into, this prospectus, and investors should not rely on any such information in deciding whether to invest in our common stock.

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We use various trademarks, trade names and design marks in our business, including Etsy®, Code as Craft™ and Craft Entrepreneurship™. This prospectus also contains trademarks and trade names of other businesses that are the property of their respective holders. We do not intend our use or display of other companies' trademarks and trade names to imply a relationship with, or endorsement or sponsorship of us by, those other companies.

## **JOBS Act**

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012. We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year (a) following the fifth anniversary of the completion of this offering, (b) in which we have total annual gross revenue of at least \$1.0 billion or (c) in which we become a large accelerated filer, which means that we have been public for at least 12 months, have filed at least one annual report and the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the last day of our then most recently completed second fiscal quarter, and (2) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period. We refer to the Jumpstart Our Business Startups Act of 2012 as the “JOBS Act,” and references to “emerging growth company” have the meaning associated with such term in the JOBS Act.

In addition, the JOBS Act provides that an emerging growth company can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

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# Glossary

The following terms are used throughout this prospectus:

Term	Definition
Active buyer	An Etsy buyer is a member who has created an account in our marketplace. An Etsy buyer is identified by a unique e-mail address; a single person can have multiple Etsy buyer accounts.  An active buyer is an Etsy buyer who has made at least one purchase in the last 12 months.
Active seller	An Etsy seller is a member who has created an account and has listed an item in our marketplace. An Etsy seller is identified by a unique e-mail address; a single person can have multiple Etsy seller accounts.
Community	An active seller is an Etsy seller who has incurred at least one charge from us in the last 12 months. Charges include transaction fees, listing fees and fees for Direct Checkout, Promoted Listings, Shipping Labels and Wholesale enrollment.
Ecosystem	Our community consists of Etsy sellers, Etsy buyers, manufacturers who work with Etsy sellers and Etsy employees.
Global-local	Our ecosystem consists of Etsy and the people and communities around the world who benefit from our platform.
GMS	Global-local refers to our focus on building local Etsy communities around the world. The Etsy sellers and Etsy buyers in these local communities, in turn, have global reach and access through our platform.
International GMS	Gross merchandise sales, or GMS, is the dollar value of items sold in our marketplace within the applicable period, excluding shipping fees and net of refunds associated with cancelled transactions.
Mobile GMS	International GMS is GMS from transactions in which either the billing address for the Etsy seller or the shipping address for the Etsy buyer at the time of sale is outside of the United States.
Mobile GMS	Mobile GMS is GMS from transactions that occur on a mobile device, such as a tablet or a smartphone. Mobile GMS excludes orders initiated on mobile devices but ultimately completed on a desktop. We began tracking mobile GMS in 2013.
Member	A member is represented by an open member account based on a unique e-mail address; a single person can have multiple member accounts.

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Term	Definition
Platform	Our platform includes our marketplace, our Seller Services, our technology and our community, both online and offline. The core of our platform is our marketplace, which connects people around the world to make, sell and buy unique goods.
Visit	A visit represents activity from a unique browser or mobile app. A visit ends after 30 minutes of inactivity.
	A mobile visit is a visit that occurs on a mobile device, such as a tablet or a smartphone. We began tracking mobile visits in 2013.

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# The Offering

Common stock offered by us	shares
Common stock offered by the selling stockholders	shares
Underwriters' option to purchase additional shares	shares
Common stock to be outstanding after this offering	shares, or        shares if the underwriters exercise their option to purchase additional shares in full
Use of proceeds	<p>We estimate that our net proceeds from the sale of the common stock that we are offering will be approximately \$      million, or approximately \$      million if the underwriters exercise their option to purchase additional shares in full, assuming an initial public offering price of \$      per share, the midpoint of the offering price range on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.</p> <p>We will not receive any of the proceeds from the sale of shares by the selling stockholders.</p> <p>The principal purposes of this offering are to increase our visibility, create a public market for our common stock and facilitate our future access to the public equity markets. We currently intend to use the net proceeds from this offering for working capital and general corporate purposes, including continued investments in the growth of our business. We also intend to use \$300,000 of the proceeds of this offering to partially fund Etsy.org, a Delaware non-profit organization that we formed in January 2015.</p> <p>We may use a portion of the net proceeds to fund the build-out of our new corporate headquarters. In addition, we may use a portion of the net proceeds received by us from this offering for acquisitions of other complementary businesses, technologies or other assets. However, we have no current understandings, agreements or commitments for any specific material acquisitions at this time. See "Use of Proceeds."</p> <p>Read "Risk Factors" and other information included in this prospectus for a discussion of factors you should consider before deciding to invest in our common stock.</p> <p>"ETSY"</p>
Risk factors	
Proposed Nasdaq trading symbol	

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The number of shares of common stock to be outstanding after this offering is based on 195,258,466 shares of common stock (including preferred stock on an as-converted basis) outstanding as of December 31, 2014, and excludes:

- 376,471 shares of common stock issued to Etsy.org;
- 23,050,594 shares of common stock issuable upon the exercise of options outstanding as of December 31, 2014 under our 2006 Stock Plan, with a weighted-average exercise price of approximately \$2.67 per share;
- 2,037,490 shares of common stock issuable upon the exercise of options granted after December 31, 2014 under our 2006 Stock Plan, with an exercise price of \$8.50 per share;
- 406,060 shares of common stock issuable upon exercise of warrants outstanding as of December 31, 2014 with a weighted-average exercise price of approximately \$0.66 per share; and
- [REDACTED] shares of our common stock reserved for issuance under our equity compensation plans, consisting of [REDACTED] shares of common stock that will be reserved for issuance under our 2015 Equity Incentive Plan, 3,036,004 shares of common stock reserved for issuance under our 2006 Stock Plan as of December 31, 2014 and [REDACTED] shares of common stock that will be reserved for issuance under our 2015 Employee Stock Purchase Plan. On the date of this prospectus, any remaining shares available for issuance under our 2006 Stock Plan will be added to the shares reserved for issuance under our 2015 Equity Incentive Plan, and we will cease granting awards under our 2006 Stock Plan. Our 2015 Equity Incentive Plan and 2015 Employee Stock Purchase Plan also provide for automatic annual increases in the number of shares reserved thereunder, as more fully described in “Executive Compensation—Equity Plans.”

Except as otherwise indicated, all information in this prospectus assumes:

- the effectiveness of our amended and restated certificate of incorporation and the adoption of our amended and restated bylaws immediately prior to the completion of this offering;
- the automatic conversion of all outstanding shares of preferred stock into an aggregate of 106,896,493 shares of common stock, the conversion of which will occur immediately prior to the completion of this offering;
- no exercise of outstanding options or warrants; and
- no exercise by the underwriters of their option to purchase up to an additional [REDACTED] shares of common stock.

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## Summary Consolidated Financial and Other Data

You should read this summary consolidated financial and other data in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Selected Consolidated Financial and Other Data” and our consolidated financial statements and related notes included elsewhere in this prospectus.

The consolidated statements of operations data for the years ended December 31, 2012, 2013 and 2014, and the consolidated balance sheet data as of December 31, 2014, are derived from our audited consolidated financial statements and related notes included elsewhere in this prospectus. The following tables also show certain operational and non-GAAP financial measures. See the accompanying footnotes and “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” below for more information. Our historical results and key metrics are not necessarily indicative of future results, and results for any interim period presented below are not necessarily indicative of the results to be expected for any annual period. The consolidated financial statements for the years ended December 31, 2012 and 2013 have been revised to correct for the understatement of certain non-income tax-related expenses. See Note 15 of the accompanying notes to our consolidated financial statements.

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	Year Ended December 31, (in thousands, except share and per share data)		
	2012	2013	2014
Consolidated Statements of Operations Data:			
Revenue:			
Marketplace	\$ 55,330	\$ 78,544	\$ 108,732
Seller Services	15,863	42,817	82,502
Other	3,409	3,661	4,357
Total revenue	<u>74,602</u>	<u>125,022</u>	<u>195,591</u>
Cost of revenue(1)	<u>24,493</u>	<u>47,779</u>	<u>73,633</u>
Gross profit	<u>50,109</u>	<u>77,243</u>	<u>121,958</u>
Operating expenses:			
Marketing(1)	10,902	17,850	39,655
Product development(1)	18,653	27,548	36,634
General and administrative(1)	21,909	31,112	51,920
Total operating expenses	<u>51,464</u>	<u>76,510</u>	<u>128,209</u>
(Loss) income from operations	(1,355)	733	(6,251)
Total other expense	<u>(1,175)</u>	<u>(675)</u>	<u>(4,009)</u>
(Loss) income before income taxes	(2,530)	58	(10,260)
Benefit (provision) for income taxes	145	(854)	(4,983)
Net loss	<u>\$ (2,385)</u>	<u>\$ (796)</u>	<u>\$ (15,243)</u>
Net loss per share of common stock—basic and diluted	<u>\$ (0.04)</u>	<u>\$ (0.01)</u>	<u>\$ (0.19)</u>
Weighted average shares of common stock used in computing net loss per share—basic and diluted	60,563,723	65,334,548	80,493,407
Pro forma net loss per share of common stock—basic and diluted(2) (unaudited)			\$ (0.08)
Weighted average shares of common stock used in computing pro forma net loss per share—basic and diluted(2) (unaudited)			187,389,900
	Year Ended December 31, (in thousands, except percentages)		
	2012	2013	2014
Other Operational and Financial Data(3):			
GMS	\$ 895,152	\$ 1,347,833	\$ 1,931,981
Adjusted EBITDA	\$ 10,669	\$ 16,947	\$ 23,081
Active sellers	830	1,074	1,353
Active buyers	9,317	14,032	19,810
Percent mobile visits	N/A	41.3%	53.2%
Percent mobile GMS	N/A	29.5%	36.1%
Percent international GMS	28.4%	28.4%	30.9%

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	As of December 31, 2014		
	Actual	Pro Forma(4) (in thousands)	
<b>Consolidated Balance Sheet Data:</b>			
Cash and cash equivalents and short-term investments	\$ 88,843		
Working capital	88,540		
Total assets	249,135		
Deferred revenue	3,452		
Long-term liabilities	60,382		
Convertible preferred stock	80,212		
Total stockholders' equity	67,088		
(1) Includes total stock-based compensation expense as follows:			
	Year Ended December 31,		
	2012	2013	2014
	(in thousands)		
Cost of revenue	\$ 166	\$ 200	\$ 1,113
Marketing	57	79	216
Product development	436	785	1,461
General and administrative	3,435	2,770	7,260
<b>Total stock-based compensation expense</b>	<b>\$ 4,094</b>	<b>\$ 3,834</b>	<b>\$ 10,050</b>
(2) Pro forma basic and diluted net loss per share have been calculated assuming the conversion of all outstanding shares of convertible preferred stock into 106,896,493 shares of common stock as of the beginning of the applicable period or at the time of issuance, if later.			
(3) See “—Glossary” for the definitions of the following terms: “active buyer,” “active seller,” “GMS” and “visit.” See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” below for the definition of Adjusted EBITDA and for a reconciliation of Adjusted EBITDA to net loss, the most directly comparable financial measure calculated in accordance with GAAP. We began tracking mobile visits and mobile GMS in 2013.			
(4) Reflects the conversion of all outstanding shares of convertible preferred stock into 106,896,493 shares of common stock as of the date reflected and, on a pro forma basis, our sale of       shares of common stock that we are offering at the assumed initial public offering price of \$       per share, which is the midpoint of the offering price range on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma balance sheet data is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing. Each \$1.00 increase or decrease in the assumed initial public offering price of \$       per share, which is the midpoint of the offering price range on the cover page of this prospectus, would increase or decrease each of cash and cash equivalents and short-term investments, working capital, total assets, deferred revenue, long-term liabilities and total stockholders' equity on a pro forma basis by approximately \$       , assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same. We may also increase or decrease the number of shares we are offering. Each increase or decrease by       shares in the number of shares offered by us would increase or decrease each of cash and cash equivalents and short-term investments, working capital, total assets, deferred revenue, long-term liabilities and total stockholders' equity by approximately \$       million, assuming that the assumed initial price to public remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.			

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# Risk Factors

*Investing in our common stock involves a high degree of risk. Before deciding whether to purchase shares of our common stock, you should consider carefully the risks and uncertainties described below, our consolidated financial statements and related notes and all of the other information in this prospectus. If any of the following risks actually occurs, our business, financial condition, results of operations and prospects could be adversely affected. As a result, the price of our common stock could decline and you could lose part or all of your investment.*

## Risks Related to Our Business and Industry

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

We incurred net losses of \$15.2 million, \$0.8 million and \$2.4 million for the years ended December 31, 2014, 2013 and 2012, respectively. As of December 31, 2014, we had an accumulated deficit of \$32.4 million. We may not achieve or maintain profitability in the future. We expect that our operating expenses will increase substantially as we hire additional employees, increase our marketing efforts, expand our operations and continue to invest in the development of our platform, including new services and features for our members. These efforts may be more costly than we expect and our revenue may not increase sufficiently to offset these additional expenses. In addition, as a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. Further, our revenue growth may slow or our revenue may decline for a number of reasons, including those described in these Risk Factors.

### **Our quarterly operating results may fluctuate, which could cause our stock price to decline.**

Our quarterly operating results may fluctuate for a variety of reasons, many of which are beyond our control. These reasons include those described in these Risk Factors as well as the following:

- fluctuations in revenue generated from Etsy sellers on our platform, including as a result of the seasonality of marketplace transactions and Etsy sellers' use Seller Services;
- our success in retaining existing members and attracting new members;
- the amount and timing of our operating expenses;
- the timing and success of new services and features we introduce;
- the impact of competitive developments and our response to those developments;
- our ability to manage our existing business and future growth;
- disruptions or defects in our marketplace, such as privacy or data security breaches; and
- economic and market conditions, particularly those affecting our industry.

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Fluctuations in our quarterly operating results may cause those results to fall below the expectations of analysts or investors, which could cause the price of our common stock to decline. Fluctuations in our results could also cause a number of other problems. For example, analysts or investors might change their models for valuing our common stock, we could experience short-term liquidity issues, our ability to retain or attract key personnel may diminish and other unanticipated issues may arise.

In addition, we believe that our quarterly operating results may vary in the future and that period-to-period comparisons of our operating results may not be meaningful. For example, our historical growth may have overshadowed the seasonal effects on our historical operating results. These seasonal effects may become more pronounced over time, which could also cause our operating results to fluctuate. You should not rely on the results of one quarter as an indication of future performance.

### **Adherence to our values and our focus on long-term sustainability may negatively influence our short- or medium-term financial performance.**

Our values are integral to everything we do, and accordingly, we intend to focus on the long-term sustainability of our business and our ecosystem. We may take actions that we believe will benefit our business and our ecosystem and, therefore, our stockholders over a period of time, even if those actions do not maximize short- or medium-term financial results. However, these longer-term benefits may not materialize within the timeframe we expect or at all. For example:

- we may choose to prohibit the sale of items in our marketplace that we believe are inconsistent with our values even though we could benefit financially from the sale of those items;
- we may choose to revise our policies in ways that we believe will be beneficial to our members and our ecosystem in the long term even though the changes are perceived unfavorably among our existing members; or
- we may take actions, such as investing in alternative forms of shipping or locating our servers in low-impact data centers, that reduce our environmental footprint even though these actions may be more costly than other alternatives.

### **The authenticity of our marketplace and the connections within our community are important to our success. If we are unable to maintain them, our ability to retain existing members and attract new members could suffer.**

We have built an authentic, trusted marketplace that embodies our values-based culture, emphasizing respect, direct communication and fun. We have developed a reputation for authenticity as a result of Etsy sellers' unique offerings and their adherence to our policies for handmade goods. We establish trust in our marketplace by emphasizing the person behind every transaction. We deepen connections among our members through our direct communication tools, seller stories on our website and our in-person events, making a personal relationship central to the member experience. As part of our community, we also strive to build meaningful connections with our members. For example, each of our employees, including

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management, is expected to perform member support rotations to help foster connections among our community and to help us better understand the needs of our members. The authenticity of our marketplace and the connections among our members are the cornerstones of our business. Many things could undermine these cornerstones, such as:

- complaints or negative publicity about us or our platform, even if factually incorrect or based on isolated incidents;
- changes to our policies that our members perceive as inconsistent with our values or that are not clearly articulated;
- our failure to enforce our policies fairly and transparently, such as by failing to prevent the widespread listing of items in our marketplace that do not comply with our policies;
- our failure to respond to feedback from our community; or
- our failure to operate our business in a way that is consistent with our values.

If we are unable to maintain the authenticity of our marketplace and encourage connections among members of our community, then our ability to retain existing members and attract new members could be impaired and our reputation and business could be adversely affected.

In addition, our reputation could be harmed if we lose our status as a Certified B Corporation, whether by our choice or by our failure to meet B Lab's certification requirements. Likewise, our reputation could be harmed if our publicly reported B Corporation score declines. B Lab, an independent, third-party organization, sets the standards for Certified B Corporation certification and may change those standards over time.

### **Our growth depends on our ability to attract and retain an active community of Etsy sellers and Etsy buyers.**

In order to increase revenue and to achieve and maintain profitability, we must attract new members and retain existing members. We must also encourage Etsy sellers to list items for sale and use our Seller Services and encourage Etsy buyers to purchase items in our marketplace.

We believe that many of our new members find Etsy by word of mouth and other non-paid referrals from existing members. If existing Etsy sellers are dissatisfied with their experience on our platform, they may stop listing items in our marketplace and may stop referring others to us. Likewise, if existing Etsy buyers do not find our platform appealing, whether because of a negative experience, lack of buyer-friendly features, declining interest in the nature of the goods offered by Etsy sellers or other factors, they may make fewer purchases and they may stop referring others to us. Under these circumstances, we may have difficulty attracting new Etsy sellers and Etsy buyers without incurring additional marketing expense.

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Even if we are able to attract new members to replace members we lose, they may not maintain the same level of activity and the revenue generated from new members may not be as high as the revenue generated from the lost members. If we are unable to retain existing members and attract new members who contribute to an active community, our growth prospects would be harmed and our business could be adversely affected.

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

Expanding our community into markets outside of the United States is an important part of our strategy. Although we have a significant number of members outside of the United States, we have limited experience in developing local markets outside the United States. The nature of the goods that Etsy sellers list in our marketplace may not appeal to non-U.S. consumers in the same way as they do to consumers in the United States. Also, visits to our marketplace from Etsy buyers outside the United States may not convert into sales as often as visits from within the United States. Our success in markets outside the United States will be linked to our ability to attract local Etsy sellers and Etsy buyers to our platform. If we are not able to do so, our growth prospects could be harmed.

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

Continued expansion in markets outside of the United States will also require significant financial investment. These investments include marketing to attract and retain new members, developing localized services, forming relationships with third-party service providers, supporting operations in multiple countries and potentially acquiring companies based outside the United States and integrating those companies with our operations.

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

- complying with different regulatory standards (including those related to the use of personal information, particularly in the European Union);
- managing and staffing operations over a broader geographic area with varying cultural norms and customs;
- adapting our platform to local cultural norms and customs;
- potentially heightened risk of fraudulent transactions;
- limitations on the repatriation of funds and fluctuations of foreign exchange rates;

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- exposure to liabilities under anti-corruption, anti-money laundering and export control laws, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act of 2010, trade controls and sanctions administered by the U.S. Office of Foreign Assets Control, and similar laws and regulations in other jurisdictions;
- varying levels of Internet, e-commerce and mobile technology adoption and infrastructure;
- our ability to enforce contracts and intellectual property rights in jurisdictions outside the United States; and
- barriers to international trade, such as tariffs or other taxes.

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

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

### **We expect to increase our marketing efforts to help grow our business, but those efforts may not be effective at attracting new members and retaining existing members.**

Maintaining and promoting awareness of our marketplace and broader platform is important to our ability to retain existing members and to attract new members. We believe that much of the growth in our member base to date has originated from word-of-mouth referrals and other organic means, as our historical marketing efforts and expenditures have been relatively limited. Going forward, we intend to invest more in marketing, with a particular focus on bringing more Etsy buyers to our platform. We anticipate that our marketing initiatives may become increasingly expensive as competition increases, and generating a meaningful return on those initiatives may be difficult. Also, the marketing efforts we implement in the future may not succeed as we have limited marketing experience. Even if we successfully increase revenue as a result of these efforts, that additional revenue may not offset the expenses we incur.

Our marketing efforts currently include search engine marketing and display advertising, as well as search engine optimization, social media usage, mobile “push” notifications and email. We obtain a significant number of visits via search engines such as Google, Bing and Yahoo!. Search engines frequently change the algorithms that determine the ranking and display of results of a user’s search, and those changes can negatively affect the placement of links to our marketplace and, therefore, reduce the number of visits to our marketplace. We also obtain a significant number of visits through email advertising. If we are unable to successfully deliver emails to our members or if members do not open our emails, whether out of choice, because those emails are marked as low priority or spam or for other reasons, our business could be adversely affected. Social networking websites, such as Facebook and Pinterest, are another important

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source of visits to our marketplace. As online commerce and social networking continue to evolve, we must maintain a presence within these networks. We may be unable to develop or maintain such a presence.

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

Etsy buyers can pay for purchases using Direct Checkout or PayPal. In the United States and other countries where Direct Checkout is available, Etsy buyers can pay with credit cards, debit cards, bank transfers and Etsy gift cards on our platform rather than being directed to a third-party payment platform. A significant portion of our GMS is processed through Direct Checkout, and a portion of our revenue is derived from Direct Checkout.

We have engaged third-party service providers to perform underlying card processing, currency exchange, identity verification and fraud analysis services. If these service providers do not perform adequately or if our relationships with these service providers were to terminate, Etsy sellers' ability to accept orders could be adversely affected and our business would be harmed. In addition, if these providers increase the fees they charge us, our operating expenses could increase. Alternatively, if we respond by increasing the fees we charge to Etsy sellers, some Etsy sellers may stop using Direct Checkout, stop listing new items for sale or even close their accounts altogether.

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

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

### **Our ability to expand our ecosystem is important to the growth of our business.**

We spend substantial time and resources creating new offerings in order to add new constituents to our ecosystem and to open new sales channels for Etsy sellers. For example, in October 2013, we expanded our ecosystem by allowing Etsy sellers to work with small-batch manufacturers. Additionally, in August 2014, we added traditional retailers to our ecosystem with the launch of our Wholesale offering, which allows Etsy sellers to sell their products to retailers on our platform.

Our efforts to expand our ecosystem could fail for many reasons, including lack of acceptance of our offerings by existing members or new constituents, our failure to market our offerings effectively to new constituents, defects or errors in our new offerings or negative publicity about us or our new offerings.

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Diversifying our offerings and expanding our ecosystem to benefit our community involves significant risk. For example, these initiatives may not drive increases in revenue, may require substantial investment and planning and may bring us more directly into competition with companies that are better established or have greater resources than we do. It will require additional investment of time and resources in the development and training of our personnel and our members. If we are unable to cost-effectively expand our ecosystem, then our growth prospects and competitive position may be harmed.

### **We must develop new offerings to respond to our members' changing needs.**

Our industry is characterized by rapidly changing technology, new service and product introductions and changing customer demands. We spend substantial time and resources understanding our members' needs and responding to them. For example, we are continually developing additional Seller Services, improving search and discovery functionality and enhancing the member experience. Recently, we have focused on providing additional Seller Services and tools to help Etsy sellers manage and scale their businesses. For example, in August 2014, we launched our Wholesale offering. In addition, we developed a mobile app and expanded Direct Checkout to enable an Etsy seller in the United States to use our "Sell on Etsy Reader" to accept credit card and debit card payments in person, such as at her store or her booth at a craft fair.

Our members may not be satisfied with our new offerings or perceive that the new offerings respond to their needs. Developing new offerings is complex, and the timetable for commercial release is difficult to predict and may vary from our historical experience. As a result, the introduction of new offerings may occur after anticipated or announced release dates. Our new offerings also may bring us more directly into competition with companies that are better established or have greater resources than we do.

If we do not continue to cost-effectively develop new offerings that satisfy our members, then our competitive position and growth prospects may be harmed. In addition, new offerings may have lower margins than existing offerings and our revenue may not grow enough as a result of the new offerings to offset the cost of developing them.

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

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

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

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

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

If our members encounter difficulty accessing or using our platform on their mobile devices, or if our members choose not to use our platform on their mobile devices, our growth prospects and our business may be adversely affected.

### **We face intense competition and may not be able to compete effectively.**

Our industry is highly competitive and we expect competition to increase in the future. To be successful, we need to attract and retain both Etsy sellers and Etsy buyers. As a result, we face competition from a wide range of online and offline competitors. See “Business—Competition.”

We compete with retailers for Etsy sellers. An Etsy seller can list her goods for sale with online retailers, such as Amazon.com, eBay or Alibaba, or sell her goods through local consignment and vintage stores and other venues or marketplaces. She may also sell wholesale directly to traditional retailers, including large national retailers, who discover her goods in our marketplace or otherwise. We also compete with companies that sell software and services to small businesses, enabling an Etsy seller to sell from her own website or otherwise run her business independently of our platform, such as Square, Intuit and Shopify.

We compete to attract, engage and retain Etsy sellers based on many factors, including:

- our brand awareness;
- the breadth of our online presence;
- the number and engagement of Etsy buyers;
- the extent to which our Seller Services can ease the administrative tasks that an Etsy seller might encounter in running her business, including through mobile apps;
- our fees;

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- the strength of our community; and
- our values.

In addition, we compete with retailers for the attention of the Etsy buyer. An Etsy buyer has the choice of shopping with any online or offline retailer, whether large marketplaces, such as Amazon.com, eBay or Alibaba, or national retail chains, such as Pottery Barn or Target, or local consignment and vintage stores or other venues or marketplaces. Many of these competitors offer low-cost or free shipping, fast shipping times, favorable return policies and other features that may be difficult or impossible for Etsy sellers to match.

We compete to attract, engage and retain Etsy buyers based on many factors, including:

- the unique goods that Etsy sellers list in our marketplace;
- our brand awareness;
- the person-to-person commerce experience;
- our reputation for authenticity;
- our mobile apps;
- ease of payment; and
- the availability and reliability of our platform.

Many of our competitors and potential competitors have longer operating histories, greater resources, better name recognition or more customers than we do. They may invest more to develop and promote their services than we do, and they may offer lower fees to sellers than we do. Additionally, we believe that it is relatively easy for new businesses to create online commerce offerings or tools or services that enable entrepreneurship.

Local companies or more established companies based in markets where we operate outside of the United States may also have a better understanding of local customs, providing them a competitive advantage. For example, in certain markets outside the United States, we compete with smaller, but similar, local online marketplaces with a focus on unique goods that are attempting to attract sellers and buyers in those markets.

If we are unable to compete successfully, or if competing successfully requires us to expend significant resources in response to our competitors' actions, our business could be adversely affected.

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

We have acquired a number of other businesses in the past and may acquire additional businesses or technologies in the future. For example, in April 2014 we acquired Jarvis Labs, Inc. (d/b/a Grand St.) and in June 2014 we acquired Incubart SAS (d/b/a A Little Market). Acquisitions may divert management's time and focus from operating our business. Acquisitions also may require us to spend a substantial portion of our available cash, incur debt or other liabilities, amortize expenses related to intangible assets or incur write-offs of goodwill or other assets. In addition, integrating an acquired business or technology is risky. Completed and future acquisitions may result in unforeseen operational difficulties and expenditures associated with:

- incorporating new businesses and technologies into our infrastructure;
- consolidating operational and administrative functions;
- coordinating outreach to our community;
- maintaining morale and culture and retaining and integrating key employees;
- maintaining or developing controls, procedures and policies (including effective internal control over financial reporting and disclosure controls and procedures); and
- assuming liabilities related to the activities of the acquired business before the acquisition, including liabilities for violations of laws and regulations, commercial disputes, taxes and other matters.

Moreover, we may not benefit from our acquisitions as we expect, or in the time frame we expect. We also may issue additional equity securities in connection with an acquisition, which could cause dilution to our stockholders. Finally, acquisitions could be viewed negatively by analysts, investors or our members.

### **Our ability to recruit and retain employees is important to our success.**

We strive to attract and motivate employees, from our office administrators to our management team, who share our dedication to our community and our mission.

Some of the challenges we face in attracting and retaining employees include:

- preserving our company culture as we grow;
- continuing to attract and retain employees who share our values;
- promoting existing employees into leadership positions to help sustain and grow our culture;
- hiring employees in multiple locations globally;
- responding to competitive pressures and changing business conditions in ways that do not divert us from our values; and

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- integrating new personnel and businesses from acquisitions.

Our ability to attract, retain and motivate employees, including our management team, is important to our success. In general, our key personnel work for us on an at-will basis. Other companies, including our competitors, may be successful in recruiting and hiring our employees, and it may be difficult for us to find suitable replacements on a timely basis or on competitive terms.

Filling engineering, product management and other technical positions in the New York City area is particularly challenging, especially in light of our distinctive technology philosophy and engineering culture. Qualified individuals are limited and in high demand, and we may incur significant costs to attract, develop and motivate them. Even if we were to offer higher compensation and other benefits, people with suitable technical skills may choose not to join us or to continue to work for us. If we are not able to maintain our engineering culture and broader company culture, then our ability to recruit and retain employees could suffer and our business would be harmed.

### **The growth of our business may strain our management team and our operational and financial infrastructure.**

We have experienced rapid growth in our business, such as in headcount, the number of Etsy sellers and the number of countries in which we have members, and we plan to continue to grow in the future, both in the United States and abroad. For example, our headcount has grown from 251 employees on December 31, 2011 to 685 employees on December 31, 2014, an increase of 172.9%. The growth of our business places significant demands on our management team and pressure to expand our operational and financial infrastructure. As we continue to grow, our operating expenses will increase. If we do not manage our growth effectively, the increases in our operating expenses could outpace any increases in our revenue and our business could be harmed.

Continued growth could also pose other challenges, such as the need to develop and improve our operational, financial and management controls and to enhance our reporting systems and procedures. For example, in 2013 we began implementing a new enterprise resource planning, or ERP, system to enhance a variety of important functions such as invoicing, accounts receivable, accounts payable, foreign currency translation, financial consolidation and internal and external financial and management reporting matters. ERP system implementations are complex, long-term projects that involve substantial expenditures. To fully realize the benefits of the new ERP system we must also make significant changes to our business and financial processes. Our business may be harmed if the ERP system does not function as expected or does not result in the expected benefits.

### **We rely on Etsy sellers to provide a fulfilling experience to Etsy buyers.**

A small portion of Etsy buyers complain to us about their experience with our platform. For example, Etsy buyers may report that they have not received the items that they purchased, that the items received were not as represented by an Etsy seller or that an Etsy seller has not been responsive to their questions.

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Negative publicity and member sentiment generated as a result of these types of complaints could reduce our ability to attract new members or retain our current members or damage our reputation. A perception that our levels of responsiveness and member support are inadequate could have similar results. In some situations, we may choose to reimburse Etsy buyers for their purchases to help avoid harm to our reputation, but we may not be able to recover the funds we expend for those reimbursements.

Anything that disrupts the operations of a substantial number of Etsy sellers, such as interruptions in delivery services, natural disasters, inclement weather, public health crises or political unrest, could also result in negative experiences for a substantial number of Etsy buyers.

### **Etsy sellers rely on third-party services to deliver their orders.**

Etsy sellers work with a number of third-party services such as FedEx, UPS, the United States Postal Service and Canada Post to deliver their products to Etsy buyers. Anything that prevents timely delivery of goods to Etsy buyers could harm Etsy sellers and could negatively affect our reputation. Delays or interruptions may be caused by events that are beyond the control of the delivery services, such as inclement weather, natural disasters, transportation disruptions, terrorism, public health crises or labor unrest. For example, certain delivery services were reported to have been overwhelmed by the volume of shipments during the 2013 holiday season, resulting in significant delays in delivery times. The delivery services could also be affected by industry consolidation, insolvency or government shut-downs. Although we have agreements with certain delivery services that enable us to provide pre-paid shipping labels as a convenience to Etsy sellers, our agreements do not require these providers to offer delivery services to Etsy sellers. Further, our competitors could obtain preferential rates or shipping services, causing Etsy sellers to pay higher shipping costs or find alternative delivery services. If the goods sold in our marketplace are not delivered in proper condition, on a timely basis or at shipping rates that Etsy buyers are willing to pay, our reputation and our business could be adversely affected.

### **Our reputation may be harmed if members of our community use unethical business practices.**

Our emphasis on our values makes our reputation particularly sensitive to allegations of unethical business practices by Etsy sellers or other members of our community. Our policies promote legal and ethical business practices, such as encouraging Etsy sellers to work only with manufacturers who do not use child or involuntary labor, who do not discriminate and who promote sustainability and humane working conditions. However, we do not control Etsy sellers or other members of our community or their business practices and cannot ensure that they comply with our policies. If members of our community engage in illegal or unethical business practices or are perceived to do so, we may receive negative publicity and our reputation may be harmed.

### **Failure to deal effectively with fraud could harm our business.**

Although we have measures in place to detect and reduce the occurrence of fraudulent activity in our marketplace, those measures may not always be effective.

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For example, Etsy sellers occasionally receive orders placed with fraudulent or stolen credit card data. Under current credit card practices, we may be liable for orders placed through Direct Checkout with fraudulent credit card data even if the associated financial institution approved the credit card transaction. Although we attempt to detect or challenge allegedly fraudulent transactions, we may not be able to do so effectively. As a result, our business could be adversely affected. We could also incur significant fines or lose our ability to give members the option of paying with credit cards if we fail to follow payment card industry data security standards or fail to limit fraudulent transactions conducted in our marketplace.

Negative publicity and member sentiment resulting from fraudulent or deceptive conduct by members or the perception that our levels of responsiveness and member support are inadequate could reduce our ability to attract new members or retain existing members and damage our reputation.

**If sensitive information about our members is disclosed, or if we or our third-party providers are subject to cyber attacks, our members may curtail use of our platform, we may be exposed to liability and our reputation would suffer.**

We collect, transmit and store personal and financial information provided by our members, such as names, email addresses, the details of transactions and credit card and other financial information. Some of our third-party service providers, such as identity verification and payment processing providers, also regularly have access to member data. In an effort to protect sensitive information, we rely on a variety of security measures, including encryption and authentication technology licensed from third parties. However, advances in computer capabilities, increasingly sophisticated tools and methods used by hackers and cyber terrorists, new discoveries in the field of cryptography or other developments may result in our failure or inability to adequately protect sensitive information. The preventive measures we take to address these risks are costly and may become more costly in the future.

Like all online services, our platform is vulnerable to power outages, telecommunications failures and catastrophic events, as well as computer viruses, break-ins, phishing attacks, denial-of-service attacks and other cyber attacks. Any of these incidents could lead to interruptions or shutdowns of our platform, loss of data or unauthorized disclosure of personally identifiable or other sensitive information. Cyber attacks could also result in the theft of our intellectual property. If we gain greater visibility, we may face a higher risk of being targeted by cyber attacks. Advances in computer capabilities, new technological discoveries or other developments may result in cyber attacks becoming more sophisticated and more difficult to detect. We and our third-party service providers may not have the resources or technical sophistication to anticipate or prevent all such cyber attacks. Moreover, techniques used to obtain unauthorized access to systems change frequently and may not be known until launched against us or our third-party service providers. Security breaches can also occur as a result of non-technical issues, including intentional or inadvertent breaches by our employees or employees of our third-party service providers.

We and our third-party service providers regularly experience cyber attacks aimed at disrupting our and our third-party service providers' services. If we or our third-party service providers experience security breaches that result in marketplace performance or availability problems or the loss or unauthorized

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disclosure of sensitive information, people may become unwilling to provide us the information necessary to set up member accounts. Existing members may also decrease their purchases or stop listing new items for sale or close their accounts altogether. We could also face potential liability and litigation, which may not be adequately covered by insurance. Any of these results could harm our growth prospects, our business and our reputation.

### **Our business depends on network and mobile infrastructure provided by third parties and on our ability to maintain and scale the technology underlying our platform.**

The reliability of our platform is important to our reputation and our ability to attract and retain members. As our number of members, volume of traffic, number of transactions and the amount of information shared on our platform grow, our need for additional network capacity and computing power will also grow. The operation of the technology underlying our platform is expensive and complex, and we could experience operational failures. If we fail to accurately predict the rate or timing of the growth of our platform, we may be required to incur significant additional costs to maintain reliability.

We also depend on the development and maintenance of the Internet and mobile infrastructure. This includes maintenance of reliable Internet and mobile networks with the necessary speed, data capacity and security, as well as timely development of complementary products.

Third-party providers host much of our technology infrastructure. Any disruption in their services, or any failure of our providers to handle the demands of our marketplace could significantly harm our business. We exercise little control over these providers, which increases our vulnerability to their financial conditions and to problems with the services they provide. If we experience failures in our technology infrastructure or do not expand our technology infrastructure successfully, then our ability to attract and retain members could be adversely affected, which could harm our growth prospects and our business.

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

Our members rely on access to the Internet or mobile networks to access our marketplace. Internet service providers may choose to disrupt or degrade our members' access to our platform or increase the cost of such access. Mobile network operators or operating system providers could block or place onerous restrictions on our members' ability to download and use our mobile apps.

Internet service providers or mobile network operators could also attempt to charge us for providing access to our platform. Although the Federal Communications Commission, or FCC, recently approved new rules that would prohibit Internet service providers from charging content providers higher rates in order to deliver their content over certain "fast traffic" lanes, these rules will not go into effect until later this year and could be subject to legal challenge or statutory preemption, which could delay or prevent implementation. If the FCC's rules are not implemented, our business could be adversely impacted. Outside of the United States, government regulation of the Internet, including the idea of network neutrality, may be developing or non-existent. As a result, we could face discriminatory or anti-competitive practices that could impede both our and Etsy sellers' growth prospects, increase our costs and harm our business.

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

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

For example, laws relating to online privacy are evolving differently in different jurisdictions. Federal, state and non-U.S. governmental authorities, as well as courts interpreting the laws, continue to evaluate the privacy implications of the use of third-party “cookies,” “web beacons” and other methods of online tracking. The United States, the European Union and other governments have enacted or are considering legislation that could significantly restrict the ability of companies and individuals to collect and store user information, such as by regulating the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools.

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

In some cases, non-U.S. privacy, data protection, consumer protection and other laws and regulations are more restrictive than those in the United States. For example, the European Union traditionally has imposed stricter obligations under such laws than the United States. Consequently, the expansion of our operations internationally may require changes to the ways we collect and use consumer information.

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

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

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Additionally, if third parties with whom we work violate applicable laws or our policies, those violations could result in other liabilities for us and could harm our business.

### **We may be unable to protect our intellectual property adequately.**

Our intellectual property is an essential asset of our business. To establish and protect our intellectual property rights, we rely on a combination of trade secret, copyright, trademark and, to a lesser extent, patent laws, as well as confidentiality procedures and contractual provisions. The efforts we have taken to protect our intellectual property may not be sufficient or effective. We generally do not elect to register our copyrights or the majority of our trademarks, relying instead on the laws protecting unregistered intellectual property, which may not be sufficient. In addition, our copyrights and trademarks, whether or not registered, and patents, may be held invalid or unenforceable if challenged. While we have obtained or applied for patent protection with respect to some of our intellectual property, we generally do not rely on patents as a principal means of protecting intellectual property. To the extent we do seek patent protection, any U.S. or other patents issued to us may not be sufficiently broad to protect our proprietary technologies.

In addition, we may not be effective in policing unauthorized use of our intellectual property. Even if we do detect violations, we may need to engage in litigation to enforce our intellectual property rights. Any enforcement efforts we undertake, including litigation, could be time-consuming and expensive and could divert our management's attention. In addition, our efforts may be met with defenses and counterclaims challenging the validity and enforceability of our intellectual property rights or may result in a court determining that our intellectual property rights are unenforceable. If we are unable to cost-effectively protect our intellectual property rights, then our business could be harmed.

### **We may be subject to claims that items listed in our marketplace are counterfeit, infringing or illegal.**

Although we do not create or take possession of the items listed in our marketplace by Etsy sellers, we frequently receive communications alleging that items listed in our marketplace infringe third-party copyrights, trademarks, patents or other intellectual property rights. We have intellectual property complaint and take-down procedures in place to address these communications, and we believe such procedures are important to promote confidence in our marketplace. We follow these procedures to review complaints and relevant facts to determine whether to take the appropriate action, which may include removal of the item from our marketplace and, in certain cases, closing the shops of Etsy sellers who repeatedly violate our policies.

Our procedures may not effectively reduce or eliminate our liability. In particular, we may be subject to civil or criminal liability for activities carried out by Etsy sellers on our platform, especially outside the United States where we may be less protected under local laws than we are in the United States. Under current U.S. copyright law and the Communications Decency Act, we may benefit from statutory safe harbor provisions that protect us from liability for content posted by our members. However, trademark and patent laws do not include similar statutory provisions, liability for these forms of intellectual property is often

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determined by court decisions. These safe harbors and court rulings may change unfavorably. In that event, we may be held secondarily liable for the intellectual property infringement of Etsy sellers.

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

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

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

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

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### **We may be involved in litigation matters that are expensive and time consuming.**

In addition to intellectual property claims, we may become involved in other litigation matters, including class action lawsuits. Any lawsuit to which we are a party, with or without merit, may result in an unfavorable judgment. We also may decide to settle lawsuits on unfavorable terms. Any such negative outcome could result in payments of substantial damages or fines, damage to our reputation or adverse changes to our offerings or business practices. Any of these results could adversely affect our business. In addition, defending claims is costly and can impose a significant burden on our management.

### **Our software is highly complex and may contain undetected errors.**

The software underlying our platform is highly complex and may contain undetected errors or vulnerabilities, some of which may only be discovered after the code has been released. We rely heavily on a software engineering practice known as “continuous deployment,” meaning that we typically release software code many times per day. This practice may result in the more frequent introduction of errors or vulnerabilities into the software underlying our platform. Any errors or vulnerabilities discovered in our code after release could result in damage to our reputation, loss of members, loss of revenue or liability for damages, any of which could adversely affect our growth prospects and our business.

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

The software powering our marketplace incorporates software covered by open source licenses. In addition, we regularly contribute source code to open source software projects and release internal software projects under open source licenses, and we anticipate doing so in the future. The terms of many open source licenses have not been interpreted by U.S. courts and there is a risk that the licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to operate our marketplace. Under certain open source licenses, we could be required to publicly release the source code of our software or to make our software available under open source licenses. To avoid the public release of the affected portions of our source code, we could be required to expend substantial time and resources to re-engineer some or all of our software. In addition, use of open source software can lead to greater risks than use of third-party commercial software because open source licensors generally do not provide warranties or controls on the origin of the software. Use of open source software may also present additional security risks because the public availability of such software may make it easier for hackers and other third parties to determine how to compromise our platform. Additionally, because any software source code we contribute to open source projects is publicly available, our ability to protect our intellectual property rights in such software source code may be limited or lost entirely, and we will be unable to prevent our competitors or others from using such contributed software source code. Any of these risks could be difficult to eliminate or manage and, if not addressed, could adversely affect our business, financial condition and results of operations.

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### **Our business and our members may be subject to sales and other taxes.**

The application of indirect taxes, such as sales and use tax, value-added tax, or VAT, provincial taxes, goods and services tax, business tax and gross receipt tax, to businesses like ours and to our members is a complex and evolving issue. For example, as of January 1, 2015, the European Union imposed an obligation on marketplaces to collect and remit VAT on sales of automatically-downloaded digital items, and we are in the process of implementing such collection and remittance procedures. Significant judgment is required to evaluate applicable tax obligations and as a result amounts recorded are estimates and could change. In many cases, the ultimate tax determination is uncertain because it is not clear how existing statutes apply to our business or to Etsy sellers' businesses. One or more states, the federal government or other countries may seek to impose additional reporting, record-keeping or indirect tax collection obligations on businesses like ours that facilitate online commerce. For example, the U.S. Congress is currently considering the "Marketplace Fairness Act," which would grant states the authority to require online merchants to collect sales tax on online sales at the time a transaction is completed. New taxes could also require us or Etsy sellers to incur substantial costs to capture data and collect and remit taxes. If such obligations were imposed, the additional costs associated with tax collection, remittance and audit requirements could make selling in our marketplace less attractive and more costly for Etsy sellers, which could adversely affect our business.

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

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

In January 2015, we implemented a revised corporate structure to more closely align our structure with our global operations and future expansion plans outside of the United States. Our new corporate structure changes how we use our intellectual property and implements certain intercompany arrangements, which we expect may result in a reduction in our overall effective tax rate and other operational efficiencies. The tax laws of the jurisdictions in which we operate are subject to interpretation, and their application may depend on our ability to operate our business in a manner consistent with our corporate structure. Moreover, these tax laws are subject to change. Tax authorities may disagree with our position as to the tax treatment of our transfer of intangible assets or determine that the manner in which we operate our business does not achieve the intended tax consequences. If our new corporate structure does not achieve our expectations for any of these or other reasons, we may be subject to a higher overall effective tax rate and our business may be adversely affected.

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### We rely on consumer discretionary spending and may be adversely affected by economic downturns and other macroeconomic conditions or trends.

Macroeconomic conditions may adversely affect our business. If general economic conditions deteriorate in the United States or other markets where we operate, consumer discretionary spending may decline and demand for the goods available in our marketplace may be reduced. This would cause sales in our marketplace to decline and adversely impact our business. Conversely, if recent trends supporting self-employment and the desire for supplemental income were to reverse, the number of Etsy sellers offering their goods in our marketplace could decline and the number of goods listed in our marketplace could decline.

Even without changes in economic conditions, the demand for the goods listed in our marketplace is dependent on consumer preferences. Consumer preferences can change quickly and may differ across generations and cultures. If demand for the goods that Etsy sellers offer in our marketplace declines, our business would be harmed. Trends in socially-conscious consumerism and buying locally could also shift or slow to the detriment of our business. Our growth prospects would also be hampered if the shift to online and mobile commerce does not continue.

### The terms of our debt instruments may restrict our ability to pursue our business strategies.

We do not currently have any obligations outstanding under our credit facility. However, our credit facility requires us, and any debt instruments we may enter into in the future may require us, to comply with various covenants that limit our ability to take actions such as:

- disposing of assets;
- completing mergers or acquisitions;
- incurring additional indebtedness;
- encumbering our properties or assets;
- paying dividends or making other distributions;
- making specified investments; and
- engaging in transactions with our affiliates.

These restrictions could limit our ability to pursue our business strategies. If we default under our credit facility and if the default is not cured or waived, the lenders could terminate their commitments to lend to us and cause any amounts outstanding to be payable immediately. Such a default could also result in cross defaults under other debt instruments. Our assets and cash flow may not be sufficient to fully repay borrowings under all of our outstanding debt instruments if some or all of these instruments are accelerated upon a default. Moreover, any such default would limit our ability to obtain additional financing, which may have an adverse effect on our cash flow and liquidity.

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### **We may need additional capital, which may not be available to us on acceptable terms or at all.**

We believe that our existing cash and cash equivalents and short-term investments, together with cash generated from operations and available borrowing capacity under our credit facility, will be enough to meet our anticipated cash needs for at least the next 12 months. However, we may require additional cash resources due to changed business conditions or other developments, such as acquisitions or investments we may decide to pursue. If our resources are insufficient to satisfy our cash requirements, we may seek to borrow funds under our credit facility or sell additional equity or debt securities. The sale of additional equity securities could result in dilution to our existing stockholders. Borrowing funds would result in increased debt service obligations and could result in additional operating and financial covenants that would limit our operations. It is also possible that financing may not be available to us in amounts or on terms acceptable to us, if at all.

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

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

### **We are an emerging growth company and the reduced disclosure requirements applicable to emerging growth companies may make our common stock less attractive to investors.**

We are an emerging growth company as defined in the JOBS Act. For as long as we continue to be an emerging growth company, we intend to take advantage of some of the exemptions from the reporting requirements applicable to other public companies. For example, we intend to take advantage of the exemption from the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, the reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and the exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments. It is possible that investors will find our common stock less attractive as a result of our reliance on these exemptions. If so, there may be a less active trading market for our common stock and our stock price may be more volatile.

We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year (a) following the fifth anniversary of the completion of this offering, (b) in which we have total annual gross revenue of at least \$1.0 billion or (c) in which we become a large accelerated filer, which means that we have been public for at least 12 months, have filed at least one annual report and the market value of our common

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stock that is held by non-affiliates exceeds \$700 million as of the last day of our then most recently completed second fiscal quarter, and (2) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period.

### **Operating as a public company will require us to incur substantial costs and will require substantial management attention. In addition, our management team has limited experience managing a public company.**

As a public company, we will incur substantial legal, accounting and other expenses that we did not incur as a private company. For example, we will be subject to the reporting requirements of the Securities Exchange Act of 1934 as amended, or the Exchange Act, the applicable requirements of the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules and regulations of the Securities and Exchange Commission, or the SEC. The rules and regulations of Nasdaq will also apply to us following this offering. As part of the new requirements, we will need to establish and maintain effective disclosure and financial controls and make changes to our corporate governance practices. We expect that compliance with these requirements will increase our legal and financial compliance costs and will make some activities more time-consuming.

Most of our management and other personnel have little experience managing a public company and preparing public filings. In addition, we expect that our management and other personnel will need to divert attention from other business matters to devote substantial time to the reporting and other requirements of being a public company. In particular, we expect to incur significant expense and devote substantial management effort to complying with the requirements of Section 404 of the Sarbanes-Oxley Act. We will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge.

### **Our management will not be required to evaluate the effectiveness of our internal control over financial reporting until the end of the fiscal year for which our second annual report is due. If we are unable to maintain effective internal control over financial reporting, investors may lose confidence in the accuracy of our financial reports.**

As a public company, we will be required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. Section 404 of the Sarbanes-Oxley Act requires that we evaluate and determine the effectiveness of our internal control over financial reporting. Beginning with our second annual report following this offering, we will be required to provide a management report on internal control over financial reporting. When we are no longer an emerging growth company, our management report on internal control over financial reporting will need to be attested to by our independent registered public accounting firm. We do not expect to have our independent registered public accounting firm attest to our management report on internal control over financial reporting while we are an emerging growth company.

If we have a material weakness in our internal control over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. In addition, our internal control

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over financial reporting will not prevent or detect all errors and fraud. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud will be detected.

If there are material weaknesses or failures in our ability to meet any of the requirements related to the maintenance and reporting of our internal controls, investors may lose confidence in the accuracy and completeness of our financial reports and that could cause the price of our common stock to decline. In addition, we could become subject to investigations by Nasdaq, the SEC or other regulatory authorities, which could require additional management attention and which could adversely affect our business.

As described below we currently have two material weaknesses, which we are in the process of remediating.

### **We currently have identified two material weaknesses in our internal control over financial reporting that, if not corrected, could result in material misstatements of our financial statements.**

In connection with the audit of our financial statements as of and for the year ended December 31, 2014, we identified two material weaknesses in our internal control over financial reporting. A material weakness is defined as a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis.

First, we determined that we did not have adequate procedures and controls to appropriately account for certain non-income tax-related expenses and comply with the related filing requirements. Second, we determined that we did not have adequate cut-off procedures to ensure the timely recording of certain period-end accruals.

These two material weaknesses resulted in a misstatement of expenses in prior periods that were immaterial to previously issued annual financial statements but in combination were material to certain interim periods. The impact of these material weaknesses resulted in the revision of our consolidated financial statements for the years ended December 31, 2012 and 2013, for the three months ended March 31, 2013, the three and six months ended June 30, 2013, the three and nine months ended September 30, 2013, the three months ended December 31, 2013 and the three months ended September 30, 2014. The impacts of these material weaknesses also resulted in the restatement of our consolidated financial statements for the three months ended March 31, 2014, the three and six months ended June 30, 2014 and the nine months ended September 30, 2014.

Neither we nor our independent registered public accounting firm has performed an evaluation of our internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act. In light of the material weaknesses that were identified, we believe that it is possible that additional material weaknesses and control deficiencies may have been identified if such an evaluation had been performed.

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We are working to remediate the material weaknesses. We have taken steps to enhance our internal control environment and plan to take additional steps to remediate the material weaknesses. Specifically:

- we began building an in-house tax function in early 2014 and have added a global head of tax, senior tax manager of planning and a dedicated senior state tax accountant and plan to add an experienced director of tax accounting. We have also hired additional qualified personnel in our accounts payable function, including an experienced supervisor, and plan to add an additional experienced senior accountant. We will continue to evaluate the structure of the finance organization and add resources as needed;
- we are implementing additional internal reporting procedures, including those designed to add depth to our review processes and improve our segregation of duties;
- we are updating our systems so that we may collect the necessary information to enable us to more effectively monitor and comply with applicable non-income tax-filing requirements on a timely basis;
- we are improving the communication and coordination among our finance departments and our record-keeping procedures and we have expanded cross-functional involvement and input into period-end accruals. We are also planning enhancements in our procure-to-pay process as well as additions to analytical procedures used to assess period-end accruals; and
- we are in the process of documenting, assessing and testing our internal control over financial reporting as part of our efforts to comply with Section 404 of the Sarbanes-Oxley Act.

The actions that we are taking are subject to ongoing senior management review as well as audit committee oversight. Although we plan to complete this remediation process as quickly as possible, we cannot at this time estimate how long it will take, and our efforts may not be successful in remediating these material weaknesses. In addition, we will incur additional costs in improving our internal control over financial reporting. If we are unable to successfully remediate these material weaknesses or if we identify additional material weaknesses, we may not detect errors on a timely basis. This could harm our operating results, cause us to fail to meet our SEC reporting obligations or Nasdaq listing requirements on a timely basis, adversely affect our reputation, cause our stock price to decline or result in inaccurate financial reporting or material misstatements in our annual or interim financial statements.

### **Our business could be adversely affected by natural disasters, public health crises, political crises or other unexpected events.**

Natural disasters and other adverse weather and climate conditions, public health crises, political crises, such as terrorist attacks, war and other political instability, or other unexpected events, could disrupt our operations, Internet or mobile networks, or the operations of one or more of our service providers. For example, when Hurricane Sandy struck New York in October 2012, although our data centers were unaffected, our headquarters in Brooklyn was closed for five days, and we experienced a heavy volume of

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member support requests which required us to devote additional resources to handle those requests. Events of this type could also impact Etsy sellers' ability to continue producing goods for sale in our marketplace. In addition, such events could negatively impact consumer spending in the affected regions. If any of these events occurs, our business could be adversely affected.

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### Risks Related to This Offering and Ownership of Our Common Stock

**The price of our common stock could be volatile and you may not be able to resell your shares at or above our initial public offering price. Declines in the price of common stock could subject us to litigation.**

There has not been a public market for our common stock prior to this offering and an active trading market may not develop following this offering. Even if such a market does develop, it may not be sustainable. If trading in our common stock is not active, you may not be able to sell your shares quickly, at the market price or at all. The initial public offering price for the shares was determined by negotiations between us and the representative of the underwriters and may not be indicative of prices that will prevail in the trading market following this offering. In addition, the trading prices of the securities of technology companies have historically been highly volatile. Accordingly, the price of our common stock could be subject to wide fluctuations for many reasons, many of which are beyond our control, including those described in these Risk Factors and others such as:

- variations in our operating results and other financial and operational metrics, including the key financial and operating metrics disclosed in this prospectus, as well as how those results and metrics compare to analyst and investor expectations;
- speculation about our operating results in the absence of our own financial projections;
- failure of analysts to initiate or maintain coverage of our company, changes in their estimates of our operating results or changes in recommendations by analysts that follow our common stock;
- announcements of new services or enhancements, strategic alliances or significant agreements or other developments by us or our competitors;
- announcements by us or our competitors of mergers or acquisitions or rumors of such transactions involving us or our competitors;
- changes in our board of directors, management or other key personnel;
- disruptions in our marketplace due to hardware, software or network problems, security breaches or other issues;
- the strength of the global economy or the economy in the jurisdictions in which we operate, and market conditions in our industry and those affecting our members;
- trading activity by our principal stockholders, including upon the expiration of contractual lock-up agreements;
- the performance of the equity markets in general and in our industry;
- the operating performance of other similar companies;

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- changes in legal requirements relating to our business;
- litigation or other claims against us;
- the number of shares of our common stock that are available for public trading; and
- any other factors discussed in this prospectus.

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

### **We have broad discretion in the use of the net proceeds from this offering and may not use them effectively.**

The principal purposes of this offering are to increase our visibility, create a public market for our common stock and facilitate our future access to the public equity markets. We currently intend to use the net proceeds from this offering for working capital and general corporate purposes, including continued investments in the growth of our business. We also intend to use \$300,000 of the proceeds of this offering to partially fund Etsy.org, a Delaware non-profit organization that we formed in January 2015. We may use a portion of the net proceeds to fund the build-out of our new corporate headquarters. In addition, we may use a portion of the net proceeds received by us from this offering for acquisitions of other complementary businesses, technologies or other assets. However, we have no current understandings, agreements or commitments for any specific material acquisitions at this time. Except with respect to Etsy.org, we have not yet determined the manner in which we will allocate the net proceeds we receive from this offering. As a result, our management will have broad discretion in the allocation and use of the net proceeds. See "Use of Proceeds."

The failure by our management to allocate or use these funds effectively could harm our business. Pending their use, we may invest the net proceeds we receive from this offering in a manner that does not produce income or that loses value. Our ultimate use of the net proceeds from this offering may vary substantially from their currently intended use.

### **We do not intend to pay dividends on our capital stock, so any returns will be limited to increases in the value of our common stock.**

We have never declared or paid any cash dividends on our capital stock. We currently anticipate that we will retain future earnings for the operation and expansion of our business. Accordingly, we do not anticipate declaring or paying any cash dividends for the foreseeable future. In addition, our ability to pay cash dividends on our capital stock is restricted by the terms of our credit facility and is likely to be restricted by

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any future debt financing arrangement we enter into. Any return to stockholders will therefore be limited to increases in the price of our common stock, if any.

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

Our directors, executive officers, greater than 5% stockholders and their respective affiliates will hold in the aggregate approximately   % of the voting power of our outstanding capital stock following this offering, assuming no exercise of the underwriters' option to purchase additional shares of our common stock in this offering. Therefore, these stockholders will continue to have the ability to influence us through their ownership position, even after this offering. If these stockholders act together, they may be able to determine all matters requiring stockholder approval. For example, these stockholders will be able to control elections of directors, amendments of our charter documents or approval of any merger, sale of assets or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our capital stock that other stockholders may feel are in their best interests.

### **If you purchase our common stock in this offering, you will incur immediate and substantial dilution.**

The initial public offering price is substantially higher than the pro forma net tangible book value per share of our common stock of \$   per share as of December 31, 2014. Investors purchasing common stock in this offering will pay a price per share that substantially exceeds the net tangible book value per share. As a result, investors purchasing common stock in this offering will incur immediate dilution of \$   per share, based on the initial public offering price of \$   per share, the midpoint of the price range on the cover page of this prospectus.

This dilution is due to the substantially lower price paid by our investors who purchased shares prior to this offering as compared to the price offered to the public in this offering. In addition, as of December 31, 2014, there were outstanding options to purchase 23,050,594 shares of our common stock with a weighted average exercise price of approximately \$2.67 per share and warrants to purchase 406,060 shares of our common stock (including preferred stock on an as-converted basis) with a weighted average exercise price of approximately \$0.66 per share. The exercise of any of these options or warrants would result in additional dilution. As a result of the dilution to investors purchasing shares in this offering, investors may receive less than the purchase price paid in this offering in the event of our liquidation. See "Dilution."

### **Sales of a substantial number of shares of our common stock in the public market by our existing stockholders following this offering could cause the price of our common stock to decline.**

Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could depress the price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. We cannot predict the effect that sales may have on the prevailing price of our common stock.

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All of our executive officers and directors and the holders of substantially all of our capital stock are subject to lock-up agreements with the underwriters of this offering that restrict the stockholders' ability to transfer shares of our common stock for periods of at least 180 days, and for a portion of the shares, 270 and 360 days from the date of this prospectus. The lock-up agreements limit the number of shares of common stock that may be sold immediately following this offering. Subject to certain limitations, approximately [REDACTED] shares will become eligible for sale upon expiration of the 180-day lock-up period, approximately [REDACTED] shares will become eligible for sale upon expiration of the 270-day lock-up period and approximately [REDACTED] shares will become eligible for sale upon expiration of the 360-day lock-up period. In addition, based on our capitalization as of December 31, 2014, [REDACTED] shares issuable upon exercise of outstanding options and [REDACTED] shares issuable upon exercise of outstanding warrants will also be eligible for sale upon expiration of the 180-day lock-up period. We intend to register all of the shares underlying outstanding options and any shares underlying other equity incentives we may grant in the future for public resale under the Securities Act of 1933, as amended, or the Securities Act. Accordingly, these shares will be able to be freely sold in the public market upon issuance to the extent permitted by any applicable vesting requirements and the lock-up agreements described above. Sales of stock by these stockholders could adversely affect the trading price of our common stock.

Certain holders of shares of our common stock have registration rights. See "Description of Capital Stock—Registration Rights." Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares held by our affiliates as defined in Rule 144 under the Securities Act. Sales of securities by any of these stockholders could adversely affect the trading price of our common stock.

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

We may issue additional common stock, convertible securities or other equity following the completion of this offering. We also expect to issue common stock to our employees, directors and other service providers pursuant to our equity incentive plans. Such issuances could be dilutive to investors and could cause the price of our common stock to decline. New investors in such issuances could also receive rights senior to those of holders of our common stock.

### **If analysts do not publish research about our business or if they publish inaccurate or unfavorable research, our stock price and trading volume could decline.**

The trading market for our common stock will depend in part on the research and reports that analysts publish about our business. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our common stock or publish inaccurate or unfavorable research about our business, the price of our common stock would likely decline. If few analysts cover us, demand for our common stock could decrease and our common stock price and trading volume may decline. Similar results may occur if one or more of these analysts stop covering us in the future or fail to publish reports on us regularly.

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### **Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of our company more difficult, could limit attempts to make changes in our management and could depress the price of our common stock.**

Provisions in our certificate of incorporation and bylaws may have the effect of delaying or preventing a change in control of our company or limiting changes in our management. Among other things, these provisions:

- establish a classified board of directors so that not all members of our board of directors are elected at one time;
- permit our 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;
- eliminate the ability of our stockholders to call special meetings of stockholders;
- prohibit stockholder action by written consent, which means all stockholder actions must be taken at a meeting of our stockholders;
- provide that our board of directors is expressly authorized to amend or repeal any provision of 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.

These provisions may delay or prevent attempts by our stockholders to replace members of our management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, Section 203 of the Delaware General Corporation Law may delay or prevent a change in control of our company. Section 203 imposes certain restrictions on mergers, business combinations and other transactions between us and holders of 15% or more of our common stock. Anti-takeover provisions could depress the price of our common stock by acting to delay or prevent a change in control of our company.

For information regarding these and other provisions, see “Description of Capital Stock.”

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**Our certificate of incorporation will provide that the Court of Chancery of the State of Delaware will be the exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.**

Our certificate of incorporation will provide that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a breach of fiduciary duty, any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our certificate of incorporation or our bylaws or any action asserting a claim against us that is governed by the internal affairs doctrine. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees and may discourage these types of lawsuits. Alternatively, if a court were to find the choice of forum provision contained in our certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions.

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# **Note Regarding Forward-Looking Statements**

This prospectus contains forward-looking statements that are based on our beliefs and assumptions and on information currently available to us. The forward-looking statements are contained principally in “Prospectus Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Letter from Chad” and “Business.” Forward-looking statements include information concerning our possible or assumed future results of operations and expenses, business strategies and plans, competitive position, business environment and potential growth opportunities. Forward-looking statements include all statements that are not historical facts. In some cases, forward-looking statements can be identified by terms such as “anticipates,” “believes,” “could,” “estimates,” “expects,” “intends,” “may,” “plans,” “potential,” “predicts,” “projects,” “seeks,” “should,” “will,” “would” or similar expressions and the negatives of those terms.

Forward-looking statements involve known and unknown risks, uncertainties and other 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. Those risks include those described in “Risk Factors” and elsewhere in this prospectus. Given these uncertainties, you should not place undue reliance on any forward-looking statements in this prospectus. Also, forward-looking statements represent our beliefs and assumptions only as of the date of this prospectus. You should read this prospectus and the documents that we have filed as exhibits to the registration statement, of which this prospectus is a part, and any related free writing prospectus, completely and with the understanding that our actual future results may be materially different from what we expect.

Any forward-looking statement made by us in this prospectus speaks only as of the date on which it is made. Except as required by law, we disclaim any obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future. All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements.

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## Industry and Market Data

We obtained the industry, market and competitive position data in this prospectus from our own internal estimates and research, from industry and general publications and from research, surveys and studies conducted by third parties. This information involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates.

In addition, industry publications, studies and surveys generally state that they have been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information. While we believe that each of these studies and publications is reliable, we have not independently verified market and industry data from third parties. Likewise, while we believe our internal company data is reliable and the definitions of these key operating metrics are appropriate, neither such data nor these definitions have been verified by any independent source.

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# Use of Proceeds

We estimate that the net proceeds to us from the issuance of our common stock in this offering, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, will be approximately \$      million, or approximately \$      million if the underwriters exercise their option to purchase additional shares in full, assuming an initial public offering price of \$      per share, which is the midpoint of the offering price range on the cover page of this prospectus.

We will not receive any of the proceeds from the sale of shares by the selling stockholders.

Each \$1.00 increase (or decrease) in the assumed initial public offering price of \$      per share, the midpoint of the offering price range on the cover page of this prospectus, would increase (or decrease) net proceeds to us by \$      million, assuming that the number of shares offered by us on the cover page of this prospectus remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Each 1,000,000 increase (or decrease) in the number of shares of common stock offered by us would increase (or decrease) net proceeds to us by approximately \$      million, assuming an initial public offering price of \$      per share, the midpoint of the price range on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The principal purposes of this offering are to increase our visibility, create a public market for our common stock and facilitate our future access to the public equity markets. We currently intend to use the net proceeds from this offering for working capital and general corporate purposes, including continued investments in the growth of our business. Consistent with our values and our mission, we also intend to use \$300,000 of the proceeds of this offering to partially fund Etsy.org, a Delaware non-profit organization that we formed in January 2015. Etsy.org will be dedicated to educating women and other under-represented entrepreneurial populations and empowering them to build businesses that regenerate communities and the planet. See “Business—Our Strategy: The Path Ahead” for additional information about Etsy.org. We may use a portion of the net proceeds to fund the build-out of our new corporate headquarters. In addition, we may use a portion of the net proceeds received by us from this offering for acquisitions of other complementary businesses, technologies or other assets. However, we have no current understandings, agreements or commitments for any specific material acquisitions at this time. Except with respect to Etsy.org, we have not allocated specific amounts of the net proceeds received by us from this offering for any of these purposes and, as a result, we will have broad discretion in the allocation and use of the net proceeds.

Pending our use of the net proceeds received by us from this offering, we intend to invest the net proceeds in short and intermediate term, interest-bearing obligations, investment grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government.

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## Dividend Policy

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings for use in the operation of our business and do not anticipate paying any cash dividends in the foreseeable future. Any future decision to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on a number of factors, including our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions and other factors that our board of directors thinks are relevant. Under Delaware law, we can only pay dividends either out of “surplus” or out of the current or the immediately preceding year’s net profits. Surplus is defined as the excess, if any, at any given time, of the total assets of a corporation over its total liabilities and statutory capital. As a result, we may not pay dividends according to our policy or at all if, among other things, we do not have sufficient cash to pay the intended dividends. Our future ability to pay cash dividends on our stock may be limited by the terms of any future debt or preferred securities and is limited by the terms of our Credit Agreement. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Sources of Liquidity” for further information about our Credit Agreement.

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# Capitalization

The following table sets forth our cash and cash equivalents and short-term investments and capitalization as of December 31, 2014:

- on an actual basis;
- on a pro forma basis to give effect to (i) the automatic conversion of all outstanding shares of our preferred stock into common stock and (ii) the effectiveness of the amendment and restatement of our certificate of incorporation in connection with the completion of this offering; and
- on a pro forma as adjusted basis to give effect to the adjustments discussed above and the issuance and sale by us of shares of common stock in this offering, and the receipt of the net proceeds from our sale of these shares at an assumed initial public offering price of the common stock of \$      per share, the midpoint of the offering price range on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The unaudited pro forma and pro forma as adjusted information below is illustrative only, and cash and cash equivalents and short-term investments, total stockholders' equity and total capitalization after this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should read this table in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Description of Capital Stock" and our consolidated financial statements and related notes included elsewhere in this prospectus.

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	As of December 31, 2014		
	Actual	Pro Forma	Pro Forma as Adjusted(1) (unaudited)
Cash and cash equivalents and short-term investments	\$ 88,843	\$ _____	\$ _____
Convertible preferred stock:			
Preferred stock, \$0.001 par value; 21,165,473 shares authorized, 21,124,432 shares issued and outstanding, actual; shares authorized, no shares issued and outstanding, pro forma and pro forma as adjusted	\$ 80,212	\$ _____	\$ _____
Stockholders' equity:			
Common stock, \$0.001 par value; 240,000,000 shares authorized, 88,361,973 shares issued and outstanding, actual; shares authorized, shares issued and outstanding, pro forma and shares issued and outstanding, pro forma as adjusted	88		
Additional paid-in capital	103,311		
Accumulated deficit	(32,377)		
Accumulated other comprehensive loss	(3,934)		
Total capitalization	\$ 147,300	\$ _____	\$ _____

(1) A \$1.00 increase (or decrease) in the assumed initial public offering price of \$ per share would increase (or decrease) each of cash and cash equivalents and short-term investments, additional paid-in capital and total capitalization by \$ million, assuming that the number of shares offered by us on the cover page of this prospectus remains the same, and after deducting estimated underwriting discounts and commissions. If the underwriters' option to purchase additional shares is exercised in full, cash and cash equivalents and short-term investments, additional paid-in capital and total capitalization would increase by approximately \$ million, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, and we would have shares of our common stock issued and outstanding.

See "Prospectus Summary—The Offering" for a description of those shares that are or are not reflected as outstanding shares on a pro forma basis in the table above.

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# Dilution

If you invest in our common stock, your investment will be diluted to the extent of the difference between the offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock immediately after this offering. Dilution results from the fact that the per share offering price of our common stock is substantially higher than the book value per share attributable to our existing stockholders.

Our pro forma net tangible book value as of [REDACTED] was \$ [REDACTED] million, or \$ [REDACTED] per share of common stock. Our pro forma net tangible book value per share represents the amount of our total tangible assets reduced by the amount of our total liabilities and divided by the total number of shares of our common stock outstanding as of [REDACTED], after giving effect to the automatic conversion of all outstanding shares of our preferred stock into common stock in connection with this offering.

After giving effect to our sale in this offering of shares of common stock at an assumed initial public offering price of \$ [REDACTED] per share, the midpoint of the offering price range on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of [REDACTED] would have been approximately \$ [REDACTED] million, or \$ [REDACTED] per share of common stock. This represents an immediate pro forma as adjusted dilution of \$ [REDACTED] per share to investors purchasing shares in this offering.

The following table illustrates this per share dilution.

Assumed initial offering price per share	\$ [REDACTED]
Pro forma net tangible book value per share as of [REDACTED]	\$ [REDACTED]
Increase in pro forma net tangible book value per share attributable to investors purchasing shares in this offering	\$ [REDACTED]
Pro forma as adjusted net tangible book value per share after this offering	\$ [REDACTED]
Dilution per share to investors in this offering	\$ [REDACTED]

A \$1.00 increase (or decrease) in the assumed offering price of \$ [REDACTED] per share would increase (or decrease) our pro forma as adjusted net tangible book value per share after this offering by \$ [REDACTED], assuming that the number of shares offered by us on the cover page of this prospectus remains the same, and after deducting estimated underwriting discounts and commissions payable by us.

If the underwriters exercise their option to purchase additional shares in full, the pro forma as adjusted net tangible book value per share after giving effect to this offering would be approximately \$ [REDACTED] per share, and the dilution in pro forma net tangible book value per share to investors in this offering would be approximately \$ [REDACTED] per share.

The following table summarizes, as of [REDACTED], the differences between the number of outstanding shares of our common stock purchased from us, after giving effect to the conversion of our preferred stock into common stock, the total cash consideration paid and the average price per share paid by our existing

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stockholders and by our new investors purchasing shares in this offering at the assumed offering price of the common stock of \$      per share, the midpoint of the offering price range on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us:

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	\$
Existing stockholders		%	\$	%	\$
New investors					
Total		100%	\$	100%	\$

Sales by the selling stockholders in this offering will cause the number of shares held by existing stockholders to be reduced to      shares, or      % of the total number of shares of our common stock outstanding after this offering, and will increase the number of shares held by new investors to      shares, or      % of the total number of shares outstanding after this offering.

A \$1.00 increase (or decrease) in the assumed initial public offering price of \$      per share would increase (or decrease) total consideration paid by new investors by \$      million, assuming that the number of shares offered by us on the cover page of this prospectus remains the same, and after deducting estimated underwriting discounts and commissions payable by us.

After giving effect to the sale of shares in this offering by us and the selling stockholders, if the underwriters exercise their option to purchase additional shares in full, our existing stockholders would own      % and our new investors would own      % of the total number of shares of our common stock outstanding after this offering.

See “Prospectus Summary—The Offering” for a description of those shares that are or are not reflected in the foregoing tables or discussion.

To the extent that any outstanding options or warrants are exercised, new investors will experience further dilution.

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## Selected Consolidated Financial and Other Data

The following tables show selected consolidated financial data. The selected consolidated statements of operations data for the years ended December 31, 2012, 2013 and 2014, and the selected consolidated balance sheet data as of December 31, 2013 and 2014, are derived from our audited consolidated financial statements and related notes included elsewhere in this prospectus. The following tables also show certain operational and non-GAAP financial measures. See the accompanying footnotes and “—Non-GAAP Financial Measures” below for more information. Our historical results and key metrics are not necessarily indicative of future results, and results for any interim period presented below are not necessarily indicative of the results to be expected for any annual period. Our consolidated financial statements for the years ended December 31, 2012 and 2013 have been revised to correct for the understatement of certain non-income tax related expenses. See Note 15 of the accompanying notes to our consolidated financial statements.

The following selected consolidated financial data and key metrics should be read together with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this prospectus.

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	Year Ended December 31,		
	2012	2013	2014
	(in thousands, except share and per share data)		
<b>Consolidated Statements of Operations Data:</b>			
Revenue:			
Marketplace	\$ 55,330	\$ 78,544	\$ 108,732
Seller Services	15,863	42,817	82,502
Other	3,409	3,661	4,357
Total revenue	74,602	125,022	195,591
Cost of revenue(1)	24,493	47,779	73,633
Gross profit	50,109	77,243	121,958
Operating expenses:			
Marketing(1)	10,902	17,850	39,655
Product development(1)	18,653	27,548	36,634
General and administrative(1)	21,909	31,112	51,920
Total operating expenses	51,464	76,510	128,209
(Loss) income from operations	(1,355)	733	(6,251)
Total other expense	(1,175)	(675)	(4,009)
(Loss) income before income taxes	(2,530)	58	(10,260)
Benefit (provision) for income taxes(2)	145	(854)	(4,983)
Net loss	<u>\$ (2,385)</u>	<u>\$ (796)</u>	<u>\$ (15,243)</u>
Net loss per share of common stock—basic and diluted	<u>\$ (0.04)</u>	<u>\$ (0.01)</u>	<u>\$ (0.19)</u>
Weighted average shares of common stock used in computing net loss per share—basic and diluted	60,563,723	65,334,548	80,493,407
Pro forma net loss per share of common stock—basic and diluted(3) (unaudited)			\$ (0.08)
Weighted average shares of common stock used in computing pro forma net loss per share—basic and diluted(3) (unaudited)			187,389,900
 <b>Other Operational and Financial Data(4):</b>			
GMS	\$ 895,152	\$ 1,347,833	\$ 1,931,981
Adjusted EBITDA	\$ 10,669	\$ 16,947	\$ 23,081
Active sellers	830	1,074	1,353
Active buyers	9,317	14,032	19,810
Percent mobile visits	N/A	41.3%	53.2%
Percent mobile GMS	N/A	29.5%	36.1%
Percent international GMS	28.4%	28.4%	30.9%

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	As of December 31,	
	<u>2013</u>	<u>2014</u>
	(in thousands)	
Consolidated Balance Sheet Data:		
Cash and cash equivalents and short-term investments	\$ 54,870	\$ 88,843
Working capital	57,566	88,540
Total assets	106,159	249,135
Deferred revenue	2,760	3,452
Long-term liabilities	2,725	60,382
Convertible preferred stock	80,212	80,212
Total stockholders' equity	4,003	67,088

(1) Includes total stock-based compensation expense as follows:

	Year Ended December 31,		
	<u>2012</u>	<u>2013</u>	<u>2014</u>
	(in thousands)		
Cost of revenue	\$ 166	\$ 200	\$ 1,113
Marketing	57	79	216
Product development	436	785	1,461
General and administrative	3,435	2,770	7,260
Total stock-based compensation expense	<u>\$ 4,094</u>	<u>\$ 3,834</u>	<u>\$ 10,050</u>

- (2) Includes a valuation allowance against our net deferred tax assets in certain European jurisdictions which was recorded during the year ended December 31, 2014. No tax benefit has been recognized for the applicable losses during this period.
- (3) Pro forma basic and diluted net loss per share have been calculated assuming the conversion of all outstanding shares of convertible preferred stock into 106,896,493 shares of common stock as of the beginning of the applicable period or at the time of issuance, if later.
- (4) See "Prospectus Summary—Glossary" for the definitions of the following terms: "active buyer," "active seller," "GMS" and "visit." See "—Non-GAAP Financial Measures" below for the definition of Adjusted EBITDA and for a reconciliation of Adjusted EBITDA to net (loss) income, the most directly comparable financial measure calculated in accordance with GAAP. We began tracking mobile visits and mobile GMS in 2013.

## Non-GAAP Financial Measures

### Adjusted EBITDA

In this prospectus, we provide Adjusted EBITDA, a non-GAAP financial measure that represents our net (loss) income before interest expense, net, (benefit) provision for income taxes and depreciation and amortization, adjusted to eliminate stock-based compensation expense, net unrealized loss on warrant and other liabilities, foreign exchange loss and acquisition-related expenses. Below is a reconciliation of Adjusted EBITDA to net (loss) income, the most directly comparable GAAP financial measure.

We have included Adjusted EBITDA in this prospectus because it is a key measure used by our management and board of directors to evaluate our operating performance and trends, allocate internal resources, prepare and approve our annual budget, develop short- and long-term operating plans and assess the health of our business. As our Adjusted EBITDA increases, we are able to invest more in our platform. We believe

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that Adjusted EBITDA can provide a useful measure for period-to-period comparisons of our business as it removes the impact of certain non-cash items and certain variable charges.

Adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and Adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- Adjusted EBITDA does not consider the impact of stock-based compensation expense or changes in the fair value of warrants;
- Adjusted EBITDA does not reflect tax payments that may represent a reduction in cash available to us;
- Adjusted EBITDA does not reflect acquisition-related expenses;
- Adjusted EBITDA does not consider the impact of foreign exchange loss;
- Adjusted EBITDA, in future periods, will not reflect the impact of our contributions to Etsy.org; and
- other companies, including companies in our industry, may calculate Adjusted EBITDA differently, which reduces its usefulness as a comparative measure.

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

The following table reflects the reconciliation of net loss to Adjusted EBITDA for each of the periods indicated:

	Year Ended December 31,		
	2012	2013 (in thousands)	2014
Net loss	\$ (2,385)	\$ (796)	\$ (15,243)
Excluding:			
Interest expense, net	438	256	549
(Benefit) provision for income taxes	(145)	854	4,983
Depreciation and amortization	7,930	12,380	17,223
Stock-based compensation expense	4,094	3,834	5,920
Stock-based compensation expense—acquisitions	—	—	4,130
Net unrealized loss on warrant and other liabilities	737	419	411
Foreign exchange loss	—	—	3,049
Acquisition-related expenses	—	—	2,059
Adjusted EBITDA	<u>\$ 10,669</u>	<u>\$ 16,947</u>	<u>\$ 23,081</u>

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# Management's Discussion and Analysis of Financial Condition and Results of Operations

*You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and related notes and other financial information included elsewhere in this prospectus. Some of the information contained in this discussion and analysis or elsewhere in this prospectus, including information with respect to our plans and strategy for our business and our performance and future success, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of this prospectus for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.*

## Overview

We operate a marketplace where people around the world connect, both online and offline, to make, sell and buy unique goods. Handmade goods are the foundation of our marketplace. Whether crafted by an Etsy seller herself, with the assistance of her team or with an outside manufacturer in small batches, handmade goods spring from the imagination and creativity of an Etsy seller and embody authorship, responsibility and transparency. We believe we are creating a new economy, which we call the Etsy Economy, where creative entrepreneurs find meaningful work and both global and local markets for their goods, and where thoughtful consumers discover and buy unique goods and build relationships with the people who sell them.

Etsy was founded in June 2005 in Brooklyn, New York as a marketplace for handmade goods and craft supplies. From those beginnings, we have built an innovative, technology-based platform that, as of December 31, 2014, connected 54.0 million members, including 1.4 million active sellers and 19.8 million active buyers, in nearly every country in the world. In 2014, Etsy sellers generated GMS of \$1.93 billion, of which 36.1% came from purchases made on mobile devices and 30.9% came from an Etsy seller or an Etsy buyer outside of the United States.

Our business has grown in significant ways:

- Our GMS was \$1.35 billion in 2013, up 50.6% over 2012, and was \$1.93 billion in 2014, up 43.3% over 2013.
- Our revenue was \$125.0 million in 2013, up 67.6% over 2012. In 2013, our Marketplace revenue was \$78.5 million, up 42.0% over 2012, and our Seller Services revenue was \$42.8 million, up 169.9% over 2012. Our revenue was \$195.6 million in 2014, up 56.4% over 2013. In 2014, our Marketplace revenue was \$108.7 million, up 38.4% over 2013, and our Seller Services revenue was \$82.5 million, up 92.7% over 2013.

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- As of December 31, 2013, our number of active sellers was 1.1 million, up 29.4% since December 31, 2012, and our number of active buyers was 14.0 million, up 50.6% since December 31, 2012. As of December 31, 2014, our number of active sellers was 1.4 million, up 26.0% since December 31, 2013, and our number of active buyers was 19.8 million, up 41.2% since December 31, 2013.
- Etsy sellers and Etsy buyers have transacted across borders since our first year of business, and our international community continues to grow. International GMS was 28.4% of GMS in 2013 and was 30.9% of GMS in 2014. Currently, Etsy sellers and Etsy buyers are based in nearly every country in the world and our marketplace is available in 10 languages.
- We launched our first mobile app in 2011, and we continue to enhance our mobile offerings. Mobile visits represented 41.3% of visits in 2013 and 53.2% of visits in 2014. Mobile GMS represented 29.5% of GMS in 2013 and 36.1% of GMS in 2014.
- We have continued to expand our Seller Services. We launched Promoted Listings in 2011, followed by Direct Checkout in 2012, Shipping Labels in 2013 and Wholesale in 2014.

We operate a platform for third-party sellers. Our business model is based on shared success: we make money when Etsy sellers make money. We do not compete with Etsy sellers, hold inventory or sell goods. Our revenue is diversified, generated from a mix of marketplace activities and the services we provide Etsy sellers to help them create and grow their businesses. Marketplace revenue includes the fee an Etsy seller pays for each completed transaction and the listing fee an Etsy seller pays for each item she lists. Seller Services revenue includes fees an Etsy seller pays for services such as prominent placement in search results via Promoted Listings, payment processing via Direct Checkout and purchases of shipping labels through our platform via Shipping Labels. Other revenue includes the fees we receive from a third-party payment processor.

In 2013, Etsy sellers generated GMS of \$1.35 billion, up 50.6% over 2012, and in 2014, Etsy sellers generated GMS of \$1.93 billion, up 43.3% over 2013. In 2013, we generated revenue of \$125.0 million, up 67.6% over 2012, and in 2014, we generated revenue of \$195.6 million, up 56.4% over 2013. In 2013, we generated a net loss of \$0.8 million and Adjusted EBITDA of \$16.9 million compared to a net loss of \$2.4 million and Adjusted EBITDA of \$10.7 million in 2012. In 2014, we generated a net loss of \$15.2 million and Adjusted EBITDA of \$23.1 million compared to a net loss of \$0.8 million and Adjusted EBITDA of \$16.9 million in 2013. See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” for more information and for a reconciliation of Adjusted EBITDA to net loss, the most directly comparable financial measure calculated in accordance with GAAP.

The consolidated financial statements for the years ended December 31, 2012 and 2013 have been revised to correct for the understatement of certain non-income tax-related expenses. See Note 15 of the accompanying notes to our consolidated financial statements.

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# Key Operating and Financial Metrics

We collect and analyze operating and financial data to evaluate the health of our ecosystem, allocate our resources (such as capital, time and technology investments) and assess the performance of our business. In addition to revenue, net (loss) income and other results under GAAP, the key operating and financial metrics we use are:

	Year Ended December 31,		
	2012	2013	2014
	(in thousands, except percentages)		
GMS	\$ 895,152	\$ 1,347,833	\$ 1,931,981
Adjusted EBITDA	\$ 10,669	\$ 16,947	\$ 23,081
Active sellers	830	1,074	1,353
Active buyers	9,317	14,032	19,810
Percent mobile visits	N/A	41.3%	53.2%
Percent mobile GMS	N/A	29.5%	36.1%
Percent international GMS	28.4%	28.4%	30.9%

## GMS

Gross merchandise sales, or GMS, is the dollar value of items sold in our marketplace within the applicable period, excluding shipping fees and net of refunds associated with cancelled transactions. GMS does not represent revenue earned by us. GMS relates only to Marketplace activity and does not reflect Seller Services activity. However, because our revenue and cost of revenue depend significantly on the dollar value of items sold in our marketplace, we believe that GMS is an indicator of the success of Etsy sellers, the satisfaction of Etsy buyers, the health of our ecosystem and the scale and growth of our business.

## Adjusted EBITDA

Adjusted EBITDA represents our net (loss) income before interest expense, net, (benefit) provision for income taxes and depreciation and amortization, adjusted to eliminate stock-based compensation expense, net unrealized loss on warrant and other liabilities, foreign exchange loss and acquisition-related expenses. In future periods, we intend to exclude the impact of our contributions to Etsy.org from Adjusted EBITDA. We have included Adjusted EBITDA in this prospectus because it is a key measure used by our management and board of directors to understand and evaluate our operating performance and trends, allocate internal resources, prepare and approve our annual budget, develop short- and long-term operating plans and assess the health of our ecosystem. As our Adjusted EBITDA increases, we are able to invest more resources in our community. We also believe that Adjusted EBITDA provides a useful measure for period-to-period comparisons of our business as it removes the impact of non-cash items and certain variable charges. See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” for information regarding the limitations of using Adjusted EBITDA as a financial measure and for a reconciliation of Adjusted EBITDA to net (loss) income, the most directly comparable financial measure calculated in accordance with GAAP.

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### **Active Sellers**

An active seller is an Etsy seller who has incurred at least one charge from us in the last 12 months. Charges include transaction fees, listing fees and fees for Direct Checkout, Promoted Listings, Shipping Labels and Wholesale enrollment. An Etsy seller is a member who has created an account and has listed an item in our marketplace. An Etsy seller is identified by a unique e-mail address; a single person can have multiple Etsy seller accounts. We succeed when Etsy sellers succeed, so we view the number of active sellers as a key indicator of the awareness of our brand, the reach of our platform, the potential for growth in GMS and revenue and the health of our ecosystem.

### **Active Buyers**

An active buyer is an Etsy buyer who has made at least one purchase in the last 12 months. An Etsy buyer is a member who has created an account in our marketplace. An Etsy buyer is identified by a unique e-mail address; a single person can have multiple Etsy buyer accounts. We succeed when Etsy buyers order items from Etsy sellers, so we view the number of active buyers as a key indicator of our potential for growth in GMS and revenue, the reach of our platform, awareness of our brand, the engagement and loyalty of Etsy buyers and the health of our ecosystem.

### **Mobile Visits**

A mobile visit is a visit that occurs on a mobile device, such as a tablet or a smartphone. Etsy sellers are increasingly using mobile devices to manage their listings and track their business performance on our platform. In addition, Etsy buyers increasingly use mobile devices to search, browse and purchase items on our platform. We began tracking mobile visits in 2013. We view percent mobile visits as a key indicator of the level of engagement of our members on our mobile website and mobile apps and of our ability to sustain GMS and revenue.

### **Mobile GMS**

Mobile GMS is GMS that occurs on a mobile device, such as a tablet or a smartphone. Mobile GMS excludes orders initiated on mobile devices but ultimately completed on a desktop. We began tracking mobile GMS in 2013. We believe that mobile GMS indicates our success in converting mobile activity into mobile purchases and demonstrates our ability to grow GMS and revenue.

### **International GMS**

International GMS is GMS from transactions where either the billing address for the Etsy seller or the shipping address for the Etsy buyer at the time of sale is outside of the United States. We believe that international GMS shows the level of engagement of our community outside the United States and demonstrates our ability to grow GMS and revenue.

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# Key Factors Affecting Our Performance

We believe that our performance and future success depend on a number of factors that present significant opportunities for us but also pose risks and challenges, including those discussed below and in the section titled “Risk Factors.”

## Growth and Retention of Active Sellers and Active Buyers

Our success depends in part on the growth and retention of our active sellers and active buyers. Our revenue is driven by the number of active sellers, seller engagement, the number of active buyers, buyer engagement and our ability to maintain an authentic, trusted marketplace. As of December 31, 2014, our marketplace had grown to 1.4 million active sellers and 19.8 million active buyers, up from 1.1 million active sellers and 14.0 million active buyers as of December 31, 2013. Failure to effectively attract and retain new active sellers and active buyers, to re-engage inactive sellers and inactive buyers and to engage active sellers and active buyers on a cost-effective basis would adversely affect our revenue growth, operating results and the overall health of our ecosystem.

To analyze our retention rates, we measure repeat activity by our members.

### Cohort of 2011 Active Sellers

We refer to active sellers as of December 31, 2011 as “2011 Active Sellers.” Fifty-three percent of 2011 Active Sellers remained active sellers as of December 31, 2012, 39% of 2011 Active Sellers remained active sellers as of December 31, 2013 and 32% of 2011 Active Sellers remained active sellers as of December 31, 2014. The average annual GMS per 2011 Active Seller in 2012 was nearly three times higher than in 2011, the average annual GMS per 2011 Active Seller in 2013 was four times higher than in 2011 and the average annual GMS per 2011 Active Seller in 2014 was five times higher than in 2011.

	Year Ended December 31,			
	2011	2012	2013	2014
Percent 2011 Active Sellers	100%	52.6%	39.3%	32.3%
Average GMS per 2011 Active Seller	\$ 817	\$ 2,241	\$ 3,314	\$ 4,299

### Cohort of 2011 Active Buyers

We refer to active buyers as of December 31, 2011 as “2011 Active Buyers.” Forty-six percent of 2011 Active Buyers remained active buyers as of December 31, 2012, 45% of 2011 Active Buyers remained active buyers as of December 31, 2013 and 45% of 2011 Active Buyers remained active buyers as of December 31, 2014. The average annual GMS per 2011 Active Buyer in 2012 was 72% higher than in 2011, the average annual GMS per 2011 Active Buyer in 2013 was 81% higher than in 2011 and the average annual GMS per 2011 Active Buyer in 2014 was 89% higher than in 2011.

	Year Ended December 31,			
	2011	2012	2013	2014
Percent 2011 Active Buyers	100%	46.2%	44.7%	44.7%
Average GMS per 2011 Active Buyer	\$ 103	\$ 177	\$ 186	\$ 195

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### High-Impact Seller Services Growth

Our business model is based on shared success: we make money when Etsy sellers make money. Because of this, we provide services to an Etsy seller to help her start and grow her shop. As of December 31, 2014, 18.2% of active sellers used Promoted Listings, 36.1% of active sellers used Direct Checkout and 21.4% of active sellers in the United States and Canada used Shipping Labels. Our effectiveness in increasing the uptake of our Seller Services, enhancing existing Seller Services and extending their geographic reach and introducing new Seller Services will directly impact the success of Etsy sellers, our revenue growth and our operating results.

### International Growth

Our growth will depend in part on international Etsy sellers and international Etsy buyers constituting an increasing portion of our community. International GMS was 28.4% of GMS in 2013 compared to 30.9% in 2014. Currently, Etsy sellers and Etsy buyers are based in nearly every country in the world, and our marketplace is available in 10 languages. Although we promote cross-border transactions, our strategy is to build and deepen local Etsy communities around the world, each with its own ecosystem of Etsy sellers and Etsy buyers. To meet this goal, we plan to invest in local marketing and content and local payment and shipping solutions. An inability to develop these Etsy communities or to otherwise grow our business outside the United States on a cost-effective basis could adversely affect our GMS, revenue and other operating results.

### Mobile Growth

We believe continued enhancement of the mobile features of our platform will be critical to attracting and retaining Etsy sellers and Etsy buyers and maintaining the vibrancy of our marketplace. The success of this effort will be increasingly important as shopping on mobile devices displaces shopping on desktops and as Etsy sellers increasingly seek to run their shops via mobile devices.

We launched our first mobile app in 2011 and since then have expanded our mobile offerings for both Etsy sellers and Etsy buyers. Our “Sell on Etsy” mobile app, which we launched in April 2014, is designed to help an Etsy seller operate her shop, manage orders and access resources. Our Etsy buyer apps and mobile web experience include features designed to keep Etsy buyers engaged and offer an improved shopping experience. As of December 31, 2014, our mobile apps have been downloaded 21.8 million times, and mobile visits represented 53.2% of visits in 2014. In addition, in the same period, mobile GMS was 36.1% of GMS. If we are unable to continue to engage Etsy sellers and Etsy buyers through our mobile offerings, then our GMS and revenue growth and other operating results could be adversely affected.

### Investment in Marketing

To date, we have grown largely due to strong brand awareness and word-of-mouth referrals, with the majority of our visits coming from direct and organic channels. In 2013, we spent \$17.9 million on marketing expenses, or 14.3% of revenue, compared with 14.6% of revenue in 2012. However, in 2014, we began

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increasing our brand and digital marketing efforts. In 2014, we spent \$39.7 million on marketing expenses, or 20.3% of revenue, up 122.2% over 2013. Our growth will depend in part on our continued ability to launch marketing campaigns that resonate with new and existing members and appropriately balance our level of marketing spending with the benefits that may be realized through member and revenue growth.

### Investment in Growth

We have made, and will continue to make, significant investments in our platform to attract members and enhance the member experience. In 2013, we spent \$27.5 million on product development expenses, or 22.0% of revenue, up 47.7% over 2012, and in 2014, we spent \$36.6 million on product development expenses, or 18.7% of revenue, up 33.0% over 2013. We have invested significant resources in our technology platform and infrastructure to date and plan to continue to invest in innovation to address the needs of our members. We also plan to hire additional personnel to address the needs of our community. As part of this growth in headcount, we signed a lease in May 2014 for a new headquarters facility to accommodate our anticipated growth in personnel. The investments we make in our platform are all designed to grow our ecosystem and revenue and to improve our operating results in the long term, but these investments could also delay our ability to achieve profitability or reduce our profitability in the near term.

## Components of Our Results of Operations

### Revenue

Our revenue consists of Marketplace revenue, Seller Services revenue and Other revenue.

*Marketplace revenue.* Marketplace revenue consists of the 3.5% fee that an Etsy seller pays for each completed transaction on our platform, exclusive of shipping fees charged. Marketplace revenue also consists of a listing fee of \$0.20 per item that she lists (for up to four months) in our marketplace. Although revenue from completed Wholesale transactions is included in Marketplace revenue, revenue from Wholesale enrollment is included in Seller Services revenue.

*Seller Services revenue.* Seller Services revenue consists of fees an Etsy seller pays us for the Seller Services she uses, including Promoted Listings, Direct Checkout, Shipping Labels and Wholesale.

- Revenue from Promoted Listings consists of cost-per-click based fees an Etsy seller pays us for prominent placement of her listings in search results generated by Etsy buyers in our marketplace.
- Revenue from Direct Checkout consists of fees an Etsy seller pays us to process credit, debit and Etsy Gift Card payments. Direct Checkout fees vary between 3–4% of the item's total sale price plus a flat fee per order, depending on the country in which her bank account is located. Direct Checkout fees are taken from the item's total sale price, including shipping.

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- Revenue from Shipping Labels consists of fees an Etsy seller pays us when she purchases shipping labels through our platform, net of the cost we incur in purchasing those shipping labels. We are able to provide our sellers shipping labels from the United States Postal Service and Canada Post at discounted pricing due to the volume of purchases through our platform.
- Revenue from Wholesale consists of fees an Etsy seller pays us when she is approved to enroll in our Wholesale program.

*Other revenue.* Other revenue includes the fees we receive from a third-party payment processor.

Our revenue recognition policies are discussed under “—Critical Accounting Policies and Significant Judgments and Estimates.”

## Cost of Revenue

Cost of revenue consists primarily of expenses associated with the operation and maintenance of our platform and data centers, including depreciation and amortization, employee-related costs, including stock-based compensation expense, and energy and bandwidth costs. Cost of revenue also includes the cost of interchange and other fees for credit card processing services, credit card verification service fees and credit card chargebacks to support Direct Checkout revenue, as well as employee-related costs, including stock-based compensation expense, for our member support staff, and costs of refunds made to Etsy buyers that we are not able to collect from Etsy sellers. Our cost of revenue as a percentage of revenue may change over time as our revenue mix changes; for example, to the extent that Direct Checkout revenue increases as a percentage of revenue, there may be a dampening effect on our gross margin.

## Operating Expenses

Operating expenses consist of marketing, product development and general and administrative expenses. Direct and indirect employee-related costs, including stock-based compensation expense, are the most significant component of the product development and general and administrative expense categories, and we expect these costs to increase as we continue to hire new employees in order to support our anticipated growth. We include stock-based compensation expense in connection with the grant of stock options in the applicable operating expense category based on the respective equity award recipient's function.

*Marketing.* Marketing expenses consist primarily of targeted online marketing costs, such as search engine marketing and, to a much lesser extent, offline marketing expenses, such as television advertising. Marketing expenses also include employee-related costs, including stock-based compensation expense, for our employees involved in marketing, public relations and communications activities. Marketing expenses are primarily driven by investments to grow and retain members on our platform.

*Product development.* Product development expenses consist primarily of employee-related costs, including stock-based compensation expense, for our employees involved in product development activities. Additional expenses include consulting costs related to the development, quality assurance and testing of new technology and enhancement of our existing technology.

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*General and administrative* . General and administrative expenses consist primarily of costs associated with the use of facilities and equipment, including depreciation and amortization, rent, and certain professional services expenses. General and administrative expenses also include employee-related costs, including stock-based compensation expense, for our employees involved in general corporate functions and currency gains or losses. General and administrative expenses are primarily driven by increases in headcount required to support business growth, and, to a lesser extent in the near term, will be driven by expenses incurred to make the transition to being a public company.

### **Other Expense, net**

Other expense, net consists of interest expense, interest income, foreign exchange loss and net unrealized loss on warrant and other liabilities.

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### Results of Operations

The following tables show our results of operations for the periods presented and express the relationship of certain line items as a percentage of revenue for those periods. The period-to-period comparison of financial results is not necessarily indicative of future results.

	Year Ended December 31,		
	2012	2013	2014
	(in thousands)		
<b>Revenue:</b>			
Marketplace	\$ 55,330	\$ 78,544	\$ 108,732
Seller Services	15,863	42,817	82,502
Other	3,409	3,661	4,357
<b>Total revenue</b>	<b>74,602</b>	<b>125,022</b>	<b>195,591</b>
<b>Cost of revenue</b>	<b>24,493</b>	<b>47,779</b>	<b>73,633</b>
<b>Gross profit</b>	<b>50,109</b>	<b>77,243</b>	<b>121,958</b>
<b>Operating expenses:</b>			
Marketing	10,902	17,850	39,655
Product development	18,653	27,548	36,634
General and administrative	21,909	31,112	51,920
<b>Total operating expenses</b>	<b>51,464</b>	<b>76,510</b>	<b>128,209</b>
(Loss) income from operations	(1,355)	733	(6,251)
Other expense, net	(1,175)	(675)	(4,009)
<b>(Loss) income before income taxes</b>	<b>(2,530)</b>	<b>58</b>	<b>(10,260)</b>
Benefit (provision) for income taxes	145	(854)	(4,983)
<b>Net loss</b>	<b>\$ (2,385)</b>	<b>\$ (796)</b>	<b>\$ (15,243)</b>

	Year Ended December 31,		
	2012	2013	2014
<b>Revenue:</b>			
Marketplace	74.2%	62.8%	55.6%
Seller Services	21.3	34.2	42.2
Other	4.6	2.9	2.2
<b>Total revenue</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Cost of revenue</b>	<b>32.8</b>	<b>38.2</b>	<b>37.6</b>
<b>Gross profit</b>	<b>67.2</b>	<b>61.8</b>	<b>62.4</b>
<b>Operating expenses:</b>			
Marketing	14.6	14.3	20.3
Product development	25.0	22.0	18.7
General and administrative	29.4	24.9	26.5
<b>Total operating expenses</b>	<b>69.0</b>	<b>61.2</b>	<b>65.5</b>
(Loss) income from operations	(1.8)	0.6	(3.2)
Other expense, net	(1.6)	(0.5)	(2.0)
<b>(Loss) income before income taxes</b>	<b>(3.4)</b>	<b>0.0</b>	<b>(5.2)</b>
Benefit (provision) for income taxes	0.2	(0.7)	(2.5)
<b>Net loss</b>	<b>(3.2)</b>	<b>(0.6)</b>	<b>(7.8)</b>

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### Comparison of Years Ended December 31, 2013 and 2014

#### Revenue

	Year Ended December 31,		Change	
	2013	2014	\$	%
(in thousands, except percentages)				
Revenue:				
Marketplace	\$ 78,544	\$ 108,732	\$ 30,188	38.4%
Percentage of total revenue	62.8%	55.6%		
Seller Services	\$ 42,817	\$ 82,502	\$ 39,685	92.7%
Percentage of total revenue	34.2%	42.2%		
Other	\$ 3,661	\$ 4,357	\$ 696	19.0%
Percentage of total revenue	2.9%	2.2%		
Total revenue	<u>\$125,022</u>	<u>\$ 195,591</u>	\$ 70,569	56.4%

Revenue increased \$70.6 million, or 56.4%, to \$195.6 million in 2014 compared to 2013, of which 55.6% consisted of Marketplace revenue and 42.2% consisted of Seller Services revenue.

Marketplace revenue increased \$30.2 million, or 38.4%, to \$108.7 million in 2014 compared to 2013. This growth corresponded with a 43.3% increase in GMS to a total of \$1.93 billion for 2014. As our GMS increased, our Marketplace revenue increased, primarily as a result of an increase in the amount of transaction fees received and an increase in listings from new and existing Etsy sellers with a corresponding increase in listing fees received. During 2014, international GMS increased as a percentage of total GMS to 30.9%, up from 28.4% for 2013. During 2014, mobile GMS increased as a percentage of total GMS to 36.1%, up from 29.5% for 2013. Active sellers increased 26.0% to 1.4 million and active buyers increased 41.2% to 19.8 million for 2014 compared to 2013.

Seller Services revenue increased \$39.7 million, or 92.7%, to \$82.5 million in 2014 compared to 2013. The growth in Seller Services revenue was primarily driven by an increase in revenue from Direct Checkout services, as well as increases in Promoted Listings and Shipping Labels. The increase in Direct Checkout services revenue reflects continued increases in U.S. Direct Checkout revenue, as well as growth in international Direct Checkout services as those services were initiated in the second quarter of 2013. As of December 31, 2014, we offered Direct Checkout in 10 currencies, including the U.S. dollar. The increase in Promoted Listings revenue reflects enhancements made to the service in 2014. The increase in Shipping Label revenue reflects an increase in the number of Etsy sellers using the service and, to a lesser extent, the introduction of Shipping Labels in Canada in 2014.

Other revenue increased \$0.7 million, or 19.0%, to \$4.4 million in 2014 compared to 2013. Other revenue decreased as a percentage of total revenue, however, as Etsy buyers opted to use Direct Checkout for their purchases rather than a third-party payment processor.

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### Cost of Revenue

	Year Ended December 31,		Change	
	2013	2014	\$	%
Cost of revenue			(in thousands, except percentages)	
Percentage of total revenue	\$ 47,779	\$ 73,633	\$ 25,854	54.1%

Cost of revenue increased \$25.9 million, or 54.1%, to \$73.6 million in 2014 compared to 2013, primarily as a result of an increase in the cost of supporting Direct Checkout revenue due to the introduction of international Direct Checkout as well as growth in the U.S. Direct Checkout revenue. To a lesser extent, the increase was due to an increase in depreciation and amortization for ongoing maintenance of our technology infrastructure and an increase in employee-related costs resulting from increased headcount in our member support and technical operations teams.

### Operating Expenses

#### *Marketing*

	Year Ended December 31,		Change	
	2013	2014	\$	%
Marketing			(in thousands, except percentages)	
Percentage of total revenue	\$ 17,850	\$ 39,655	\$ 21,805	122.2%

Marketing expenses increased \$21.8 million, or 122.2%, to \$39.7 million in 2014 compared to 2013, primarily as a result of an increase in search engine marketing from Google product listing ads and, to a lesser extent, from an increase in employee-related costs resulting from increased headcount in our marketing team, which includes our public relations and communications teams.

#### *Product development*

	Year Ended December 31,		Change	
	2013	2014	\$	%
Product development			(in thousands, except percentages)	
Percentage of total revenue	\$ 27,548	\$ 36,634	\$ 9,086	33.0%

Product development expenses increased \$9.1 million, or 33.0%, to \$36.6 million in 2014 compared to 2013, primarily as a result of an increase in employee-related costs resulting from increased headcount in our product and engineering teams.

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### General and administrative

	Year Ended December 31,		Change	
	2013	2014	\$	%
General and administrative			(in thousands, except percentages)	
Percentage of total revenue	\$ 31,112	\$ 51,920	\$ 20,808	66.9%

General and administrative expenses increased \$20.8 million, or 66.9%, to \$51.9 million in 2014 compared to 2013, primarily as a result of an increase in employee-related costs from headcount growth in general corporate functions and from building out the executive management team and, to a lesser extent, due to increased legal and accounting fees.

### Other Expense, net

	Year Ended December 31,		Change	
	2013	2014	\$	%
Other expense, net			(in thousands, except percentages)	
Percentage of total revenue	\$ (675)	\$ (4,009)	\$ (3,334)	493.9%

Other expense, net increased \$3.3 million, or 493.9%, to \$4.0 million in 2014 compared to 2013, primarily as a result of the foreign exchange loss.

### Provision for Income Taxes

	Year Ended December 31,		Change	
	2013	2014	\$	%
Provision for income taxes			(in thousands, except percentages)	
Percentage of total revenue	\$ (854)	\$ (4,983)	\$ (4,129)	NM

Our effective tax rate fluctuates from period to period due to changes in the mix of income and losses in jurisdictions with a wide range of tax rates, the amount of stock-based compensation expense and net unrealized loss on warrants, the impact of acquisitions, the change resulting from the amount of recorded valuation allowance, the permanent difference between GAAP and local tax laws and certain one-time items such as tax rate changes. For the year ended December 31, 2014, we determined that the existence of a three-year cumulative loss in a foreign jurisdiction was sufficient negative evidence to warrant the establishment of a valuation allowance against deferred tax assets in that jurisdiction. As a result, we recorded a valuation allowance against certain of our deferred tax assets of \$0 as of December 31, 2013 and \$2.1 million as of December 31, 2014.

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### Comparison of Years Ended December 31, 2012 and 2013

#### Revenue

	Year Ended December 31,		Change	
	2012	2013	\$	%
<b>Revenue:</b>				
Marketplace	\$ 55,330	\$ 78,544	\$ 23,214	42.0%
Percentage of total revenue	74.2%	62.8%		
Seller Services	\$ 15,863	\$ 42,817	\$ 26,954	169.9%
Percentage of total revenue	21.3%	34.2%		
Other	\$ 3,409	\$ 3,661	\$ 252	7.4%
Percentage of total revenue	4.6%	2.9%		
Total revenue	<u>\$ 74,602</u>	<u>\$125,022</u>	\$ 50,420	67.6%

Revenue increased \$50.4 million, or 67.6%, to \$125.0 million in 2013 compared to 2012, of which 62.8% consisted of Marketplace revenue and 34.2% consisted of Seller Services revenue.

Marketplace revenue increased \$23.2 million, or 42.0%, to \$78.5 million in 2013 compared to 2012. This growth corresponded with a 50.6% increase in GMS to a total of \$1.35 billion for 2013. As our GMS increased, our Marketplace revenue increased, primarily as a result of an increase in the amount of transaction fees received and an increase in listings from new and existing Etsy sellers with a corresponding increase in listing fees received. During 2013, international GMS as a percentage of total GMS was 28.4%, and mobile GMS as a percentage of total GMS was 29.5%. Active sellers increased 29.4% to 1.1 million and active buyers increased 50.6% to 14.0 million for 2013 compared to 2012.

Seller Services revenue increased \$27.0 million, or 169.9%, to \$42.8 million in 2013 compared to 2012. The growth in Seller Services revenue was primarily driven by an increase in revenue from Direct Checkout services, as well as increases in Promoted Listings and Shipping Labels. The increase in Direct Checkout services revenue reflects a full year of U.S. Direct Checkout revenue, as the service was first introduced in the United States in the second quarter of 2012, as well as the introduction of international Direct Checkout services starting in the second half of 2013. As of the end of 2013, we offered Direct Checkout in 10 currencies, including the U.S. dollar. The increase in Promoted Listings revenue and the increase in Shipping Label revenue reflect an increase in the number of Etsy sellers using these services.

Other revenue increased \$0.3 million, or 7.4%, to \$3.7 million in 2013 compared to 2012. Other revenue decreased as a percentage of revenue, however, as Etsy buyers opted to use Direct Checkout for their purchases rather than a third-party payment processor.

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### Cost of Revenue

	Year Ended December 31,		Change	
	2012	2013	\$	%
Cost of revenue			(in thousands, except percentages)	
Percentage of total revenue	\$ 24,493	\$ 47,779	\$ 23,286	95.1%

Cost of revenue increased \$23.3 million, or 95.1%, to \$47.8 million in 2013 compared to 2012, primarily as a result of an increase in the cost of supporting Direct Checkout revenue due to the introduction of international Direct Checkout as well as growth in the U.S. Direct Checkout revenue. To a lesser extent, the increase was due to an increase in depreciation and amortization for ongoing maintenance of our technology infrastructure and an increase in employee-related costs resulting from increased headcount in our member support and technical operations teams.

### Operating Expenses

#### *Marketing*

	Year Ended December 31,		Change	
	2012	2013	\$	%
Marketing			(in thousands, except percentages)	
Percentage of total revenue	\$ 10,902	\$ 17,850	\$ 6,948	63.7%

Marketing expenses increased \$6.9 million, or 63.7%, to \$17.9 million in 2013 compared to 2012, primarily as a result of an increase in search engine marketing from Google product listing ads and, to a lesser extent, from an increase in employee-related costs resulting from increased headcount in our marketing team, which includes our public relations and communications teams.

#### *Product development*

	Year Ended December 31,		Change	
	2012	2013	\$	%
Product development			(in thousands, except percentages)	
Percentage of total revenue	\$ 18,653	\$ 27,548	\$ 8,895	47.7%

Product development expenses increased \$8.9 million, or 47.7%, to \$27.5 million in 2013 compared to 2012, primarily as a result of an increase in employee-related costs resulting from increased headcount in our product and engineering teams.

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### General and administrative

	Year Ended December 31,		Change	
	2012	2013	\$	%
General and administrative				
Percentage of total revenue	\$ 21,909	\$ 31,112	\$ 9,203	42.0%
	29.4%	24.9%		

General and administrative expenses increased \$9.2 million, or 42.0%, to \$31.1 million in 2013 compared to 2012, primarily as a result of an increase in employee-related costs from headcount growth in general corporate functions and from building out the executive management team.

### Other Expense, net

	Year Ended December 31,		Change	
	2012	2013	\$	%
Other expense, net				
Percentage of total revenue	\$ (1,175)	\$ (675)	\$ 500	42.6%
	(1.6)%	(0.5)%		

Other expense, net decreased primarily as a result of a smaller unrealized loss in 2013 for our warrant liability and lower interest expense.

### Benefit (Provision) for Income Taxes

	Year Ended December 31,		Change	
	2012	2013	\$	%
Benefit (provision) for income taxes				
Percentage of total revenue	\$ 145	\$ (854)	\$ (999)	NM
	0.2%	(0.7)%		

Our effective tax rate fluctuates from period to period due to changes in the mix of income and losses in jurisdictions with a wide range of tax rates, the amount of stock-based compensation expense and net unrealized loss on warrants, the impact of acquisitions, the change resulting from the amount of recorded valuation allowance, the permanent difference between GAAP and local tax laws and certain one-time items such as tax rate changes.

## Quarterly Results of Operations

The following tables show selected unaudited quarterly results of operations and other operational and non-GAAP financial data for the eight quarters ended December 31, 2014, as well as the percentage that each line item in the following results of operations data represents of revenue. The results of operations data for each of these quarters has been prepared on the same basis as the audited annual financial statements included elsewhere in this prospectus and includes all adjustments, which include only normal recurring adjustments, necessary for the fair statement of our results of operations for these periods. The results of operations data for the three months ended March 31, 2013, the three and six months ended June 30, 2013,

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the three and nine months ended September 30, 2013, the three months ended December 31, 2013 and the three months ended September 30, 2014 have been revised and the three months ended March 31, 2014, the three and six months ended June 30, 2014 and the nine months ended September 30, 2014 have been restated to correct for the understatement of certain non-income tax-related expenses and the misstatement of expenses due to period-end cutoff errors. See Note 16 of the accompanying notes to our consolidated financial statements. This data should be read in conjunction with our consolidated financial statements and related notes included elsewhere in this prospectus. Our quarterly results of operations and operational and non-GAAP financial data will vary in the future. These quarterly operating results are not necessarily indicative of our operating results for any future quarter or year.

	Three Months Ended							
	Mar. 31, 2013	June 30, 2013	Sept. 30, 2013	Dec. 31, 2013	Mar. 31, 2014 Restated	June 30, 2014 Restated	Sept. 30, 2014	Dec. 31, 2014
	(in thousands)							
<b>Revenue:</b>								
Marketplace	\$ 17,152	\$ 17,741	\$ 19,189	\$ 24,462	\$ 23,727	\$ 24,777	\$ 26,917	\$ 33,311
Seller Services	8,161	8,768	9,851	16,037	15,833	16,587	19,392	30,690
Other	831	855	917	1,058	976	1,145	1,325	911
<b>Total revenue</b>	<b>26,144</b>	<b>27,364</b>	<b>29,957</b>	<b>41,557</b>	<b>40,536</b>	<b>42,509</b>	<b>47,634</b>	<b>64,912</b>
<b>Cost of revenue</b>	<b>9,581</b>	<b>10,499</b>	<b>11,548</b>	<b>16,151</b>	<b>15,394</b>	<b>17,345</b>	<b>18,115</b>	<b>22,779</b>
<b>Gross profit</b>	<b>16,563</b>	<b>16,865</b>	<b>18,409</b>	<b>25,406</b>	<b>25,142</b>	<b>25,164</b>	<b>29,519</b>	<b>42,133</b>
<b>Operating expenses:</b>								
Marketing	3,004	3,223	4,148	7,475	7,468	8,766	8,808	14,613
Product development	6,690	6,754	7,056	7,048	8,042	8,792	10,077	9,723
General and administrative	6,619	7,489	7,905	9,099	9,213	11,400	13,686	17,621
<b>Total operating expenses</b>	<b>16,313</b>	<b>17,466</b>	<b>19,109</b>	<b>23,622</b>	<b>24,723</b>	<b>28,958</b>	<b>32,571</b>	<b>41,957</b>
<b>Income (loss) from operations</b>	<b>250</b>	<b>(601)</b>	<b>(700)</b>	<b>1,784</b>	<b>419</b>	<b>(3,794)</b>	<b>(3,052)</b>	<b>176</b>
<b>Total other (expense) income, net</b>	<b>(159)</b>	<b>(254)</b>	<b>(158)</b>	<b>(104)</b>	<b>(669)</b>	<b>235</b>	<b>(1,144)</b>	<b>(2,431)</b>
<b>Income (loss) before income taxes</b>	<b>91</b>	<b>(855)</b>	<b>(858)</b>	<b>1,680</b>	<b>(250)</b>	<b>(3,559)</b>	<b>(4,196)</b>	<b>(2,255)</b>
<b>(Provision) benefit for income taxes</b>	<b>(408)</b>	<b>1,903</b>	<b>1,939</b>	<b>(4,288)</b>	<b>(213)</b>	<b>408</b>	<b>(2,075)</b>	<b>(3,103)</b>
<b>Net (loss) income</b>	<b>\$ (317)</b>	<b>\$ 1,048</b>	<b>\$ 1,081</b>	<b>\$ (2,608)</b>	<b>\$ (463)</b>	<b>\$ (3,151)</b>	<b>\$ (6,271)</b>	<b>\$ (5,358)</b>

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	Three Months Ended							
	Mar. 31, 2013	June 30, 2013	Sept. 30, 2013	Dec. 31, 2013	Mar. 31, 2014 Restated	June 30, 2014 Restated	Sept. 30, 2014	Dec. 31, 2014
<b>Revenue:</b>								
Marketplace	65.6%	64.8%	64.1%	58.9%	58.5%	58.3%	56.5%	51.3%
Seller Services	31.2	32.0	32.9	38.6	39.1	39.0	40.7	47.3
Other	3.2	3.1	3.1	2.5	2.4	2.7	2.8	1.4
<b>Total revenue</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
Cost of revenue	36.6	38.4	38.5	38.9	38.0	40.8	38.0	35.1
Gross profit	63.4	61.6	61.5	61.1	62.0	59.2	62.0	64.9
<b>Operating expenses:</b>								
Marketing	11.5	11.8	13.8	18.0	18.4	20.6	18.5	22.5
Product development	25.6	24.7	23.6	17.0	19.8	20.7	21.2	15.0
General and administrative	25.3	27.4	26.4	21.9	22.7	26.8	28.7	27.1
<b>Total operating expenses</b>	<b>62.4</b>	<b>63.8</b>	<b>63.8</b>	<b>56.8</b>	<b>61.0</b>	<b>68.1</b>	<b>68.4</b>	<b>64.6</b>
Income (loss) from operations	1.0	(2.2)	(2.3)	4.3	1.0	(8.9)	(6.4)	0.3
Total other (expense) income, net	(0.6)	(0.9)	(0.5)	(0.3)	(1.7)	0.6	(2.4)	(3.7)
Income (loss) before income taxes	0.3	(3.1)	(2.9)	4.0	(0.6)	(8.4)	(8.8)	(3.5)
(Provision) benefit for income taxes	(1.6)	7.0	6.5	(10.3)	(0.5)	1.0	(4.4)	(4.8)
<b>Net (loss) income</b>	<b>(1.2)</b>	<b>3.8</b>	<b>3.6</b>	<b>(6.3)</b>	<b>(1.1)</b>	<b>(7.4)</b>	<b>(13.2)</b>	<b>(8.3)</b>

	Three Months Ended							
	Mar. 31, 2013	June 30, 2013	Sept. 30, 2013	Dec. 31, 2013	Mar. 31, 2014	June 30, 2014	Sept. 30, 2014	Dec. 31, 2014
<b>Other financial and operations data(1):</b>								
GMS	\$ 290,295	\$ 298,497	\$ 319,454	\$ 439,587	\$ 414,833	\$ 438,472	\$ 467,202	\$ 611,474
Adjusted EBITDA(2)	\$ 3,813	\$ 3,084	\$ 3,656	\$ 6,394	\$ 6,103	\$ 3,432	\$ 4,248	\$ 9,298
Active sellers	891	944	1,012	1,074	1,135	1,191	1,284	1,353
Active buyers	10,591	11,686	12,633	14,032	15,260	16,490	18,102	19,810
Percent mobile visits	37.5%	37.7%	42.8%	46.0%	50.2%	52.1%	54.7%	55.0%
Percent mobile GMS	27.8%	28.5%	30.3%	30.7%	35.2%	35.5%	36.5%	37.0%
Percent international GMS	29.0%	28.4%	27.9%	28.4%	30.6%	30.9%	31.6%	30.6%

(1) See "Prospectus Summary—Glossary" for the definitions of the following terms: "active buyer," "active seller," "GMS" and "visit." See "Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures" for the definition of Adjusted EBITDA.

(2) Adjusted EBITDA has been restated for the three months ended March 31, 2014 and June 30, 2014.

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The following table reflects the reconciliation of net (loss) income to Adjusted EBITDA for each of the periods indicated (in thousands):

	Three Months Ended							
	Mar. 31, 2013	June 30, 2013	Sept. 30, 2013	Dec. 31, 2013	Mar. 31, 2014 Restated	June 30, 2014 Restated	Sept. 30, 2014	Dec. 31, 2014
Net (loss) income	\$ (317)	\$ 1,048	\$ 1,081	\$ (2,608)	\$ (463)	\$ (3,151)	\$ (6,271)	\$ (5,358)
<b>Excluding:</b>								
Interest expense, net	77	86	39	54	53	107	165	224
Provision (benefit) for income taxes	408	(1,903)	(1,939)	4,288	213	(408)	2,075	3,103
Depreciation and amortization	2,626	2,824	3,282	3,648	3,895	4,132	4,465	4,731
Stock-based compensation expense	937	861	1,074	962	1,176	1,737	1,299	1,708
Stock-based compensation expense—acquisitions	—	—	—	—	—	348	1,448	2,334
Net unrealized loss (gain) on warrant and other liabilities	82	168	119	50	616	(342)	(35)	172
Foreign exchange loss	—	—	—	—	—	—	1,014	2,035
Acquisition-related expenses	—	—	—	—	613	1,009	88	349
<b>Adjusted EBITDA</b>	<b>\$ 3,813</b>	<b>\$ 3,084</b>	<b>\$ 3,656</b>	<b>\$ 6,394</b>	<b>\$ 6,103</b>	<b>\$ 3,432</b>	<b>\$ 4,248</b>	<b>\$ 9,298</b>

## Seasonality and Quarterly Trends

Etsy sellers experience increased sales and use more Seller Services during the fourth-quarter holiday shopping season. This has resulted in increased revenue for us during the fourth quarter of each fiscal year, which can compare to lower revenue in the first quarter of the following fiscal year. For example, revenue in the first quarter of 2014 decreased slightly when compared with revenue in the fourth quarter of 2013. We expect this seasonality to continue in future years. Our operating (loss) income has also been affected by these historical trends because many of our expenses are relatively fixed in the short term. As our growth rates begin to moderate, the impact of these seasonality trends on our results of operations may become more pronounced.

Our quarterly revenue increased sequentially quarter-to-quarter for all periods presented above, other than the first quarter of 2014, corresponding to our GMS performance in the same periods. We cannot assure you that this pattern of sequential revenue growth will continue. We believe that it is generally more meaningful to compare year-over-year results than sequential quarter-over-quarter results.

Our quarterly cost of revenue increased sequentially quarter-to-quarter for substantially all periods presented above, primarily due to increases in visits and to increased usage of Direct Checkout during the period and, to a lesser extent, to an increase in employee-related costs resulting from increased headcount in our member support and technical operations teams.

Marketing expenses increased sequentially quarter-to-quarter for substantially all periods presented above, and significantly increased beginning in the fourth quarter of 2013, primarily due to increased marketing

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programs to attract and retain new Etsy sellers and Etsy buyers on our platform and, to a lesser extent, to an increase in employee-related costs resulting from increased headcount in our marketing team, which includes our public relations and communications teams.

Product development expenses generally remained consistent or increased sequentially quarter-to-quarter for the periods presented above, primarily as a result of an increase in employee-related costs resulting from increased headcount in our product and engineering teams.

General and administrative expenses increased sequentially quarter-to-quarter for substantially all periods presented above, primarily as a result of an increase in employee-related costs from headcount growth in general corporate functions and from building out the executive management team.

Our business is directly affected by the behavior of consumers. Economic conditions and competitive pressures can significantly impact, both positively and negatively, the level of demand by Etsy sellers and Etsy buyers on our platform. Consequently, the results of any prior quarterly or annual periods should not be relied upon as indications of our future operating performance.

## Liquidity and Capital Resources

The following tables show our cash and cash equivalents, short-term investments, accounts receivable and working capital as of the dates indicated:

	As of December 31,	
	2013	2014
	(in thousands)	
Cash and cash equivalents	\$ 36,795	\$ 69,659
Short-term investments	18,075	19,184
Accounts receivable, net	11,102	15,404
Working capital	57,566	88,540

As of December 31, 2014, our cash and cash equivalents, a majority of which were held in cash deposits and money market funds, were held for working capital purposes. We intend to increase our capital expenditures to support the growth in our business and operations, and intend to invest approximately \$50.0 million through the middle of 2016 to build out our new Brooklyn, New York headquarters. We believe that our existing cash and cash equivalents and short-term investments, together with cash generated from operations and available borrowing capacity under our Credit Agreement, will be sufficient to meet our anticipated cash needs for at least the next 12 months. However, our liquidity assumptions may prove to be incorrect, and we could exhaust our available financial resources sooner than we currently expect. We may seek to borrow funds under our Credit Agreement or raise additional funds at any time through equity, equity-linked or debt financing arrangements. Our future capital requirements and the adequacy of available funds will depend on many factors, including those described in the section of this prospectus captioned "Risk Factors." We may not be able to secure additional financing to meet our operating requirements on acceptable terms, or at all.

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### Sources of Liquidity

Since our inception, we have financed our operations and capital expenditures primarily through cash flows generated by operations and through non-registered sales of preferred stock and common stock. Since inception and as of December 31, 2014, we have raised a total of \$125.6 million from the sale of preferred stock and common stock (including proceeds from the exercise of stock options), net of costs and expenses associated with such financings and net of repurchases of \$0.5 million of capital stock.

### Credit Facility

In May 2014, we entered into a \$35.0 million senior secured revolving credit facility pursuant to a Revolving Credit and Guaranty Agreement with several lenders, or the Credit Agreement. In March 2015, we amended the Credit Agreement to increase the credit facility to \$50.0 million. As amended, the Credit Agreement will mature in May 2019. The amended Credit Agreement includes a letter of credit sublimit of \$10.0 million and a swingline loan sublimit of \$15.0 million.

Borrowings under the amended Credit Agreement (other than swingline loans) bear interest, at our option, at (i) a base rate equal to the highest of (a) the prime rate, (b) the federal funds rate plus 0.50% and (c) an adjusted LIBOR rate for a one-month interest period plus 1.00%, in each case plus a margin ranging from 0.00% to 0.25% or (ii) an adjusted LIBOR rate plus a margin ranging from 1.00% to 1.25%. Swingline loans under the amended Credit Agreement bear interest at the same base rate (plus the margin applicable to borrowings bearing interest at the base rate). These margins are determined based on the total leverage ratio for the preceding four fiscal quarters. We are also obligated to pay other customary fees for a credit facility of this size and type, including an unused commitment fee and fees associated with letters of credit. As amended, the Credit Agreement also permits us, in certain circumstances, to request an increase in the facility by an additional amount of up to \$50.0 million (and in minimum amounts of \$10.0 million) at the same maturity, pricing and other terms.

The amended Credit Agreement contains customary representations and warranties applicable to us and our subsidiaries and customary affirmative and negative covenants applicable to us and our restricted subsidiaries. The negative covenants include restrictions on, among other things, indebtedness, liens, investments, mergers, dispositions, transactions with affiliates and dividends and other distributions. These restrictions do not prohibit any of our subsidiaries from making pro rata payments to us or any other person that owns an equity interest in any such subsidiary. The amended Credit Agreement contains a financial covenant that requires us and our subsidiaries to maintain a total leverage ratio (defined as net debt to adjusted EBITDA) not to exceed 3.50 to 1.00.

As amended, the Credit Agreement includes customary events of default, including a change in control and a cross-default on our material indebtedness. Our obligations under the amended Credit Agreement are secured by substantially all of our and our subsidiaries' assets, and our obligations under the amended Credit Agreement are guaranteed by certain of our subsidiaries.

As of March 4, 2015, no amounts have been drawn under the credit facility. In January 2015, we implemented a revised corporate structure to more closely align our structure with our global operations

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and future expansion plans outside the United States. The amendment to the Credit Agreement includes a waiver with respect to our compliance with certain restrictions in the Credit Agreement, to the extent that actions taken to implement our revised corporate structure could be construed as breaches or defaults under the Credit Agreement.

### Historical Cash Flows

	Year Ended December 31,		
	2012	2013	2014
	(in thousands)		
Cash (used in) provided by:			
Operating activities	\$ 9,684	\$ 16,542	\$ 12,087
Investing activities	(28,877)	(15,025)	(20,723)
Financing activities	42,972	(103)	45,237

### Net Cash Provided by Operating Activities

Our cash flows from operations are largely dependent on the amount of revenue generated on our platform. Net cash provided by operating activities in each period presented has been influenced by changes in accounts receivable, funds receivable and customer accounts, prepaid expenses and other current assets, accounts payable and accrued liabilities, and funds payable and amounts due to customers.

Net cash provided by operating activities was \$12.1 million in 2014, as a result of net loss of \$15.2 million, depreciation and amortization expense, stock-based compensation expense and other non-cash charges of \$27.1 million and changes in our operating assets and liabilities that provided \$0.3 million in cash.

Net cash provided by operating activities was \$16.5 million in 2013, as a result of net loss of \$0.8 million, depreciation and amortization expense, stock-based compensation expense and other non-cash charges of \$19.6 million and changes in our operating assets and liabilities that used \$2.2 million in cash.

Net cash provided by operating activities was \$9.7 million in 2012 as a result of net loss of \$2.4 million, depreciation and amortization expense, stock-based compensation expense and other non-cash charges of \$13.5 million and changes in our operating assets and liabilities that used \$1.4 million in cash.

### Net Cash Used in Investing Activities

Our primary investing activities have consisted of capital expenditures, including investments in website development and internal-use software and purchases of property and equipment to support our overall business growth. Investments in website development and internal-use software and purchases of property and equipment may vary from period to period due to timing of the expansion of our operations. Additionally, we have invested some of our excess cash balances in U.S. Government and agency bills.

Net cash used in investing activities was \$20.7 million in 2014. This was primarily attributable to \$5.3 million in restricted cash associated with the lease of our new Brooklyn, New York headquarters, \$4.7 million in cash paid to acquire businesses, capital expenditures, including \$8.3 million for website development and internal-use software and \$1.3 million for purchases of property and equipment, and net purchases of marketable securities of \$1.1 million.

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Net cash used in investing activities was \$15.0 million in 2013. This was primarily attributable to capital expenditures, including \$9.3 million for website development and internal-use software and \$7.8 million for purchases of property and equipment, offset by sales of marketable securities of \$2.8 million.

Net cash used in investing activities was \$28.9 million in 2012. This was primarily attributable to purchases of U.S. Government and agency bills of \$16.1 million as well as capital expenditures, including \$7.4 million for website development and internal-use software and \$6.5 million for purchases of property and equipment, offset by sales of marketable securities of \$1.4 million.

### Net Cash Provided by (Used in) Financing Activities

Net cash provided by financing activities was \$45.2 million in 2014. This was primarily attributable to net proceeds from a common stock financing of \$35.0 million, proceeds from the exercise of stock options of \$8.0 million and the excess tax benefit from the exercise of stock options of \$4.9 million, offset by payments related to our public offering of \$1.0 million and payments on capitalized lease obligations of \$1.5 million.

Net cash used in financing activities was \$0.1 million in 2013. This was primarily attributable to payments on capitalized lease obligations of \$1.3 million, offset by proceeds from the exercise of stock options of \$1.3 million.

Net cash provided by financing activities was \$43.0 million in 2012. This was primarily attributable to net proceeds from a preferred stock financing of \$39.8 million and proceeds from the exercise of stock options of \$4.6 million, offset by payments on capitalized lease obligations of \$1.4 million.

## Off Balance Sheet Arrangements

We did not have any off balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K, in 2012, 2013 or 2014.

## Contractual Obligations

The following table summarizes our future fixed contractual obligations as of December 31, 2014 (in thousands):

	Total	Less than 1 Year	1–3 Years	3–5 Years	More than 5 Years
Capital lease obligations	\$ 4,903	\$ 1,755	\$ 3,148	\$ —	\$ —
Operating lease obligations	21,044	3,870	2,699	3,523	10,952
Long-term debt	547	—	267	280	—
Interest payments	892	535	357	—	—
Facility financing obligations	90,314	—	9,684	18,858	61,772
Purchase obligations	9,824	5,154	3,734	936	—
<b>Total contractual obligations</b>	<b>\$ 127,524</b>	<b>\$ 11,314</b>	<b>\$ 19,889</b>	<b>\$ 23,597</b>	<b>\$ 72,724</b>

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Capital lease obligations consist of obligations under capital leases for computer equipment.

Operating lease obligations consist of obligations under non-cancelable operating leases for our existing and new headquarters (both in Brooklyn, New York) and for our offices in San Francisco, California and Dublin, Ireland.

Long-term debt consists of obligations we assumed in connection with our acquisition of Incubart SAS.

Interest payments consist of interest due in connection with our capital leases.

Facility financing obligations consist of the portion of our obligations for our new headquarters in Brooklyn, New York that is accounted for as a build-to-suit lease.

Purchase obligations consist of commitments for our co-location and other support services. For those agreements with variable terms, we do not estimate what the total obligation may be beyond any minimum quantities and/or pricing.

In addition, we have uncertain tax positions of \$0.4 million, which are not reflected in the table as the ultimate resolution and timing are uncertain.

## Critical Accounting Policies and Significant Judgments and Estimates

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

We believe that the assumptions and estimates associated with revenue recognition, income taxes, internal-use software and website development costs, business combinations, goodwill and intangible assets, leases and stock-based compensation have the greatest potential impact on our consolidated financial statements. Therefore, we consider these to be our critical accounting policies and estimates. For further information on all of our significant accounting policies, see Note 1 of the accompanying notes to our consolidated financial statements.

### Revenue Recognition

We operate a platform for third-party sellers. Our business model is based on shared success: we make money when Etsy sellers make money, and we offer services to help Etsy sellers be more successful. We do not compete with Etsy sellers, hold inventory or sell goods. Our revenue is diversified, generated from a mix

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of marketplace activities and the services we provide Etsy sellers to help them create and grow their businesses. Our revenue consists of Marketplace revenue, Seller Services revenue and Other revenue. Our revenue is recorded net of actual and expected refunds. Marketplace revenue includes the fee an Etsy seller pays for each completed transaction and the listing fee an Etsy seller pays for each item she lists. Seller Services revenue includes fees an Etsy seller pays for services such as prominent placement in search results via Promoted Listings, payment processing via Direct Checkout and purchases of shipping labels through our platform via Shipping Labels. We deduct our cost of shipping labels and estimated refunds from gross shipping fees to determine net shipping fees. Other revenue includes the fees we receive from a third-party payment processor.

We recognize revenue when all of the following conditions are satisfied: (1) there is persuasive evidence of an arrangement; (2) the service has been provided to the Etsy seller; (3) the collection of fees is reasonably assured; and (4) the amount of fees to be paid by the Etsy seller is fixed or determinable. We evaluate whether it is appropriate to recognize revenue on a gross or net basis based upon our evaluation of whether we: are the primary obligor in a transaction, have inventory risk and have latitude in establishing pricing and selecting suppliers. Based on our evaluation of these factors, revenue is recorded net of merchandise values associated with the transaction.

*Marketplace revenue.* Marketplace revenue consists of the 3.5% fee that an Etsy seller pays for each completed transaction on our platform, exclusive of shipping fees charged. Marketplace revenue also consists of a listing fee of \$0.20 per item that she lists in our marketplace. Although revenue from completed Wholesale transactions is included in Marketplace revenue, revenue from Wholesale enrollment is included in Seller Services revenue. Transaction fees are recognized when the corresponding transaction is made. Listing fees are recognized ratably over a four-month listing period, unless the item is sold or the seller relists it, at which time any remaining listing fee is recognized.

*Seller Services revenue.* Seller Services revenue consists of fees an Etsy seller pays us for the Seller Services she uses, including Promoted Listings, Direct Checkout, Shipping Labels and Wholesale.

- Revenue from Promoted Listings consists of cost-per-click based fees an Etsy seller pays us for prominent placement of her listings in search results generated by Etsy buyers in our marketplace. Revenue is recognized when the Promoted Listing is clicked.
- Revenue from Direct Checkout consists of fees an Etsy seller pays us to process credit, debit and Etsy Gift Card payments. Direct Checkout fees vary between 3–4% of the item’s total sale price plus a flat fee per order, depending on the country in which her bank account is located. Direct Checkout fees are taken from the item’s total sale price, including shipping. Revenue from Direct Checkout is recognized when the corresponding transaction is made. Revenue from breakage on Etsy Gift Cards is recognized when the amount is probable and estimable. Given the lack of historical experience related to gift card activity, there has been no breakage revenue recorded to date.

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- Revenue from Shipping Labels consists of fees an Etsy seller pays us when she purchases shipping labels through our platform, net of the cost we incur in purchasing those shipping labels. We are able to provide our sellers shipping labels from the United States Postal Service and Canada Post at a discounted price due to the volume of purchases through our platform. We recognize Shipping Label revenue when an Etsy seller purchases a shipping label. We recognize Shipping Label revenue on a net basis as we are not the primary obligor in the delivery of these services.
- Revenue from Wholesale consists of fees an Etsy seller pays us when she is approved to enroll in our Wholesale program. The one-time Wholesale enrollment fee is recognized ratably over the estimated customer life. Revenue from completed Wholesale transactions is included in Marketplace revenue.

*Other revenue.* Other revenue includes the fees we receive from a third-party payment processor. Other revenue is recognized as the transactions are processed by the third-party payment processor.

## Income Taxes

We account for income tax benefit (provision) based on (loss) income before income taxes, and we use the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. We assess the need for a valuation allowance on an annual basis to reduce deferred tax assets to the amounts we expect to be realized.

We account for uncertainty in income taxes using a recognition threshold and a measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by the taxing authorities. The amount recognized is measured as the largest amount of benefit that has a greater than 50% likelihood of being realized upon ultimate audit settlement. We have no unrecognized tax benefits at December 31, 2012 and 2013 and have an unrecognized tax benefit of \$0.4 million as of December 31, 2014.

We recognize interest and penalties, if any, associated with tax matters as part of the income tax provision and include accrued interest and penalties with the related tax liability in our consolidated balance sheet.

## Website Development and Internal-Use Software

We capitalize certain costs incurred in connection with software developed for our platform and software developed for internal use. In accordance with authoritative accounting guidance, we begin to capitalize our costs to develop software when preliminary development efforts are successfully completed, management has authorized and committed project funding and it is probable that the project will be completed and the

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software will be used as intended. We also capitalize costs related to upgrades and enhancements when it is probable the expenditures will result in additional functionality or will extend the useful life of existing functionality. These costs are amortized over the estimated useful life of the asset, typically three years.

We periodically review these assets to determine whether the projects will be completed, placed in service, removed from service or replaced by other internally-developed or third-party software; if an asset is not expected to provide any future benefit, the asset is retired and any unamortized cost is expensed.

Costs related to the design or maintenance of software developed for our platform and software developed for internal use are expensed as incurred.

### **Business Combinations, Goodwill and Intangible Assets**

We have completed a number of acquisitions of other businesses in the past and may acquire additional businesses or technologies in the future. The results of businesses acquired in a business combination are included in our consolidated financial statements from the date of acquisition. We allocate the purchase price, which is the sum of the consideration provided and may consist of cash, equity or a combination of the two, in a business combination to the identifiable assets and liabilities of the acquired business at their acquisition date fair values. The excess of the purchase price over the amount allocated to the identifiable assets and liabilities, if any, is recorded as goodwill. Determining the fair value of assets acquired and liabilities assumed requires management to use significant judgment and estimates, including the selection of valuation methodologies, estimates of future revenues and cash flows, discount rates and selection of comparable companies.

When we issue stock-based or cash awards to an acquired company's stockholders, we evaluate whether the awards are contingent consideration or compensation for post-acquisition services. The evaluation includes, among other things, whether the vesting of the awards is contingent on the continued employment of the acquired company's stockholder beyond the acquisition date. If continued employment is required for vesting, the awards are treated as compensation for post-acquisition services and recognized as expense over the requisite service period.

We carry intangible assets at cost, and we amortize them on a straight-line basis, which approximates the pattern of the benefits derived, over their estimated useful lives, typically three to five years. When circumstances indicate that the carrying value of these assets may not be recoverable, we review our identifiable amortizable intangible assets for impairment.

Goodwill is not amortized but is tested for impairment annually in the fourth quarter, as well as when events indicate that the carrying amount of this asset may exceed its fair value. The assessment is performed at the reporting unit level using the two-step goodwill impairment test to identify potential goodwill impairment. The first step is to compare the fair value of the reporting unit to the book value including goodwill. If the fair value of the reporting unit exceeds the book value, goodwill is not impaired. If the book value exceeds the fair value, the second step of the process is performed to measure the amount of the impairment. The accounting guidance also allows for a simplified approach to testing for impairment, in

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which a company can assess certain qualitative factors (referred to as “step zero”) to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying amount. If that is the case, the entity must perform the quantitative analysis.

No impairment of goodwill was recorded at December 31, 2013 or 2014.

### **Leases**

We lease office space and certain computer equipment in multiple locations under non-cancelable lease agreements. The leases are reviewed for classification as operating or capital leases. For operating leases, rent is recognized on a straight-line basis over the lease period. For capital leases, we record the leased asset with a corresponding liability. Payments are recorded as reductions to the liability with an appropriate interest charge recorded based on their outstanding remaining liability.

We consider the nature of the renovations and our involvement during the construction period of newly-leased office space to determine if we are considered to be the owner of the construction project during the construction period. If we determine that we are the owner of the construction project, we are required to capitalize the fair value of the building as well as the construction costs incurred on our consolidated balance sheet along with a corresponding financing liability (“build-to-suit accounting”). Upon occupancy for build-to-suit leases, we assess whether the circumstances qualify for sales recognition under the sale-leaseback accounting guidance. If the lease meets the sale-leaseback criteria, we will remove the asset and related financial obligation from the balance sheet and treat the building lease as an operating lease. If upon completion of construction, the project does not meet the “sale-leaseback” criteria, the leased property will be treated as a capital lease for financial reporting purposes.

### **Stock-Based Compensation**

Stock options awarded to employees, members of our board of directors and non-employee third parties are measured at fair value at each grant date. We consider what we believe to be comparable publicly-traded companies, discounted free cash flows and an analysis of our enterprise value in estimating the fair value of our common stock. Options generally vest over a four-year period with 25% of the shares underlying the options vesting on the date that is 12 months after the vesting commencement date and thereafter 1/48th of the shares vesting each month, subject to continued service with us through each vesting date.

Stock-based compensation cost is measured on the grant date, based on the estimated fair value of the award using a Black-Scholes pricing model and recognized as an expense over the employee’s or director’s requisite service period on a straight-line basis. We expect to continue to grant stock options in the future, and, to the extent that we do, our stock-based compensation expense recognized in future periods will likely increase.

We account for stock-based compensation arrangements with non-employees using a fair value approach. The fair value of these options is measured using the Black-Scholes option-pricing model reflecting the

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same assumptions as applied to employee options in each of the reported periods, other than the expected life, which is assumed to be the contractual life of the option. The compensation costs of these arrangements are subject to remeasurement over the vesting terms as earned.

We account for stock-based compensation arrangements in restricted shares, subject to a put option that allows the holder of the shares to put the shares back to us for cash, as liability-classified stock awards. These awards are re-measured at each reporting period, with changes in fair value being charged to the statement of operations. Compensation expense is recognized using a graded vesting methodology for each separately vesting tranche of the award as though the award were, in substance, multiple awards. Unless the put option is exercised, the restricted shares will be reclassified from a liability to an equity classified award upon the termination of the put option.

### *Key Assumptions*

Our Black-Scholes option-pricing model requires the input of highly subjective assumptions, including the fair value of the underlying common stock, the expected volatility of the price of our common stock, risk-free interest rates, the expected term of the option and the expected dividend yield of our common stock. These estimates involve inherent uncertainties and the application of management's judgment. If factors change and different assumptions are used, our stock-based compensation expense could be materially different in the future.

- *Fair Value of Our Common Stock* . Because our stock is not publicly traded, we must estimate the fair value of our common stock, as discussed in “—Common Stock Valuations” below.
- *Expected Volatility* . As we have not been a public company and do not have a trading history for our common stock, the expected stock price volatility for our common stock is estimated by taking the average historical price volatility for industry peers based on daily price observations over a period equivalent to the expected term of the stock option grants. Industry peers, which we have selected, consist of several public companies in the industry similar in size, stage of life cycle and financial leverage. These industry peers are also used in our common stock valuations. We intend to continue to consistently apply this process using the same or similar public companies until a sufficient amount of historical information regarding the volatility of our own common stock share price becomes available, or unless circumstances change such that the identified companies are no longer similar to us, in which case more suitable companies whose share prices are publicly available would be used in the calculation.
- *Risk-free Interest Rate* . The risk-free interest rate is based on the yields of U.S. Treasury securities with maturities similar to the expected term of the options for each option group.
- *Expected Term* . The expected term represents the period that our stock-based awards are expected to be outstanding. As we do not have sufficient historical experience for determining the expected term of the stock option awards granted, we base our expected term for awards issued to employees or

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members of our board of directors on the simplified method, which represents the average period from vesting to the expiration of the stock option. For grants to non-employees, the expected term is equal to the contractual term, which is generally ten years.

- *Expected Dividend Yield*. We have never declared or paid any cash dividends to common stockholders and do not presently plan to pay cash dividends in the foreseeable future. Consequently, we use an expected dividend yield of zero.

In determining the fair value of stock options granted, the following weighted average assumptions were used in the Black-Scholes option-pricing model for awards granted in the periods indicated:

	Year Ended December 31,		
	2012	2013	2014
Assumptions:			
Expected volatility	42.7% – 43.9%	45.7% – 50.3%	43.0% – 49.0%
Risk-free interest rate	0.7% – 1.1%	0.9% – 1.9%	1.7% – 2.1%
Expected term (in years)	5.12 – 6.08	5.48 – 6.08	5.46 – 6.08
Dividend rate	—%	—%	—%

## Common Stock Valuations

The fair value of our common stock underlying stock options has historically been determined by our board of directors, with assistance from management, based upon information available at the time of grant. Given the absence of a public trading market for our common stock and in accordance with the American Institute of Certified Public Accountants Practice Aid, *Valuation of Privately Held Company Equity Securities Issued as Compensation*, or the Practice Aid, our board of directors has exercised reasonable judgment and considered numerous objective and subjective factors to determine the best estimate of the fair value of our common stock at each grant date. These factors included:

- contemporaneous third-party valuations of our common stock;
- the prices, rights, preferences and privileges of our preferred stock relative to the common stock;
- the prices of preferred stock sold by us to third-party investors in arms-length transactions;
- the prices of common stock sold to third-party investors by us and in secondary transactions or repurchased by us in arms-length transactions;
- our operating and financial performance;
- current business conditions and projections;
- the likelihood of achieving a liquidity event for the shares of common stock underlying these stock options, such as an initial public offering or sale of our company, given prevailing market conditions;

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- the lack of marketability of our common stock;
- the market performance of comparable publicly traded e-commerce and technology companies; and
- the U.S. and global economic and capital market conditions and outlook.

The per share estimated fair value of our common stock in the table below represents the determination by our board of directors of the fair value of our common stock as of the date of grant, taking into consideration the various objective and subjective factors described above, including the valuations of our common stock. There is inherent uncertainty in these estimates and, if we had made different assumptions than those described below, the fair value of the underlying common stock and amount of our stock-based compensation expense, net loss and net loss per share amounts would have differed. Following the closing of our initial public offering, the fair value per share of our common stock for purposes of determining stock-based compensation will be the closing price of our common stock as reported on the applicable grant date.

The following table summarizes by grant date the number of shares of common stock subject to stock options granted from January 1, 2013 through the date of this prospectus, as well as the associated per share exercise price and the estimated fair value per share of our common stock on the grant date:

Grant Date	Number of Shares Underlying Options Granted	Estimated	
		Exercise Price per Share	Fair Value per Share
January 22, 2013	713,810	\$ 2.38	\$ 2.38
February 4, 2013	1,521,851	\$ 2.38	\$ 2.38
May 7, 2013	460,384	\$ 2.79	\$ 2.79
July 17, 2013	236,465	\$ 2.79	\$ 2.79
September 20, 2013	157,938	\$ 3.01	\$ 3.01
October 29, 2013	2,263,295	\$ 3.01	\$ 3.01
December 11, 2013	798,467	\$ 3.11	\$ 3.11
February 19, 2014	2,203,970	\$ 4.13	\$ 4.13
March 13, 2014	121,010	\$ 4.13	\$ 4.13
April 22, 2014	501,064	\$ 5.18	\$ 5.18
July 16, 2014	1,442,401	\$ 5.23	\$ 5.23
November 5, 2014	2,132,990	\$ 6.19	\$ 6.19
November 12, 2014	12,000	\$ 6.19	\$ 6.19
January 30, 2015	2,037,490	\$ 8.50	\$ 8.50

Based on an assumed initial public offering price of \$ [REDACTED] per share, the midpoint of the offering price range on the cover page of this prospectus, the intrinsic value of stock options outstanding at [REDACTED] was \$ [REDACTED] million, of which \$ [REDACTED] million and \$ [REDACTED] million related to stock options that were vested and unvested, respectively, at that date.

In valuing our common stock, our board of directors determined the equity value of our business using the income approach. The income approach estimates the fair value of a company based on the present value of such company's future estimated cash flows and the residual value of such company beyond the forecast period. These future values are discounted to their present values to reflect the risks inherent in such company achieving these estimated cash flows. Significant inputs of the income approach (in addition to

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our estimated future cash flows themselves) include the long-term growth rate assumed in the residual value, discount rate and normalized long-term operating margin. The terminal value was calculated to estimate our value beyond the forecast period by applying valuation metrics to the final year of our forecasted revenue and discounting that value to the present value using the same weighted average cost of capital, or WACC, applied to the forecasted periods.

For valuations through February 10, 2014, the equity value determined was allocated to the common stock using the Option Pricing Method, or OPM. The OPM treats common stock and preferred stock as call options on an equity value, with exercise prices based on the liquidation preference of the preferred stock. Therefore, the common stock has value only if the funds available for distribution to the stockholders exceed the value of the liquidation preference at the time of a liquidity event such as a merger, sale or initial public offering, assuming the enterprise has funds available to make a liquidation preference meaningful and collectible by the stockholders. The common stock is modeled to be a call option with a claim on the enterprise at an exercise price equal to the remaining value immediately after the preferred stock is liquidated. The OPM uses the Black-Scholes option-pricing model to price the call options. The OPM is appropriate to use when the range of possible future outcomes is so difficult to predict that forecasts would be highly speculative.

Beginning with the March 31, 2014 valuation, we changed the methodology for allocating our equity value to our common stock to a probability weighted expected return method, or PWERM. We made this change as greater certainty developed regarding a possible liquidity event. The PWERM methodology relies on a forward-looking analysis to predict the possible future value of a company. Under this method, discrete future outcomes, including initial public offering, non-IPO scenarios and a merger or sale are weighted based on our estimate of the probability of each scenario. We applied a hybrid method of the PWERM where the non-IPO scenario is modeled using an OPM to reflect the full distribution of possible non-IPO outcomes. The hybrid method is useful when certain discrete future outcomes can be predicted, but also accounts for uncertainty regarding the timing or likelihood of specific alternative exit events.

## Recent Accounting Pronouncements

Under the JOBS Act, we meet the definition of an emerging growth company. We have irrevocably elected to opt out of the extended transition period for complying with new or revised accounting standards pursuant to Section 107(b) of the JOBS Act.

In March 2013, the Financial Accounting Standards Board, or FASB, issued new accounting guidance clarifying the accounting for the release of cumulative translation adjustment into net income when a company either sells a part or all of its investment in a foreign entity or no longer holds a controlling financial interest in a subsidiary or group of assets that is a nonprofit activity or a business within a foreign entity. The new guidance is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2013. The adoption of this guidance did not have an impact on our consolidated financial statements.

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In May 2014, the FASB issued an accounting standards update that will replace existing revenue recognition guidance. Among other things, the updated guidance requires companies to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The new guidance will be effective for us beginning January 1, 2017. We are currently evaluating the effect the guidance will have on our consolidated financial statements.

In August 2014, the FASB issued an accounting standard update under which management will be required to assess an entity's ability to continue as a going concern and provide related footnote disclosures in certain circumstances. The new guidance is effective for annual periods beginning after December 15, 2016 and for annual and interim periods thereafter. The adoption of this guidance is not expected to have an impact on our financial statements or disclosures.

## **Quantitative and Qualitative Disclosures about Market Risk**

We have operations both within the United States and internationally, and we are exposed to market risks in the ordinary course of our business, including the effects of interest rate changes and foreign currency fluctuations. Information relating to quantitative and qualitative disclosures about these market risks is described below.

### **Interest Rate Sensitivity**

Cash and cash equivalents and short-term investments as of December 31, 2014 were held primarily in cash deposits and money market funds. The fair value of our cash, cash equivalents and short-term investments would not be significantly affected by either an increase or decrease in interest rates due mainly to the short-term nature of these instruments. As of December 31, 2014, no amounts were outstanding under our credit facility. Any future borrowings incurred under the credit facility would accrue interest at a floating rate based on a formula tied to certain market rates at the time of incurrence (as described above). A 10% increase or decrease in our current interest rate would not have a significant impact on our interest expense.

### **Foreign Currency Risk**

Most of our sales are denominated in U.S. dollars, and therefore, our revenue is not currently subject to significant foreign currency risk. Our operating expenses are denominated in the currencies of the countries in which our operations are located, and may be subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the Pound Sterling and Euro. Fluctuations in foreign currency exchange rates may cause us to recognize transaction gains and losses in our statement of operations. A 10% increase or decrease in current exchange rates could result in additional income or expense of \$1.8 million.

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# Letter from Chad

## The Etsy Economy

Since inception, Etsy has challenged conventional ways of thinking about commerce, business, individuals and communities. I intend to keep our unconventional operating philosophy as we become a public company, and I welcome new investors into our community.

When I joined Etsy almost seven years ago, Etsy was an online marketplace for handmade goods, vintage items and craft supplies that connected sellers and buyers. Even in my early days at Etsy, it was clear to me that the vision for Etsy could extend far beyond the founding idea of the company and have even more potential to impact the world for good.

Vision is just the starting point. I believe Etsy can truly change the world when our vision is met with strong culture, a powerful team and disciplined execution. In my time at Etsy, I've put my heart and soul into nurturing a culture and building a team and company that match the ambition of our mission. Today our mission is much more expansive than when Etsy began: to reimagine commerce in ways that build a more fulfilling and lasting world.

The reimagining of commerce means transforming every aspect of how goods are made, bought and sold. We believe that Etsy has the long-term potential to transform the world economy into one that is more people-centered and community-focused—one that values and honors designers and makers and one that creates stronger connections among people who make, sell and buy goods. We see an economy that is more sustainable and transparent—and one that is more joyful. We believe in an economy that transcends price and convenience, one that emphasizes relationships over transactions and optimizes for authorship and provenance. We call this the Etsy Economy.

Building the Etsy Economy matters more than ever. For decades now, the conventional and dominant retail model has relentlessly focused on delivering goods at the lowest price, valuing products and profits over community, short-changing the future with the instant gratification of today. I do not believe that this race to the bottom is a sustainable, successful model. Our growing community has made it clear that they desire thoughtful alternatives to mass commerce and impersonal retail and products that better reflect their personal style and values. Person by person, sale by sale, we are building a new model to replace the old. With GMS of \$1.93 billion in 2014, I see the Etsy Economy emerging.

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# Etsy's Values

If you want to understand Etsy, you'll have to understand our values.

- We are a mindful, transparent and humane business.
- We plan and build for the long term.
- We value craftsmanship in all we make.
- We believe fun should be part of everything we do.
- We keep it real, always.

Fundamentally, we believe that companies can and should use the power of business to create social good, which is reflected in our status as a Certified B Corporation. Our commitment to using business as a force of good manifests itself in the way we run our business.

People often ask me how I choose between the success of our community and the success of our business. My answer is that I don't have to choose; we have built a business that does well when our community is successful. Making money matters to Etsy because our financial success creates long-term sustainability for our community. The more we invest in our platform, the more we enable Etsy sellers to pursue their craft and grow their businesses and the easier we make it for Etsy buyers to find unique goods. We call this Etsy's Empowerment Loop.

# Community

At Etsy, we believe that our strength and business success rest in the interdependence among Etsy sellers, Etsy buyers, responsible manufacturers and our employees—in other words, our community.

Etsy sellers represent a diverse mosaic of needs and aspirations. Some sellers are first-time small business owners and benefit greatly from our seller support and education programs. The vast majority of sellers on Etsy are one-person shops, and we continue to embrace and develop new ways to support them. Other sellers have grown and need help scaling with the assistance of responsible manufacturers, creating opportunity for other participants in the Etsy Economy. In all cases, we empower each Etsy seller to succeed on her own terms.

I have heard concerns that by allowing our sellers to partner with responsible manufacturers, we are diluting our handmade ethos. I share our community's desire to preserve what is special about Etsy. After all, Etsy has always served as an antidote to mass manufacturing. We still do. With our vision of responsible manufacturing, we are promoting a new, people-centered model in which artisans can preserve the spirit of craftsmanship and grow responsibly by collaborating with people at small-batch manufacturers to make their goods. This brings more hands together to build both products and

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more diverse local, living economies. These local, living economies band together into a larger Etsy Economy made up of individuals with diverse roles but all sharing a collective vision of an economy based on community.

When individuals share a collective vision, the power and possibility of community manifest in profound ways. Etsy is, by design, a collection of many small things. As we grow, Etsy becomes a larger collection of individuals and communities, with compounding benefits when they connect with each other. Etsy sellers have self-organized into more than 10,000 groups around the world, known as “Etsy Teams.” They provide local support to each other and collaborate with Etsy on initiatives, such as teaching entrepreneurship to economically disadvantaged people in their communities, lobbying the government on issues important to Etsy sellers, running local craft fairs and translating Etsy’s site into other languages.

In 2012, Mayor Larry Morrissey reached out to me on Twitter asking how to build an Etsy Economy in his community of Rockford, Illinois. Rockford is a city that has faced challenges familiar to many cities in America and around the world: loss of manufacturing jobs, high unemployment and a struggling economy. We worked with Mayor Morrissey, members of the local Rockford Etsy Team, the public education system, local arts organizations and the public housing authority to launch the Etsy Craft Entrepreneurship Program. This program teaches people with a craft skill that entrepreneurship and economic opportunity are within reach on our platform. We have extended this program to 10 cities around the world and see it as an inspirational model for even deeper community involvement in the coming years.

Our concept of community includes the cities where we live and work, and we run Etsy in a way that supports our own local economy and ecosystem. At our headquarters in Brooklyn, twice a week we serve a meal that we call “Eatsy.” Our approach is to foster community and productivity through a meal, designed for employees to eat together on picnic-style benches. This meal allows employees to engage with each other, within and across teams, and increases team-building and work relationships throughout the company. Eatsy also serves as an end point for company-wide meetings, so that employees can continue the conversation on important workplace topics.

In 2014, we sourced food from over 40 local businesses with an emphasis on our health and ecological impact. We eat on compostable plates, and employees sign up to deliver our compost by bike to a local farm in Red Hook, Brooklyn, where it is turned back into the soil that produces the food we enjoy together. In this way, Eatsy goes into the very soil we live and work on. Eatsy is a metaphor for how I think about many aspects of our business and our relationship to the world around us: regenerative, mindful, interdependent, community-based and fun.

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# Why Etsy Should be a Public Company

I believe the principles and resources of being a public company align well with the model of shared success that is fundamental to Etsy's way of doing business, namely that we make money when our sellers make money. Investing in the growth of our business and increasing Etsy's visibility will help elevate Etsy sellers and attract more buyers, which creates more opportunities for everyone.

## **Accountability / transparency**

Etsy has a long history of providing data to the community, everything from key financial metrics, to our gross happiness index, to our carbon footprint data, to our workplace diversity stats. As a public company, we will be able to provide a higher level of transparency and accountability to a broader number of people.

## **Community participation**

Being a private company means that most people don't have an opportunity to invest in Etsy. When Etsy is a public company, anyone will be able to own a piece of Etsy, including our sellers, our buyers and anyone else who shares Etsy's values and mission. These shareholders will be valued members of our community.

## **Long-term sustainability**

We want to be a company that spans generations. Eighty-six of the original companies in the S&P 500 index are still publicly traded after 58 years. I view going public as an important step towards providing Etsy with the capital and long-term corporate structure to achieve similar longevity.

## **Making the world more like Etsy**

I believe that Etsy can be a public company that holistically integrates the concerns of people and the planet, the present and the future, profitability and accountability. If we succeed, then other companies might replicate our model. We think the world will be a better place for it.

As a public company, we will continue to concentrate on the long term. Our mission to reimagine commerce is a big goal and it will take time to achieve it; success will be based on strategies that evolve over years and decades, not just quarters. We are more focused on creating long-term results for us and our community than short-term results that lack that promise.

I believe this approach will deliver the most sustainable long-term returns to investors.

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When we're public, we do not plan to give quarterly or annual earnings guidance. I think providing quantitative earnings guidance is misaligned with Etsy's mission. For example, the pressure to hit a quarterly financial target could incent us too heavily to seek near-term gains, which could diminish our ability to fulfill our larger mission over the long-term.

We will continue to be transparent with our investors. Instead of providing guidance in the traditional sense, I plan to talk frequently with our investors about our progress, challenges and opportunities. I welcome investors who share our long-term, community-oriented philosophy.

## What's Ahead

I am intensely grateful to all of the people who have given so much of themselves to build Etsy, and I am excited to welcome new like-minded shareholders to our community.

We are entering a new era. I believe that successful businesses will be those that combine vision, execution and discipline with values, heart and conviction. That is how I plan to lead Etsy and work with our community to build a more fulfilling and lasting world through commerce. Etsy will be entering its second decade this year, and we look forward to many more in our new form as a public company.

Onward,

A handwritten signature in black ink, appearing to read "Chad Rubin".

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# Business

## Our Mission

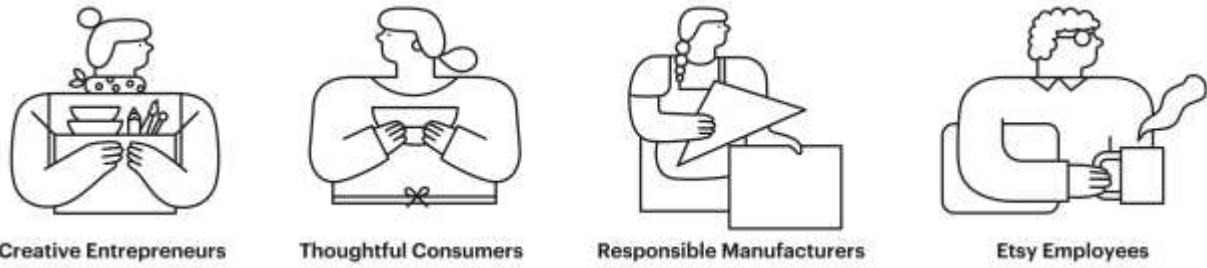
Our mission is to reimagine commerce in ways that build a more fulfilling and lasting world.

We are building a human, authentic and community-centric global and local marketplace. We are committed to using the power of business to create a better world through our platform, our members, our employees and the communities we serve.

## Overview

We operate a marketplace where people around the world connect, both online and offline, to make, sell and buy unique goods. Handmade goods are the foundation of our marketplace. Whether crafted by an Etsy seller herself, with the assistance of her team or with an outside manufacturer in small batches, handmade goods spring from the imagination and creativity of an Etsy seller and embody authorship, responsibility and transparency. We believe we are creating a new economy, which we call the Etsy Economy, where creative entrepreneurs find meaningful work and both global and local markets for their goods, and where thoughtful consumers discover and buy unique goods and build relationships with the people who sell them.

Etsy was founded in June 2005 in Brooklyn, New York as a marketplace for handmade goods and craft supplies. From those beginnings, we have built an innovative, technology-based platform that, as of December 31, 2014, connected 54.0 million members, including 1.4 million active sellers and 19.8 million active buyers, in nearly every country in the world. In 2014, Etsy sellers generated GMS of \$1.93 billion, of which 36.1% came from purchases made on mobile devices and 30.9% came from an Etsy seller or an Etsy buyer outside of the United States.



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## Our Community

Our community is the heart and soul of Etsy. Our community is made up of creative entrepreneurs who sell on our platform, thoughtful consumers looking to buy unique goods in our marketplace, responsible manufacturers who help Etsy sellers grow their businesses and Etsy employees who maintain our platform and nurture our ecosystem.

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Our business model is based on shared success: we make money when Etsy sellers make money. Our revenue is diversified, generated from a mix of marketplace activities and the services we provide Etsy sellers to help them create and grow their businesses. Marketplace revenue includes the fee an Etsy seller pays for each completed transaction and the listing fee an Etsy seller pays for each item she lists. Seller Services revenue includes fees an Etsy seller pays for services such as prominent placement in search results via Promoted Listings, payment processing via Direct Checkout and purchases of shipping labels through our platform via Shipping Labels. Other revenue includes the fees we receive from a third-party payment processor.

In 2014, Etsy sellers generated GMS of \$1.93 billion, up 43.3% over 2013. In 2014, we generated revenue of \$195.6 million, up 56.4% over 2013. In 2014, we generated a net loss of \$15.2 million and Adjusted EBITDA of \$23.1 million compared to a net loss of \$0.8 million and Adjusted EBITDA of \$16.9 million in 2013. See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” for more information and for a reconciliation of Adjusted EBITDA to net (loss) income, the most directly comparable financial measure calculated and presented in accordance with GAAP.

## Our Values

Our values are integral to everything we do.

*We are a mindful, transparent and humane business.* We believe that business interests and social and environmental responsibility are interwoven and aligned and that the power of business should be used to strengthen communities and empower people. To demonstrate our commitment, each year we publish a Values & Impact report to monitor and then publicly report our efforts to minimize the harm and maximize the benefit that we have on people and the planet. B Lab, an independent nonprofit organization, has certified us as a B Corporation for our adherence to rigorous social and environmental standards, and Fortune has recognized us as a great place to work in both 2013 and 2014.

*We plan and build for the long term.* We want to build a company that lasts, and we plan to measure our success in years and decades. Etsy sellers in particular depend on us and on our platform to grow their businesses, so we will strive to make decisions that are best for the long-term health of our ecosystem.

*We value craftsmanship in all we make.* Craftsmanship is the marriage of skill and passion. We believe every job at our company should demonstrate our commitment to craft. We are an engineering-driven company, and we think of our code as craft: we are makers of the products and services that our members use, and we approach the work we do with the same care and inspiration as do Etsy sellers.

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We believe fun should be part of everything we do. Our mission includes fostering a world in which personal fulfillment is a key element of success. We believe that this way of working is connected and joyful. We strive to do excellent work and bring a sense of humor and playfulness to it.

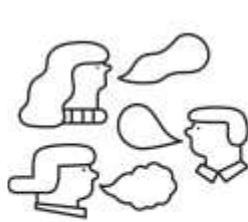
We keep it real, always. We have the courage and the will to do business in ways that are unconventional and impactful. We strive to stay genuine, maintaining integrity, humility and sincerity in everything we do. When we feel that we are not being true to our values or our mission, we are not afraid to stop and change course.

## Our Community

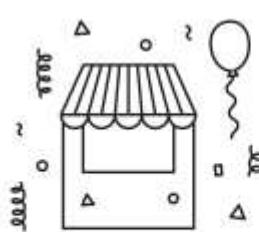
Our community includes Etsy sellers, Etsy buyers, responsible manufacturers and Etsy employees.

### Etsy Sellers: Creative Entrepreneurs

Etsy sellers join our community to be part of a vibrant global-local marketplace that allows them to express their creativity and turn their passion into a business while connecting to thoughtful consumers locally and around the world. As of December 31, 2014, there were 1.4 million active sellers on our platform and more than 11% of active sellers as of that date had been selling on Etsy for more than four years.



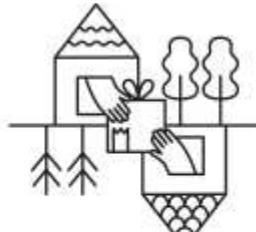
**1.4M** active sellers  
as of Dec 31, 2014



**11%** of active sellers have  
been on Etsy for 4+ years  
as of Dec 31, 2014



**86%** of sellers are women  
2014 Seller Survey



**95%** of sellers run their  
Etsy shop from home  
2014 Seller Survey

### Etsy Sellers

We support a diverse group of artists, makers, designers and collectors from around the world—from the solo artisan to the full-time jewelry maker with staff; from the antique furniture collector to the textile graphic designer partnering with a small-batch manufacturer.

Etsy sellers range from hobbyists to professional merchants, and have a broad range of personal and professional goals. In November 2014, we conducted a survey of U.S. Etsy sellers who made a sale in the preceding 12 months, to which 4,000 sellers responded. The 2014 Seller Survey reveals a unique population of Internet-enabled creative entrepreneurs who are building businesses on their own terms—prioritizing flexibility, independence and creativity. Some Etsy sellers are looking for extra pocket money, while others depend on their shops to support themselves and their families. According to our 2014 Seller Survey, among U.S. Etsy sellers:

- 86% are women;

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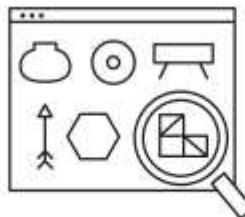
- 95% run their shops from their homes;
- 90% aspire to grow their sales in the future;
- 79% started their Etsy shop as an outlet for creativity;
- 65% started their Etsy shop as a way to supplement income; and
- 76% consider their Etsy shop to be a business.

## Etsy Buyers: Thoughtful Consumers

Etsy buyers visit our marketplace to discover a broad selection of unique goods that are hard to find elsewhere, ranging from a \$5 ornament to a \$50 hand-knit sweater to a \$2,000 custom-made coffee table. We believe many Etsy buyers are motivated by more than simply price and convenience; we believe they also value craftsmanship, artistry, uniqueness, authenticity and sustainability. We find that Etsy buyers want to know how items were made, where they were made and who made them. In our marketplace, Etsy buyers can enjoy a personalized shopping experience and direct interactions with Etsy sellers. Etsy buyers can also purchase customized items or other bespoke goods from Etsy sellers. By buying in our marketplace, Etsy buyers are supporting creative entrepreneurs in their local communities and around the world. As of December 31, 2014, there were 19.8 million active buyers on our platform.



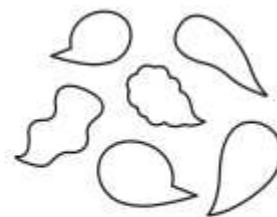
**21.8M** app downloads  
as of Dec 31, 2014



**4.3B** search pages viewed  
in 2014



**775M** listings favorited  
in 2014



**216M** messages sent  
in 2014

## Marketplace Activity

Etsy buyers also include retailers we have selected for our Wholesale offering, which we launched in August 2014. From local boutiques to national chains such as Nordstrom, West Elm and Whole Foods, retailers use our platform to connect with new artists and designers and to add unique and distinctive items to their store offerings. As of December 31, 2014, more than 6,500 local boutiques and three U.S. national retail chains had been invited to join our Wholesale offering.

## Responsible Manufacturers

We are committed to helping Etsy sellers who want to work with responsible, small-batch manufacturing partners to increase their production. An Etsy seller might work with a cut-and-sew shop to make clothes she has designed, a casting house that casts her wax models for her jewelry designs or a digital printing

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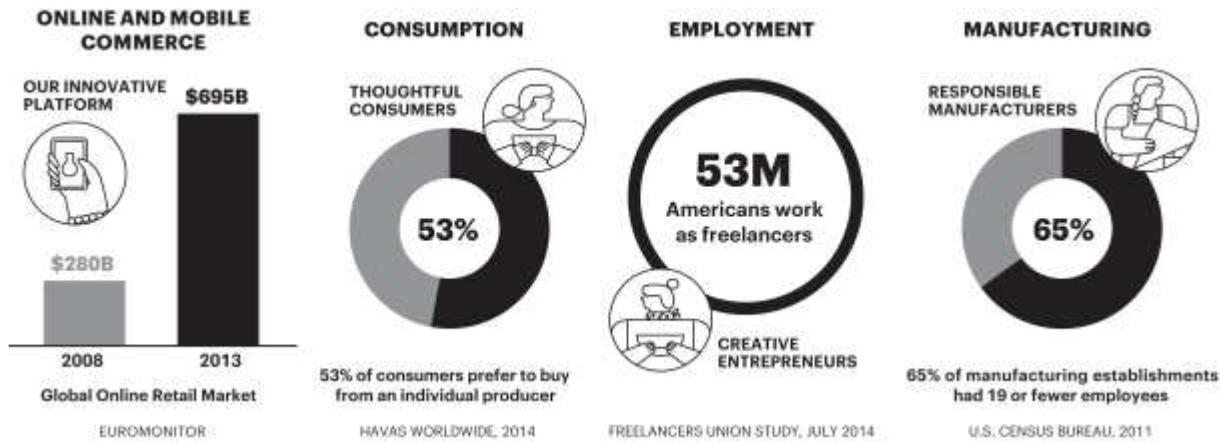
house that prints her photographs on household items. We ask Etsy sellers to work with manufacturers who adhere to our ethical expectations: humane working conditions, non-discrimination policies, sustainability practices and no child, youth or involuntary labor. As of December 31, 2014, we had approved more than 3,000 Etsy shops for over 5,000 manufacturing partnerships. Much of this production is local: as of December 31, 2014, 86% of manufacturers partnering with Etsy sellers were located in the same country as the Etsy seller.

## Etsy Employees

We too are members of our community. Whether crafting our policies, talking with Etsy sellers and Etsy buyers in our online forums or building the tools and services underlying our marketplace, our employees create lasting, authentic connections in our community. Etsy employees emphasize building personal relationships with Etsy sellers, visiting their shops, inviting them to our offices for lunch or celebrating with them at in-person events.

## Our Opportunity

We operate at the center of several converging macroeconomic trends in online and mobile commerce, employment, consumption and manufacturing. We believe that in combination these trends will benefit millions of people in our ecosystem around the world: Etsy sellers engaging in their creative passion, working for themselves and defining success on their own terms; Etsy buyers accessing a diverse, global marketplace of goods that have historically been found in highly fragmented markets; and, increasingly, responsible manufacturers using modern tools to craft goods in partnership with Etsy sellers.



## Trends in Our Favor

### Trends in Online and Mobile Commerce

Etsy sellers offer goods in dozens of online retail categories, including jewelry, stationery, clothing, home goods, craft supplies and vintage items. Euromonitor, a consumer market research company, estimated that the global online retail market was \$695 billion in 2013, up from \$280 billion in 2008, representing a

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compound annual growth rate, or CAGR, of 19.9%. This growth is expected to continue, with the global online retail market becoming a significantly larger portion of the total retail market, reaching \$1.5 trillion by 2018, implying a 16.6% CAGR from 2013.

Mobile commerce is also increasingly important in online retail. comScore estimated that since the first quarter of 2013, consumers visiting online commerce sites spent more than half of their browsing time on mobile devices; however, online commerce spending via mobile devices represented only 11% of total online commerce dollars in the third quarter of 2014.

## Trends in Employment

Whether motivated by economic necessity or personal preference, a growing number of people are turning to self-employment for their livelihoods.

In a 2012 survey of middle-class households in the United States by the Pew Research Center, 85% said that it was more difficult to maintain their living standards today than it was ten years ago. The erosion of middle-income jobs is not unique to the United States: we believe middle-class families in many developed countries face similar challenges. Responding to these challenges, many people supplement their incomes and support their families by becoming freelancers, and freelancers are now making significant contributions to their respective economies. A study commissioned in July 2014 by the Freelancers Union and Elance-oDesk, or the Freelancer Study, estimated that 53 million Americans are working as freelancers, or 34% of the U.S. workforce. The same study estimated that this freelance workforce adds \$715 billion to the U.S. economy each year.

**"By helping the people around me I am becoming the person I want to be in this world. There is no bottom line to good deeds, but they are the best kind of currency in life and in business."**



Brandi Harper, Etsy Shop: purlBknit, Brooklyn, NY

The Freelancer Study also found that millennials (workers under 35) represent a source of growth in the number of Americans working as freelancers. Millennials are more likely to freelance than older workers—38% of millennials are freelancing, compared to 32% of workers over 35—and many millennials have spent their entire working lives in this freelance era. Millennial freelancers are also more likely to search out work that has “a positive impact on the world” (62% of millennials vs. 54% of non-millennials) or is “exciting” (62% of millennials vs. 47% of non-millennials).

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Many other people are motivated by similar personal priorities to start their own businesses. In 2012, a Harvard Business School study found that “autonomy” was a top motivation in a faculty survey of 2,000 business founders, amongst all age cohorts and for both men and women.

Women are also contributing to the trend towards self-employment. According to an October 2012 analysis by Booz and Company, by 2020, 865 million women worldwide who have not previously been part of the economic mainstream will join as producers, consumers, employees and entrepreneurs. World Bank research shows that, in certain developing nations, over half of the women in the labor force are self-employed.

In combination, these data underscore the importance of tools that help people start and grow their businesses. We believe that many of these freelancers, millennials and women have creative skills that could provide a foundation for entrepreneurship, but that they often have little or no experience running their own businesses, and they typically lack the marketing resources, the technological expertise and the manufacturing and logistics capabilities to turn their creativity into a business.

### Trends in Consumption

Most large retailers today follow the same formula, emphasizing efficiency and scale and pressuring their suppliers to reduce their costs in order to serve mass-produced goods at the lowest-possible prices. We believe, however, that many consumers want to purchase goods that are unique and that reflect their personality and style, not simply mass-produced, generic goods. Some consumers want their purchases to reflect their values; they want to support retailers and suppliers that have responsible and sustainable policies toward their employees, their communities and the environment. Finding these goods can be difficult, as markets for such goods have historically been highly fragmented across boutiques, consignment stores and other venues and marketplaces.

**“The driftwood and birch for our docks is collected with the environment in mind. We carefully select wood from the beaches, lakes and forests of Maine that will not disturb eco-systems or natural habitats.”**



**Chris and Katie Francis, Lee Goodwin, Olivia Turrell, Etsy Shop: Docksmith, Brunswick, ME**

A 2014 Nielsen study reported that global consumers between the ages of 21 and 34 represent 51% of all consumers who are willing to pay extra for sustainable products. The Nielsen study also indicated that 55% of consumers worldwide are willing to pay extra for products and services from companies committed to social impact, a 10% increase from a similar study in 2011, and that 46% of those consumers identified support for small businesses and entrepreneurship as a key cause.

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Still other thoughtful consumers are looking to support their local communities and prefer buying goods that they can trace to an individual person or community. According to a 2014 Havas Worldwide case study, 53% of consumers say that when possible they prefer to buy directly from an individual producer than from a store or shopping center. These consumers prefer to bypass large manufacturers and retailers when possible in favor of buying locally and independently-produced goods.

### Trends in Manufacturing

Just as the power of computing, once reserved for government and large businesses, is now available to individuals on their personal computers and mobile devices, individuals and small businesses now have the ability to manufacture goods in their homes and studios using tools such as computer-assisted design, 3D printers, computer-controlled routers and other machines at a fraction of the historical cost. We believe the decrease in the size and the cost of these tools will make it easier for creative entrepreneurs to start new businesses. We also believe that small-batch manufacturers will be able to use these new technologies to provide high-quality manufacturing services to creative entrepreneurs. According to the U.S. Census Bureau, in 2011, approximately 65% of manufacturing establishments had 19 or fewer employees. Manufacturing plants that produce items such as apparel, leather, ornamental metal, furniture, printing materials, cutlery and jewelry tended to have even smaller workforces, as 80% had 19 or fewer employees. We believe that to scale their own businesses, creative entrepreneurs can access this growing number of small-batch manufacturers.

**"Finding a trusted manufacturer meant I could actually focus on expanding my business... The success of Little Hero Capes now has a ripple effect. Ultimately, the better I do, the better my town does."**



Allison Faunce, Etsy Shop: Little Hero Capes, Somerset, MA

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### Our Strengths

Our platform connects millions of Etsy sellers and Etsy buyers globally, making it one of the largest online marketplaces in the world. We have achieved our scale because of the following key strengths:

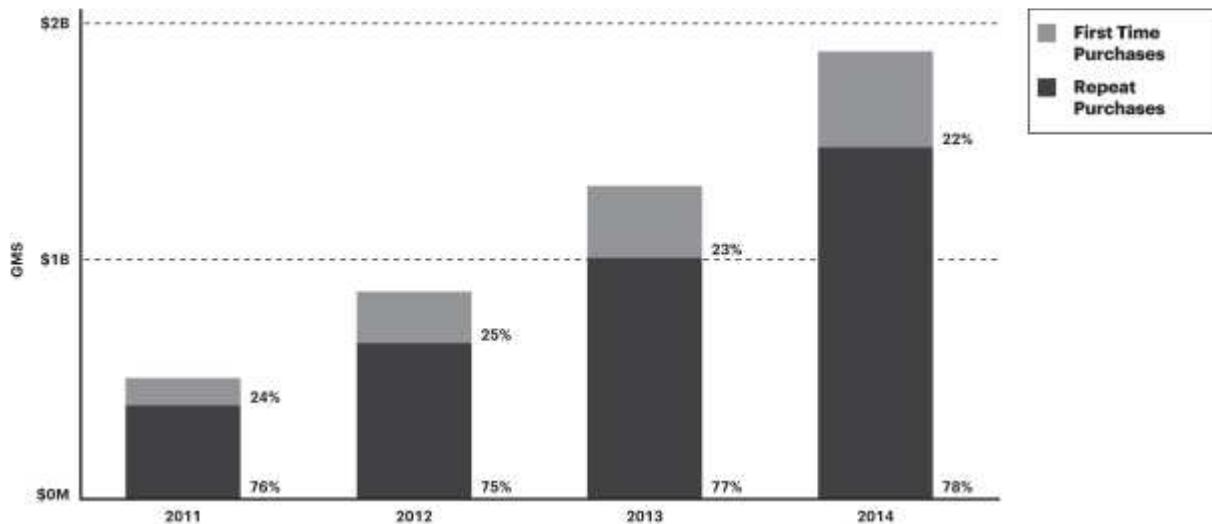
*Our Authentic, Trusted Marketplace.* We have built an authentic, trusted marketplace that embodies our values-based culture, emphasizing respect, direct communication and fun. We have developed a reputation for authenticity as a result of Etsy sellers' unique offerings and their adherence to our policies for handmade goods embodying the principles of authorship, responsibility and transparency. We establish trust in our marketplace by emphasizing the person behind every transaction. We deepen connections among our members through our direct communication tools, seller stories on our website and apps and in-person events, making a personal relationship central to the member experience. The authenticity of our marketplace and the connections among people in our community are the cornerstones of our business.

*Our Passionate, Engaged and Loyal Members.* Our members are passionate, engaged and loyal—not only to us, but to each other—building a strong community.

- Our active sellers and active buyers remain so for multiple years. For example, 32.3% of active sellers and 44.7% of active buyers as of December 31, 2011 continued to be active sellers and active buyers, respectively, three years later, as of December 31, 2014. In addition, as of December 31, 2014, 11% of active sellers have been selling on Etsy for more than four years. Likewise, as of December 31, 2014, 11% of active buyers have been members for more than four years.
- Our members' repeat sales and purchases drive GMS growth. In 2014, 78.5% of our GMS resulted from repeat purchases made by Etsy buyers, and 99.3% of our GMS was generated by repeat sales made by Etsy sellers.
- Our active sellers and active buyers also log into Etsy frequently. During the fourth quarter of 2014, 78% of active sellers as of December 31, 2014 and 63% of active buyers as of December 31, 2014 logged in to our marketplace.
- Our members also spend time with each other. For example, Etsy sellers and Etsy buyers sent 216 million messages on our platform in 2014 using our Conversations tool. As of December 31, 2014, 27.7% of active sellers belong to a self-organized Etsy Team, developing supportive personal relationships with other Etsy sellers as they build their independent creative businesses. Currently, over 10,000 Etsy Teams have formed around the world.

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The passion and loyalty demonstrated by Etsy sellers and Etsy buyers underlies the growth and scale of our platform. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Factors Affecting Our Performance—Growth and Retention of Active Sellers and Active Buyers” for more information.



### GMS Contribution by Purchase Type

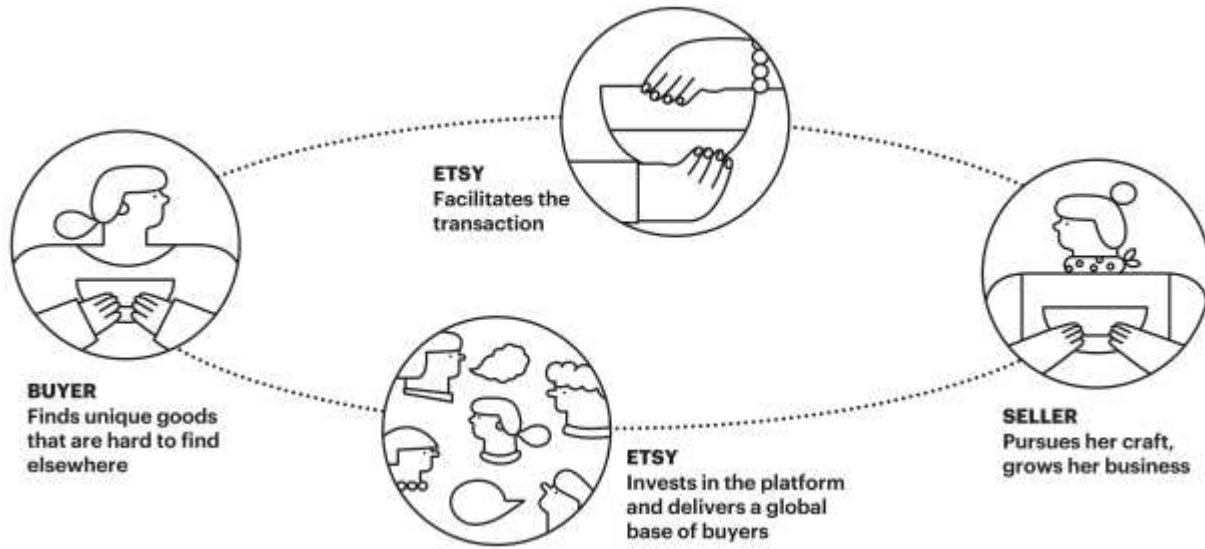
**Our Innovative Technology.** Our widely-respected engineering team has built a sophisticated platform that enables millions of Etsy sellers and Etsy buyers to smoothly transact across borders, languages and devices. Our team is at the forefront of the software engineering practice of continuous deployment. We update our code as often as every 20 minutes, and as many as 70 times per day, with more than 10,000 deploys during the year ended December 31, 2014. To enhance the performance of our platform, we collect and analyze a large volume of data. For example, we currently collect more than 1.8 million discrete metrics, which we expect will increase as we grow. Further, in the field of search relevance and purchase recommendations, we currently collect and analyze more than 1,200 terabytes of data to calculate search and personalization relevance signals in real time to recommend goods to each prospective Etsy buyer from a broad inventory of unique goods.

For the year ended December 31, 2014, 53.2% of our visits and 36.1% of our GMS were generated on a mobile device. We developed our “Sell on Etsy” mobile app to help the Etsy seller operate her shop and manage orders. Our mobile website and our mobile app for Etsy buyers, which we developed to keep Etsy buyers engaged wherever they are, includes search, discovery, curation, personalization and social shopping features, optimized for the mobile experience.

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**Our Scaled, Global-Local Marketplace.** Our marketplace is global-local, meaning that we focus on building local Etsy communities around the world. Etsy sellers and Etsy buyers in these local communities, in turn, have global reach and access through our platform. Currently, Etsy sellers and Etsy buyers are based in nearly every country in the world and our marketplace is available in 10 languages. In 2014, 30.9% of our GMS involved an Etsy seller or Etsy buyer outside of the United States. We believe our global-local marketplace creates strong competitive advantages outside the United States because our success is not dependent on scale in any given country; instead, the diverse location of Etsy sellers and Etsy buyers creates the scale, and a concentration of Etsy sellers and Etsy buyers in any given region can give rise to a vibrant local Etsy marketplace.

**Our Seller-Aligned Business Model.** Etsy sellers are drawn to our platform because we empower them to succeed, and as Etsy sellers succeed, so do we. Our seller-aligned business model creates network effects. The more we invest in our platform, the more we enable Etsy sellers to pursue their craft and grow their businesses and the easier we make it for Etsy buyers to find unique goods. We call this Etsy's Empowerment Loop. Some 76% of Etsy sellers consider their Etsy shops to be businesses and 90% want to grow their businesses, as indicated by our 2014 Seller Survey. We focus on offering Seller Services that help an Etsy seller spend more of her time on her creative passion and less of her time on the administrative aspects of running a business. During the year ended December 31, 2014, 46.1% of Etsy sellers used at least one of our Seller Services. Similarly, we have launched our manufacturing and Wholesale offerings in an effort to enable an Etsy seller to grow her business on our platform.



## Etsy Empowerment Loop

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# Our Strategy: The Path Ahead

*Make Etsy an Everyday Experience.* The power of human connection is central to the Etsy member experience. We emphasize relationships, connecting creative entrepreneurs to thoughtful consumers around the world, and we continually strive to make those connections a daily habit for our members.

The everyday experience starts with mobile. In 2014, 53.2% of our visits and 36.1% of our GMS were generated on a mobile device:

- We will continue to help the Etsy seller manage her shop, connect with Etsy buyers and sell her goods on our platform, all on her mobile device. We plan to bring the Etsy experience to local communities, using mobile technology to highlight Etsy sellers' goods in nearby brick-and-mortar stores and crafts fairs.
- We will continue to make it easy and fun for Etsy buyers to connect with Etsy sellers and to discover and purchase Etsy sellers' unique goods, particularly through mobile devices. We plan to improve Etsy buyers' engagement with our community through enhanced content, search and discovery.

*Build Local Marketplaces, Globally.* Our vision is global and local. In 2014, 28.9% of Etsy sellers were located outside the United States, and 30.9% of our GMS involved an Etsy seller or Etsy buyer outside of the United States. Although we promote cross-border transactions, our strategy is to build and deepen local Etsy communities around the world, each with its own ecosystem of Etsy sellers and Etsy buyers. To meet this goal, we plan to invest in local marketing and content and local payment and shipping solutions in countries around the world. We believe our locally-focused work will broaden the reach of our global platform.

**"Being a global platform, Etsy was able to connect my business to buyers from across the world, 24 hours a day, 7 days a week. Without this global reach my business simply would not have thrived as it has."**

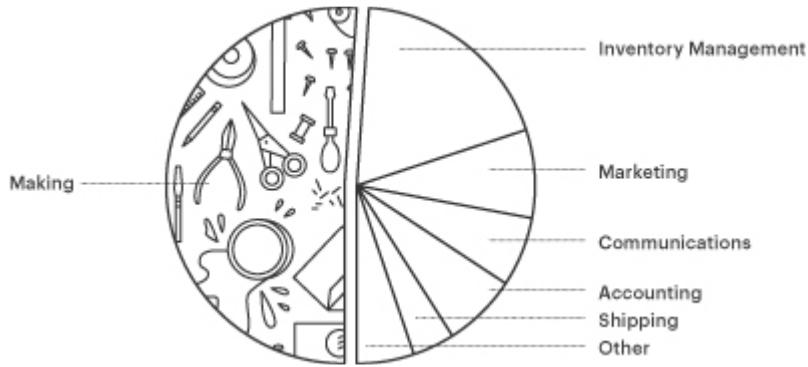


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Kamma Spring, Etsy Shop: Lorgie, Fremantle, Australia

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*Offer High-impact Seller Services.* Seller Services, such as Promoted Listings, Direct Checkout and Shipping Labels, help an Etsy seller spend more time on the pleasures of her craft and less time on the administrative aspects of her business. Seller Services represented \$42.8 million, or 34.2%, of our revenue in 2013, a 169.9% increase over 2012, and \$82.5 million, or 42.2%, of our revenue in 2014, a 92.7% increase over 2013. According to our 2014 Seller Survey, for every hour that an Etsy seller spends making her products, she spends another hour doing business-related tasks, including inventory management, shipping, customer service, marketing and accounting. We intend to enhance existing Seller Services, extend their geographic reach and introduce new ones to increase the amount of time an Etsy seller can devote to her craft.



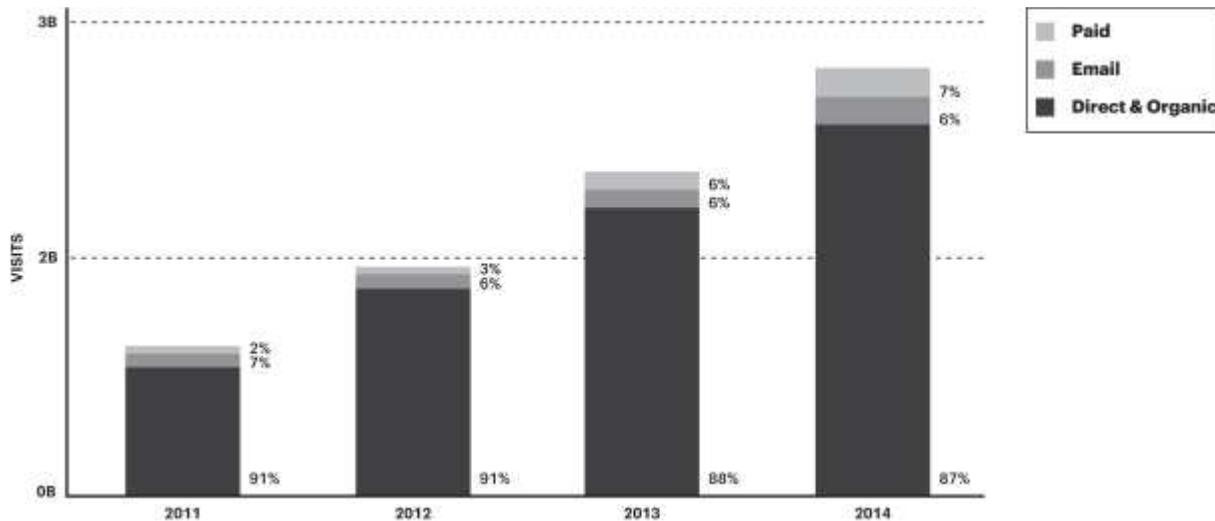
## How an Etsy Seller Spends Her Time

*Expand the Etsy Economy.* We intend to fulfill our mission to reimagine commerce by expanding the impact of our platform beyond our community. By further developing our manufacturing program, we believe we will help Etsy sellers who want to grow their businesses connect with skilled partners, while helping to revitalize small-batch manufacturing in local communities. We will also continue to focus on our Wholesale offering, which we launched in August 2014, so that Etsy sellers can sell their products to select retail partners such as Nordstrom, West Elm and Whole Foods. Finally, we plan to focus on strategic partnerships, technological advances and public-private endeavors such as our Craft Entrepreneurship program, which we believe will bring the benefit of the Etsy Economy to more people and more communities.

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*Invest in Marketing.* We believe that the rapid growth of our marketplace is a testament to our compelling value proposition for Etsy sellers and Etsy buyers. Etsy sellers and Etsy buyers have been our best marketers, and the majority of our visits have come from direct and organic channels. Historically, we have invested relatively small amounts in marketing. We spent only \$10.9 million on marketing in 2012 and only \$17.9 million in 2013. In 2014, we began increasing our brand and digital marketing efforts and spent \$39.7 million in marketing, up 122% from 2013.

We plan to continue to increase our marketing spending on traditional and online media to increase awareness of our brand and attract additional members to our ecosystem.



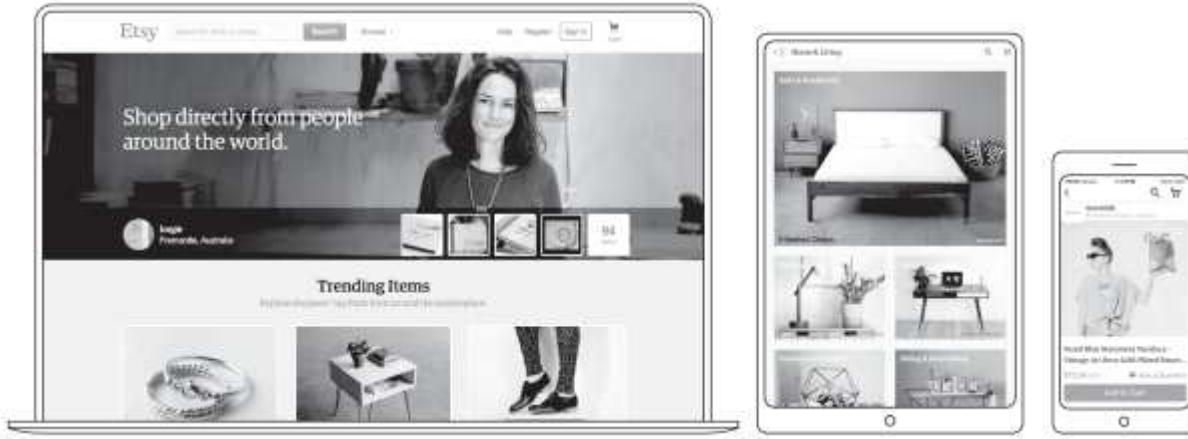
### Visits to Etsy by Channel

Our investment in marketing has shown early signs of success. Beginning in the fourth quarter of 2013, we strategically increased our marketing spending in the United Kingdom, our second largest market in terms of number of active sellers, with a goal of growing the number of Etsy buyers in the United Kingdom. In the following twelve months, we spent five times more on search engine marketing in the United Kingdom during the twelve months ended September 30, 2014 than we did during the same period in the prior year. During the twelve months ended September 30, 2014, the number of active buyers in the United Kingdom grew 112.9% year-over-year, compared to 89.0% year-over-year in the same period in the prior year. Additionally, Etsy buyers in the United Kingdom spent more in our marketplace, with the amount spent increasing by 114.2% year-over-year versus 64.7% year-over-year in the same period in the prior year. Our success in the United Kingdom demonstrates our ability to accelerate growth with marketing improvements and increased marketing spending. We intend to apply the key lessons from our experience in the United Kingdom into growing other local Etsy markets around the globe.

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# Our Platform

Our platform is an authentic vehicle for person-to-person commerce, both globally and locally. Our platform includes our marketplace, our Seller Services, our technology and our community, both online and offline. The core of our platform is our marketplace, which connects people around the world to make, sell and buy unique goods.



## Connecting People through Our Platform

### The Etsy Seller Experience

Our platform makes it easy for an Etsy seller to open an Etsy shop and operate her business. We help the Etsy seller in the following ways:

- *Seller Services.* We offer a variety of services to help Etsy sellers build their personal brands, engage potential customers and complete transactions. These services include:
  - *Promoted Listings.* Our Promoted Listings offering enables an Etsy seller to pay a cost-per-click based fee to feature and promote her goods in search results generated by Etsy buyers on our platform. This service allows an Etsy seller to target Etsy buyers who are specifically searching for goods similar to those she offers for sale. As of December 31, 2014, 18.2% of active sellers used Promoted Listings in 2014.
  - *Direct Checkout.* Our Direct Checkout offering allows Etsy sellers to accept various forms of payment such as credit cards, debit cards and Etsy gift cards. As of December 31, 2014, Direct Checkout was available in 22 countries and 10 currencies. Once an Etsy buyer makes payment, the Etsy seller receives the funds in her own bank account and in her local currency. In addition, in October 2014, we expanded Direct Checkout to enable an Etsy seller in the United States to use our “Sell on Etsy Reader” to accept credit card and debit card payments in person, whether at her store or her booth at a craft fair. As of December 31, 2014, 36.1% of active sellers used Direct Checkout in 2014.

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- *Shipping Labels.* Etsy sellers can purchase United States Postal Service and Canada Post shipping labels through our platform with the appropriate amount of postage. The ability to print shipping labels at home reduces the cost and time it takes Etsy sellers to ship goods to Etsy buyers. As of December 31, 2014, 21.4% of active sellers in the United States and Canada purchased shipping labels through our platform in 2014.



## Use of Seller Services in 2014

- *Mobile.* We developed our “Sell on Etsy” mobile app to help Etsy sellers operate their shops and manage orders. Etsy sellers can also access communication and shop management tools and help resources through the Sell on Etsy mobile app. From its launch in April 2014 through December 31, 2014, 21.9% of active sellers used our Sell on Etsy app.
- *Seller Dashboard.* Etsy sellers can analyze visits to their shop and listings, estimate the effectiveness of their spending on Promoted Listings, monitor orders and track sales using our online seller dashboard. Etsy sellers can access the dashboard on our website or on our Sell on Etsy mobile app.
- *Education.* We provide extensive educational resources to teach Etsy sellers how to build and grow their businesses on our platform through blog posts, video tutorials, the Etsy Seller Handbook (available on our website), access to our online forums, and insights from our support teams. In addition to our own educational resources, Etsy sellers connect through Etsy Teams to build personal relationships, collaborate, and educate and support each other.

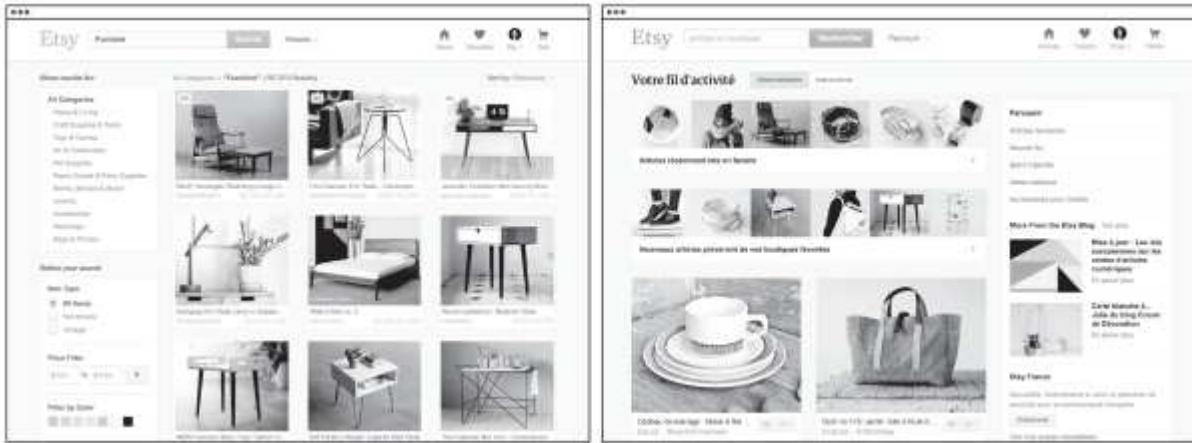
## The Etsy Buyer Experience

To help Etsy buyers discover and purchase items that they love, we provide a number of tools, including:

- *Communication.* We believe human connection is central to Etsy buyers’ engagement. Etsy buyers and Etsy sellers use the Conversations tool on our platform to communicate, person to person, about their orders, to request custom goods or personalization of goods or simply to have a conversation about the product or the process. In 2014, our members sent 216 million messages on our platform.
- *Search and discovery.* Our platform is engineered to provide a personalized experience to each Etsy buyer that adjusts in real time based on her interactions with our marketplace. An Etsy buyer may search for an item using our search tool bar and filter the results by color, price, location or other characteristics. She may browse through items, creating an activity feed by “favoriting” items that catch

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her eye and by following shops and tastemakers. In 2014, our members tagged 775 million favorites on our platform. We glean insights from Etsy buyers' interactions through our machine-learning algorithms and through traditional information retrieval techniques, such as cookies. We use these insights to personalize the activity feed an Etsy buyer sees when she comes to Etsy, with suggestions of shops or tastemakers to follow and items to buy or favorite. We use the data we collect and the insights we gain to match Etsy sellers' goods with Etsy buyers' tastes and interests. Our community is large and engaged, with more than 4.3 billion search page views in 2013.



## Discovering Unique Goods

- *Mobile.* We strive to keep Etsy buyers engaged wherever they are, by providing the functionality of our website in iOS and Android mobile apps, specifically crafted for Etsy buyers. Our mobile apps for Etsy buyers include search and discovery, curation, personalization and social shopping features similar to those that Etsy buyers enjoy on our desktop site. Our mobile apps have been downloaded 21.8 million times as of December 31, 2014.

## Our Policies

Our members rely on us to maintain a marketplace that meets their expectations for authenticity. Our policies are designed to give the Etsy buyer the comfort that she is purchasing unique goods from a small business that adheres to certain principles.

Most fundamentally, we require that goods listed in our marketplace be handmade, vintage or craft supplies. Handmade items begin with the imagination and creativity of the Etsy seller. To conform to our vision of handmade, we ask that the Etsy seller follow these three principles:

- *Authorship* : The Etsy seller should have a meaningful design and creative role in the items she is selling.
- *Responsibility* : The Etsy seller should know how her goods are made and by whom.
- *Transparency* : The Etsy seller should be open and honest about how her goods are made and by whom.

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Etsy buyers enjoy a high degree of insight into Etsy sellers' business practices. Our policies encourage Etsy sellers to be transparent about themselves, their businesses and the goods they sell. We enforce our policies through the following:

*Integrity team* . The job of our Integrity team is to remove items that do not belong in our marketplace. We use a combination of machine learning, automated systems and community-generated queries and flags to review items and shops that may be in violation of our policies.

*Trust and Safety team* . Our Trust and Safety team uses human review and sophisticated automated tools and algorithms to detect fraud. We cancel transactions if fraud is detected, and we strive to prohibit bad actors from using our platform.

*Responsible Seller Growth team* . Our Responsible Seller Growth team reviews the application of every Etsy seller who applies to work with an outside manufacturer. We do not review or approve the manufacturer; instead, we look to the Etsy seller to provide evidence of authorship, responsibility and transparency.

*Our Case System* . Etsy sellers and Etsy buyers communicate via our Case System in instances when items do not arrive or are not as expected. Disputes are often resolved without our involvement. When necessary, we intervene, and when appropriate, we may suspend or terminate the accounts of members who do not adhere to our policies.

## Our Unique Engineering Culture and Approach

Etsy engineering is widely known for its thought-leading approaches to software development as well as its unique engineering culture. Our engineering team coined the phrase "Code as Craft" to describe our love for building software and our melding of engineering discipline and individual craftsmanship. We believe our engineers have the skills, practices and experience needed to embrace the change the future inevitably brings. As of December 31, 2014, our engineering team consisted of 241 employees.



Code as Craft

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Our engineering culture is built on three principles:

- *A mindful and humane approach.* We trust humans and we build for humans. We believe that judgment, mindfulness and intelligence can be found and developed in the people doing the work, and our environment provides continuous opportunities to develop those traits. An organization of engaged, empowered, mindful engineers can adapt to inevitable and unpredictable change.
- *A spirit of generosity.* Our engineers believe that we are part of a larger community of practice and a larger world, and part of each engineer's job is improving our team, our company, our industry and the world. Every engineer is expected to contribute to open source software projects and to write or speak publicly. We believe this increases job satisfaction and retention, gives us outsized influence in our industry and eases onboarding as prospective employees can learn about our culture before joining us.
- *Adaptability and learning.* We learn through honest, blameless reflection on lessons and surprises. We believe that traditional root-cause analysis makes learning from mistakes difficult. Our blameless post-mortem process is a widely-cited technique that we believe is becoming best practice among organizations that value innovation. Blameless post-mortems drive a significant percentage of our development as we analyze what about our production environment was less than optimal and rapidly make corresponding adjustments.

## Our Work Culture

We pride ourselves on our values-based culture. We emphasize respect, direct communication and fun. We focus on maximizing our employees' professional and personal well-being. We evaluate performance not just on traditional business metrics, but also on societal and environmental goals and on adherence to our mission and values.

We believe employee happiness comes from engaging and fulfilling work and from ample personal and professional growth opportunities. We invest heavily in employee development by offering coaching, skills workshops and training. We actively encourage personal education through arts and crafts workshops and employee-taught classes called "Etsy School," covering subjects ranging from screen printing to Python programming.

As of December 31, 2014, we had 685 employees worldwide, with 430 in our offices in Brooklyn, New York. Of those employees, we had 153 in member operations, 332 in product and engineering, 89 in marketing and 111 in corporate. Our product development expenses were \$18.7 million, \$27.5 million and \$36.6 million in the years ended December 31, 2012, 2013 and 2014, respectively.

We proactively work and recruit to improve the gender balance at all levels of our company. As of December 31, 2014, 51% of employees identified as female. As of December 31, 2014, women comprised 46% of managers and 28% of product, engineering and technical operations employees.

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### **Etsy.org**

In January 2015, we formed Etsy.org, a Delaware non-profit organization, to focus on building innovative educational programs that reimagine how and to whom business is taught. In particular, Etsy.org will focus on educating women and other under-represented entrepreneurial populations and empowering them to build businesses that regenerate communities and the planet. In January 2015, we issued 376,471 shares of our common stock to Etsy.org, and we expect to use \$300,000 of the proceeds of this offering to partially fund Etsy.org.

### **Competition**

We compete with retailers for the Etsy seller. An Etsy seller can list her goods for sale with online retailers or sell her goods through local consignment and vintage stores and other venues and marketplaces. She may also sell wholesale directly to traditional retailers, including large national retailers, who discover her goods in our marketplace or otherwise. We also compete with companies that sell software and services to small businesses, enabling an Etsy seller to sell from her own website or otherwise run her business independently of our platform. We are able to compete for Etsy sellers based on our brand awareness, the breadth of our online presence, the number and engagement of Etsy buyers, our Seller Services, our fees, the strength of our community and our values.

We also compete with retailers for the attention of the Etsy buyer. An Etsy buyer has the choice of shopping with any online or offline retailer, whether large marketplaces or national retail chains or local consignment and vintage stores or other venues or marketplaces. We are able to compete for Etsy buyers based on the unique goods that Etsy sellers list in our marketplace, awareness of our brand, the person-to-person commerce experience, our reputation for authenticity, our mobile apps, ease of payment and the availability and reliability of our platform.

### **Intellectual Property**

Protection of our technology and intellectual property is an important component of our success. We rely on intellectual property laws, primarily including trade secret, copyright and trademark laws in the United States and abroad, and we use confidentiality procedures, non-disclosure agreements, invention assignment agreements and other contractual rights to protect our intellectual property.

While we have obtained or applied for patent protection for some of our intellectual property, we generally do not rely on patents as a principal means of protecting intellectual property. We register domain names, trademarks and service marks in the United States and abroad. We also rely upon common law protection for certain trademarks.

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Circumstances beyond our control could pose a threat to our intellectual property rights. Effective intellectual property protection may not be available in the United States or other countries in which we operate. In addition, the efforts we have taken to protect our intellectual property rights may not be sufficient or effective. Any impairment of our intellectual property rights could harm our business, our ability to compete and our operating results.

## Facilities

Our headquarters are located in Brooklyn, New York where we occupy approximately 104,493 square feet under a lease that expires in 2016. We use these facilities for our principal administration, technology and development and engineering activities. Our European headquarters are located in Dublin, Ireland.

In May 2014, we signed a lease for new corporate headquarters, also located in Brooklyn, which we expect to occupy in 2016. The lease covers two buildings totaling approximately 198,635 square feet and will expire approximately ten years from the later to occur of the two buildings' lease commencement dates. We expect that our new space will allow us to grow our local staff, will be LEED-certified and will support our efforts to reduce our environmental footprint.

We also maintain offices in Hudson (New York), San Francisco, Berlin, Dublin, London, Paris, Melbourne and Toronto.

We believe that our current facilities are suitable and adequate to meet our ongoing needs and that, if we require additional space, we will be able to obtain additional facilities.

## Government Regulation

As with any company operating on the Internet, we grapple with a growing number of local, national and international laws and regulations. These laws are often complex, sometimes contradict other laws, and are frequently still evolving. Laws may be interpreted and enforced in different ways in various locations around the world, posing a significant challenge to our global business. For example, U.S. federal and state laws, EU directives, and other national laws govern the processing of payments, consumer protection and the privacy of consumer information; other laws define and regulate unfair and deceptive trade practices. Still other laws dictate when and how sales or other taxes must be collected. Laws of defamation apply online and vary by country. The growing regulation of e-commerce worldwide could impose additional compliance burdens and costs on us or on Etsy sellers, and could subject us to significant liability for any failure to comply. Additionally, because we operate internationally, we need to comply with various laws associated with doing business outside of the United States, including anti-money laundering, anti-corruption and export control laws.

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## Legal Matters

From time to time, we are involved in legal proceedings and subject to claims that arise in the ordinary course of business. Although the results of legal proceedings and claims cannot be predicted with certainty, we believe we are not currently party to any legal proceedings which, if determined adversely to us, would individually or taken together have a material adverse effect on our business, operating results, cash flows or financial condition. There can be no assurances that we will obtain a favorable outcome. Regardless of the outcome, such proceedings can harm us because of defense and settlement costs, diversion of resources and other factors.

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# Management

## Executive Officers and Directors

Our executive officers and directors, and their ages and positions as of January 31, 2015, are listed below:

Name	Age	Position(s)
<i>Executive Officers:</i>		
Chad Dickerson	42	President, Chief Executive Officer and Chairman
Kristina Salen	43	Chief Financial Officer
Jordan Breslow	59	General Counsel and Secretary
Kellan Elliott-McCrea	37	Chief Technology Officer and Chief Architect
<i>Non-Employee Directors:</i>		
James W. Breyer	53	Director
M. Michele Burns	57	Director
Jonathan D. Klein	54	Director
Fred Wilson	53	Lead Independent Director

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- (1) Member of audit committee
  - (2) Member of compensation committee
  - (3) Member of nominating and corporate governance committee

The following is a brief biography of each of our executive officers and directors:

### Executive Officers

*Chad Dickerson* has served as our president and chief executive officer since July 2011, as a member of our board of directors since September 2011, and has served as the chairman of our board of directors since October 2014. He previously served as our chief technology officer from September 2008 until July 2011. Prior to Etsy, Mr. Dickerson was the director of the Advanced Products/Brickhouse team at Yahoo! Inc., a multinational Internet company, from December 2007 to August 2008, was the head of the Yahoo! Developer Network from June 2006 to December 2007 and was the director of platform evangelism from August 2005 to May 2006. Prior to Yahoo!, Mr. Dickerson served as chief technology officer at InfoWorld Media Group, Inc., an information technology online media business, from April 2001 to August 2005. Mr. Dickerson worked on early web-based newspapers, including Salon.com from July 1998 to March 2001. Mr. Dickerson holds a B.A. in English literature from Duke University. Mr. Dickerson should serve as a member of our board of directors because he is our chief executive officer and because he has extensive experience in media and technology companies.

*Kristina Salen* has served as our chief financial officer since January 2013. Prior to Etsy, Ms. Salen led the media, Internet, and telecommunications research group of FMR LLC d/b/a Fidelity Investments, a multinational financial services company, from January 2006 to January 2013. Prior to Fidelity, Ms. Salen worked in various financial and executive roles at several companies, including Oppenheimer Capital LLC,

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an investment firm, from June 2002 to December 2005; Merrill Lynch & Co., Inc., a financial services corporation acquired by Bank of America Corporation in January 2009, from June 1997 to June 2001; Lazard Frere & Co. LLC, a global financial advisory and asset management firm, from April 1996 to June 1997; and SBC Warburg, an investment bank, from December 1994 to April 1996. Ms. Salen has served as a member of the board of directors of Cornerstone OnDemand, Inc., a cloud-based talent management software solution company, since July 2014. Ms. Salen holds a B.A. in Political Science from Vassar College and an M.B.A. in finance from Columbia University.

*Jordan Breslow* has served as our general counsel since November 2013 and as secretary since September 2014. Prior to Etsy, Mr. Breslow served as general counsel of New Island Capital Management, Inc., an impact investment advisor, from April 2011 to November 2013; as general counsel of Silver Spring Networks, Inc., a provider of smart grid networks, from May 2008 to September 2010; and as general counsel of Opsware, Inc. (formerly called Loudcloud), a provider of data center software, from February 2000 to September 2007. Prior to that, Mr. Breslow was an associate and a partner at several law firms. Mr. Breslow has also served as a Adjunct Professor at the New York University School of Law since February 2015. Mr. Breslow has also lectured at University of California-Berkeley Law School and San Francisco State University. Mr. Breslow holds a B.A. in Anthropology from San Francisco State University and a J.D. from University of California, Hastings College of the Law.

*Kellan Elliott-McCrea* has served as our chief technology officer and chief architect since July 2011, and previously served as our vice president of engineering from July 2010 to July 2011. Prior to Etsy, Mr. Elliott-McCrea worked as Flickr's architect at Yahoo! from May 2006 to June 2010. Prior to Yahoo!, Mr. Elliott-McCrea served as an engineer at several start-ups. Mr. Elliott-McCrea founded his first Internet startup, Metaevents, Inc., a developer of an online calendar publishing tool, in 1997, which was acquired in 2000 by AnyDay.com, Inc., an online free calendar and scheduling service, shortly before AnyDay.com, Inc. was acquired by Palm, Inc., a mobile product manufacturer, where he served as a principal engineer. Mr. Elliott-McCrea is the author of several well-known open source libraries, including MagpieRSS which is a key component of a large number of open source applications. He is also a co-author of the IETF security standard: OAuth.

### Non-Employee Directors

*James W. Breyer* has served as a member of our board of directors since January 2008. Mr. Breyer has been a partner of Accel Partners, a venture capital firm, since 1987. Mr. Breyer is also the founder and has been the chief executive officer of Breyer Capital, an investment firm, since July 2006. Mr. Breyer has served on the board of directors of Twenty-First Century Fox, Inc., a media company, since June 2013, and also serves on the boards of directors of several privately-held companies. Mr. Breyer has served as a fellow of the Harvard Corporation, a Harvard University Governing Board, since 2013. Previously, Mr. Breyer served as a member of the boards of directors of Brightcove, Inc., an online video and publishing platform, from 2005 to 2013; News Corporation, a mass media company, from 2011 to 2013; Wal-Mart Stores, Inc., a multinational retail company, from 2001 to 2013; Facebook, Inc., a worldwide social network, from 2005 to 2013; Dell Inc., a worldwide merchant of technology products and services, from 2009 to 2013; Model N, Inc., a provider of

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revenue management solutions, from 2000 to 2013; Prosper Marketplace, Inc., a peer-to-peer online credit platform operator from 2005 to 2012; and Marvel Entertainment, Inc., a character-based entertainment company, from 2006 to 2009. Mr. Breyer holds a B.S. in interdisciplinary studies from Stanford University and an M.B.A. from Harvard University. Mr. Breyer should serve as a member of our board of directors due to his extensive experience with retail, media and technology companies, as a venture capitalist and as one of our early investors.

*M. Michele Burns* has served as a member of our board of directors since March 2014. Ms. Burns has served as the Center Fellow and Strategic Advisor to the Stanford Center on Longevity at Stanford University since August 2012. Ms. Burns served as the chief executive officer of the Retirement Policy Center sponsored by Marsh & McLennan Companies, Inc., an insurance brokerage and consulting firm, from October 2011 to February 2014; as chairman and chief executive officer of Mercer LLC (a subsidiary of Marsh & McLennan Companies, Inc.), a human resources consulting firm, from September 2006 to October 2011; as chief financial officer of Marsh & McLennan Companies, Inc. from March 2006 to September 2006; and as chief financial officer and chief restructuring officer of Mirant Corporation, an energy company, from May 2004 to January 2006. Ms. Burns joined Delta Airlines in January 1999 and served as chief financial officer from August 2000 until April 2004. She began her career at Arthur Andersen in 1981, serving ultimately as the Senior Partner, Southern Region Federal Tax Practice until December 1998. Ms. Burns has served as a member of the boards of directors of Cisco Systems, Inc., a multinational company that designs, manufactures and sells networking equipment, since November 2003; Goldman Sachs Group, Inc., an investment banking firm and affiliate of one of the underwriters of this offering, since October 2011; and Alexion Pharmaceuticals, Inc., a pharmaceutical company, since July 2014. She also serves on the boards of directors of, or as an advisor to, several private companies. She previously served as a member of the board of directors of Wal-Mart Stores, Inc., a multinational retail company, from June 2003 to June 2013. She is a member of the executive board of directors of the Elton John AIDS Foundation, where she also serves as Treasurer. Ms. Burns holds a B.A. in Business Administration from the University of Georgia and a Master of Accountancy from the University of Georgia. Ms. Burns should serve as a member of our board of directors due to her expertise in corporate finance, accounting and strategy, including experience gained as the chief financial officer of public companies. She also brings expertise in global and operational management, including a background in organizational leadership and human resources.

*Jonathan D. Klein* has served as a member of our board of directors since June 2011. Mr. Klein is co-founder and chief executive officer of Getty Images, Inc., a global digital media company and the premier creator and distributor of still imagery and video worldwide. Mr. Klein has also served as a member of the board of directors of Getty Images, Inc. (and its predecessor company Getty Communications) since March 1995. Mr. Klein has served as a member of the board of directors of Squarespace, Inc., a provider of web publishing products and services, since July 2010 and served as a member of the board of directors of Real Networks, Inc., a provider of Internet streaming media delivery software and services, from January 2003 to November 2011. Mr. Klein also serves as a member of the boards of directors of numerous non-profit organizations, including the Committee to Protect Journalists, the Groton School, where he serves as president, and Friends

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of the Global Fight Against HIV, Tuberculosis and Malaria, where he serves as chairman. Mr. Klein holds an M.A. in law from the University of Cambridge. Mr. Klein should serve as a member of our board of directors due to his extensive experience with communications and media companies.

*Fred Wilson* has served as a member of our board of directors since June 2007 and has served as our lead independent director since October 2014. Mr. Wilson was a founder and has served as a managing partner of Union Square Ventures, a venture capital firm, since June 2003. Mr. Wilson also serves on the boards of directors of various private companies in connection with his role at Union Square Ventures. Mr. Wilson holds an S.B. in Mechanical Engineering from Massachusetts Institute of Technology and an M.B.A. from The Wharton School of Business at the University of Pennsylvania. Mr. Wilson should serve as a member of our board of directors due to his extensive experience with social media and technology companies, as a venture capitalist, and as one of our early investors.

Our directors hold office until their successors have been elected and qualified or appointed, or the earlier of their death, resignation or removal. There are no family relationships among any of our directors or executive officers.

## Director Independence

We intend to apply to have our common stock listed on the Nasdaq Global Select Market. The listing rules of this stock exchange generally require that a majority of the members of a listed company's board of directors be independent within 12 months following the closing of an initial public offering. Our board of directors has determined that none of our non-employee directors has a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is "independent" as that term is defined under the rules of Nasdaq. The independent members of our board of directors will hold separate regularly scheduled executive session meetings at which only independent directors are present.

Audit committee members must also satisfy the independence rules in SEC Rule 10A-3 adopted under the Exchange Act. In order to be considered independent for purposes of Rule 10A-3, a member of an audit committee of a public company may not, other than in his or her capacity as a member of the audit committee, the board of directors or any other board committee, accept, directly or indirectly, any consulting, advisory or other compensatory fee from the listed company or any of its subsidiaries or be an affiliated person of the listed company or any of its subsidiaries. Each of \_\_\_\_\_ qualify as an independent director pursuant to Rule 10A-3.

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### Board Composition

Immediately after this offering, our board of directors will be divided into three classes with staggered three-year terms. At each annual meeting of stockholders, the successors to directors whose terms then expire will be elected to serve until the third annual meeting following election. Our directors will be divided among the three classes as follows:

- the Class I directors will be , and their terms will expire at our annual meeting of stockholders to be held in 2016;
- the Class II directors will be , and their terms will expire at our annual meeting of stockholders to be held in 2017; and
- the Class III directors will be , and their terms will expire at our annual meeting of stockholders to be held in 2018.

Directors in a particular class will be elected for three-year terms at our annual meeting of stockholders in the year in which their terms expire. As a result, only one class of directors will be elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective three-year terms. Each director's term continues until the election and qualification of his or her successor, or the earlier of his or her death, resignation or removal.

Our amended and restated certificate of incorporation and amended and restated bylaws that will be in effect after this offering provide that only our board of directors can fill vacant directorships, including newly created seats. Any additional directorships resulting from an increase in the authorized number of directors would be distributed among the three classes so that, as nearly as possible, each class would consist of one-third of the authorized number of directors.

The classification of our board of directors may have the effect of delaying or preventing changes in our control or management. See “Description of Capital Stock—Anti-Takeover Provisions—Certificate of Incorporation and Bylaw Provisions.”

### Board Oversight of Risk

One of the key functions of our board of directors is informed oversight of our risk management process. In particular, our board of directors is responsible for monitoring and assessing strategic risk exposure, and our executive officers are responsible for the day-to-day management of the material risks we face. Our board of directors administers its oversight function directly as a whole and through its standing committees. For example, our audit committee is responsible for overseeing the management of risks associated with financial reporting, accounting and auditing matters; our compensation committee oversees the management of risks associated with executive compensation policies and programs; and our nominating

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and corporate governance committee oversees the management of risks associated with director independence, conflicts of interest, composition and organization of our board of directors and director succession planning.

## Board Committees

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee, to be effective after this offering. Our board of directors may establish other committees to facilitate the management of our business. Our board of directors and its committees meet throughout the year and may also hold special meetings and act by written consent from time to time, as appropriate. Our board of directors has delegated various responsibilities and authority to its committees as generally described below. The committees will regularly report on their activities and actions to our full board of directors. Each member of each committee of our board of directors qualifies as an independent director in accordance with listing standards. Each committee of our board of directors has a written charter approved by our board of directors, which will be posted on the Investor Relations section of our website at [www.etsy.com](http://www.etsy.com) after this offering. The inclusion of our website address in this prospectus does not include or incorporate by reference the information on our website into this prospectus. Members serve on these committees until their resignation or until otherwise determined by our board of directors.

### Audit Committee

The members of our audit committee will be        after this offering, each of whom can read and understand fundamental financial statements.        are each independent under the rules and regulations of the SEC and the listing standards of Nasdaq applicable to audit committee members.        will chair the audit committee. Our board of directors has determined that        qualifies as an audit committee financial expert within the meaning of SEC regulations and meets the financial sophistication requirements of Nasdaq.

Our audit committee assists our board of directors' oversight of the following: the integrity of our financial statements, our compliance with legal and regulatory requirements, the qualifications, independence and performance of our independent registered public accounting firm, the design and implementation of our internal audit function and risk assessment and risk management. Among other things, our audit committee is responsible for reviewing and discussing with our management the adequacy and effectiveness of our disclosure controls and procedures. The audit committee also discusses with our management and independent registered public accounting firm the annual audit plan and scope of audit activities, scope and timing of the annual audit of our financial statements and the results of the audit, quarterly reviews of our financial statements and, as appropriate, initiates inquiries into other aspects of our financial affairs. Our audit committee is responsible for establishing and overseeing procedures for the receipt, retention and treatment of any complaints reporting accounting, internal accounting controls or auditing matters, as well as for the confidential and anonymous submissions by our employees concerning questionable accounting or auditing matters. In addition, our audit committee has direct responsibility for

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the appointment, compensation, retention and oversight of the work of our independent registered public accounting firm. Our audit committee has sole authority to approve the hiring and discharging of our independent registered public accounting firm, all audit engagement fees and terms and all permissible non-audit engagements with our independent registered public accounting firm. Our audit committee will review and oversee all related person transactions in accordance with our policies and procedures.

### **Compensation Committee**

The members of our compensation committee will be        after this offering.        will chair the compensation committee. Each member of our compensation committee is independent under the rules and regulations of the SEC and the listing standards of Nasdaq applicable to compensation committee members. Our compensation committee assists our board of directors with its oversight of the forms and amount of compensation for our executive officers, and the administration of our incentive plans for employees and other service providers, including our equity incentive plans, and certain other matters related to our compensation programs.

### **Nominating and Corporate Governance Committee**

The members of our nominating and corporate governance committee will be        after this offering.        will chair the nominating and corporate governance committee. Our nominating and corporate governance committee assists our board of directors with its oversight of and identification of individuals qualified to become members of our board of directors, consistent with criteria approved by our board of directors, and selects, or recommends that our board of directors select, director nominees; develops and recommends to our board of directors a set of corporate governance guidelines; and oversees the evaluation of our board of directors.

### **Code of Conduct**

Our board of directors has adopted a code of conduct that will be effective after this offering and will apply to all of our employees, officers and directors. We also expect our contractors, consultants, suppliers and agents to follow our code of conduct in connection with their work for us. Our code of conduct represents the standards by which we operate and reflects our values of being a mindful, transparent and humane business. The purpose of our code of conduct is to promote: honesty and integrity, including with respect to actual or apparent conflicts of interest; full, fair, accurate, timely and understandable disclosure in periodic reports to be filed by us; and compliance with all applicable rules and regulations. The code of conduct will be posted on the Investor Relations section of our website at [www.etsy.com](http://www.etsy.com) after this offering. We intend to disclose future amendments to, or waivers of, our code of conduct at the same location on our website. Information contained on our website is not incorporated by reference into this prospectus, and you should not consider information contained on our website to be part of this prospectus or in deciding whether to invest in our common stock.

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### Compensation Committee Interlocks and Insider Participation

As noted above, the compensation committee of our board of directors will consist of [REDACTED]. During our fiscal year ended December 31, 2014, our compensation committee consisted of Jonathan D. Klein and Fred Wilson. None of our executive officers serves, or served during our fiscal year ended December 31, 2014, as a member of the board of directors or compensation committee of any other entity that has or has had one or more executive officers serving as a member of our board of directors or our compensation committee.

### 2014 Director Compensation

Prior to this offering, we did not have a formal compensation program for non-employee directors. We have granted stock option awards on an ad hoc basis to members of our board of directors who are not otherwise affiliated with us. In April 2014 we granted an option to purchase 253,294 shares of our common stock to M. Michele Burns in connection with her election to our board of directors. The option vests 25% when Ms. Burns completes 12 months of continuous service with us and then in equal monthly installments over the following 36 months of her service with us. We reimburse directors for their reasonable out-of-pocket expenses incurred in attending board of directors and committee meetings.

For services rendered during the year ended December 31, 2014, our non-employee directors received the following compensation:

Name	Option Awards (\$)(1)	Total (\$)
Fred Wilson	—	—
James W. Breyer	—	—
M. Michele Burns	629,537(2)	629,537
Caterina Fake(3)	—	—
Jonathan D. Klein	—	—
Daniel Rimer(4)	—	—

(1) As of December 31, 2014, Mr. Klein held options to purchase 478,261 shares of Etsy common stock, Ms. Burns held options to purchase 253,294 shares of Etsy common stock and no other non-employee member of our board of directors held Etsy options or stock awards.

(2) The value disclosed is the aggregate grant date fair value of options to purchase 253,294 shares granted to Ms. Burns in 2014 computed in accordance with FASB ASC Topic 718. See Note 9 of the accompanying notes to the consolidated financial statements included elsewhere in this prospectus for a discussion of the assumptions made by us in determining the grant date fair value of our equity awards.

(3) Ms. Fake resigned from our board of directors in July 2014.

(4) Mr. Rimer resigned from our board of directors in March 2015.

In March 2015, we adopted a new non-employee director compensation program that will be effective upon the completion of this offering. Under this program, each new, non-employee director who joins our board of directors will be granted equity compensation (in the form of stock options or restricted stock units) upon the effective date of his or her election to our board of directors with a fair value (calculated in accordance with FASB

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ASC Topic 718) at the time of grant equal to \$350,000. Equity awards for new directors will vest in equal annual installments on the first three anniversaries of the grant date if the director has served continuously as a member of our board of directors through the applicable vesting date. In addition, equity awards for new directors will vest in full in the event that we are subject to a change in control or upon certain other events.

Beginning in 2016 on the date of our annual meeting of stockholders, each non-employee director will receive an annual board retainer equity award with a fair value (calculated in accordance with FASB ASC Topic 718) at the time of grant equal to \$175,000. At the election of the director, up to 50% of the annual retainer may be paid in cash. Equity awarded as an annual retainer will vest in full on the date of our next annual meeting of stockholders if the director has served continuously as a member of our board of directors through the date of that meeting. In addition, annual retainer equity awards will vest in full in the event that we are subject to a change in control or upon certain other events. A director will not be eligible to receive an annual retainer in the same calendar year in which he or she receives an initial new director equity grant.

In addition to the annual and new director fees described above, non-employee directors will receive the following payments in cash, payable annually:

Role	Annual Cash Payments
Lead Independent Director	\$15,000
Audit Committee Chairperson	\$18,000
Audit Committee Member	\$9,000
Compensation Committee Chairperson	\$10,000
Compensation Committee Member	\$5,000
Nominating and Corporate Governance Committee Chairperson	\$6,000
Nominating and Corporate Governance Committee Member	\$3,000

Mr. Breyer and Mr. Wilson have waived their compensation as directors.

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# Executive Compensation

## Summary Compensation Table

The following table provides information concerning the compensation of our chief executive officer and our two other most highly compensated executive officers, or our named executive officers.

Name and Principal Position	Year				Non-equity Incentive Plan	All Other Compensation	Total (\$)
		Salary (\$)	Bonus (\$)	Option Awards (\$)(1)	Compensation (\$)		
Chad Dickerson <i>President, Chief Executive Officer and Chairman</i>	2014	300,000	—	—	247,500	—	547,500
	2013	300,000	—	—	—	—	300,000
Kristina Salen <i>Chief Financial Officer</i>	2014	297,917	—	—	211,750	70,316(2)	579,983
	2013	251,202	175,000	1,715,430	—	192,333	2,333,965
Jordan Breslow <i>General Counsel and Secretary</i>	2014	275,000	—	—	166,375	—	441,375
	2013	38,616	75,000	1,010,468	—	25,000	1,149,074

- (1) The amounts in this column represent the aggregate grant date fair value of stock option awards granted to the officer in the applicable fiscal year computed in accordance with FASB ASC Topic 718 and do not reflect cash compensation actually received by the named executive officer. See Note 9 of the accompanying notes to the consolidated financial statements included elsewhere in this prospectus for a discussion of the assumptions made by us in determining the grant date fair value of our equity awards.
- (2) Represents a payment of \$43,234 in connection with Ms. Salen's relocation to the New York metropolitan area, plus a tax gross-up of \$27,082 on the value of the relocation benefits.

## Narrative Explanation of Compensation Arrangements with Our Named Executive Officers

In 2014, the compensation of our named executive officers consisted primarily of base salary, annual cash incentive bonuses and long-term equity incentive compensation, in the form of stock options.

### Base Salaries

For the year ended December 31, 2014, the annual base salaries for our named executive officers were as follows: Mr. Dickerson—\$300,000; Ms. Salen—\$300,000; and Mr. Breslow—\$275,000. Historically, the base salaries of our executive officers have been reviewed on an ad hoc basis and adjusted only when our board of directors or compensation committee determines an adjustment is appropriate. In February 2014, Ms. Salen's salary was increased from her initial base salary of \$275,000 to \$300,000 in light of her performance in 2013 and her responsibilities.

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### **Annual Cash Incentive Bonuses**

Prior to 2014, we did not have a regular annual cash incentive bonus program for our executive officers. In 2014, our compensation committee approved an annual cash incentive plan in which certain of our employees, including our named executive officers, participated. The bonus plan was funded based upon the satisfaction of company-wide Adjusted EBITDA margin and net revenue goals. Because we exceeded our Adjusted EBITDA margin goal, the bonus plan was funded above target. The target bonuses for our named executive officers for 2014, as a percentage of base salary, were 75% for Mr. Dickerson, 59% for Ms. Salen and 50% for Mr. Breslow, and the actual bonus payouts were 110% of target for Mr. Dickerson and 121% of target for Ms. Salen and Mr. Breslow. The individual bonus payments were approved by our compensation committee and our board of directors with input from Mr. Dickerson for the other named executive officers.

### **Long-Term Equity Incentive Compensation**

We grant stock options to our employees, including our named executive officers, as the long-term equity incentive component of our compensation program. Stock options allow employees to purchase shares of our common stock at a price no less than the fair market value of our common stock on the date of grant and are generally granted to employees in connection with their commencement of employment. Our board of directors or compensation committee from time to time also grants stock options to certain employees who have had a long tenure at Etsy, who have taken on significant new responsibilities or as a reward for superior performance. Employee stock options generally vest 25% when an employee completes 12 months of service with us and then in equal monthly installments over the following 36 months of service with us. None of our named executive officers received stock options in 2014.

In January 2015, we granted an option to purchase 600,000 shares of our common stock to Mr. Dickerson and an option to purchase 290,000 shares of our common stock to Ms. Salen. The options vest 25% upon Mr. Dickerson's or Ms. Salen's 12 months of continuous service from January 30, 2015 and then in equal monthly installments over his or her following 36 months of service with us.

For information regarding the vesting acceleration provisions applicable to the options held by our named executive officers, see “—Change in Control Benefits” below.

### **Employee Benefits and Perquisites**

Our named executive officers are eligible to participate in our health and welfare plans to the same extent as other full-time employees generally. We generally do not provide our named executive officers with perquisites or other personal benefits. From time to time, however, we provide relocation benefits to new executive officers.

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### Outstanding Equity Awards at 2014 Fiscal Year-End

The following table sets forth information regarding unexercised stock options held by each of our named executive officers as of December 31, 2014.

Name	Stock Option Awards			
	Number of Securities Underlying Unexercised Options Exercisable(#)	Number of Securities Underlying Unexercised Options Unexercisable (#)	Option Exercise Price (\$)	Option Expiration Date
Chad Dickerson	600,000 1,713,876	350,000(1) 1,521,702(2)	1.15 2.38	7/28/2021 7/16/2022
Kristina Salen	697,515	824,336(3)	2.38	2/3/2023
Jordan Breslow	192,345	517,852(4)	3.11	12/10/2023

- (1) This stock option vested 25% on July 19, 2012, with the remainder vesting in 36 equal monthly installments thereafter if Mr. Dickerson remains continuously employed with us on each vesting date.
- (2) This stock option vested 25% on June 11, 2013, with the remainder vesting in 36 equal monthly installments thereafter if Mr. Dickerson remains continuously employed with us on each vesting date.
- (3) This stock option vested 25% on February 3, 2014, with the remainder vesting in 36 equal monthly installments thereafter if Ms. Salen remains continuously employed with us on each vesting date.
- (4) This stock option vested 25% on November 11, 2014, with the remainder vesting in 36 equal monthly installments thereafter if Mr. Breslow remains continuously employed with us on each vesting date.

For information regarding the vesting acceleration provisions applicable to the options held by our named executive officers, see “—Change in Control Benefits” below.

### Employment Agreements

A summary of the material terms of the employment letter agreements with our named executive officers and other arrangements providing benefits in connection with such officers’ termination of employment or in connection with a change in control is below.

#### Chad Dickerson

In August 2011, we entered into an employment letter agreement with Mr. Dickerson in connection with his promotion to chief executive officer. Under this agreement, Mr. Dickerson’s annual salary was set at \$300,000 per year and he received an option to purchase 2,400,000 shares of our common stock, as described in more detail above under “—Outstanding Equity Awards at 2014 Fiscal Year-End.” In addition, for information regarding the vesting acceleration provisions applicable to Mr. Dickerson’s stock options, see “—Change in Control Benefits” below.

If Mr. Dickerson’s employment is terminated in an involuntary termination, he will be entitled to the severance benefits described below under “—Severance Benefits” or “—Change in Control Benefits.”

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### **Kristina Salen**

In January 2013, we entered into an employment letter agreement with Ms. Salen in connection with her appointment as our chief financial officer. Under this agreement, Ms. Salen's annual salary was set at \$275,000 and she is eligible to receive a cash incentive bonus for each fiscal year starting in 2014 if the relevant performance measures are satisfied. Ms. Salen also received a signing bonus of \$175,000 and was entitled to relocation benefits to assist with her move to the New York metropolitan area.

Pursuant to subsequent letter agreements we entered into with Ms. Salen, she received a temporary living stipend, an additional relocation payment and a gross-up for taxes incurred in connection with her temporary housing and transportation reimbursements in connection with her relocation.

In addition, pursuant to Ms. Salen's employment letter agreement, she received an option to purchase 1,521,851 shares of our common stock in 2013, as described in more detail above under "—Outstanding Equity Awards at 2014 Fiscal Year-End." In addition, for information regarding the vesting acceleration provisions applicable to Ms. Salen's stock options, see "—Change in Control Benefits" below.

If Ms. Salen's employment is involuntarily terminated, she will be entitled to the severance benefits described below under "—Severance Benefits" or "—Change in Control Benefits."

### **Jordan Breslow**

In October 2013, we entered into an employment letter agreement with Mr. Breslow in connection with his appointment as our general counsel. Under this agreement, Mr. Breslow's annual salary was set at \$275,000 and he is eligible to receive a cash incentive bonus for each fiscal year starting in 2014 if the relevant performance measures are satisfied. Mr. Breslow also received a signing bonus of \$75,000 and was entitled to relocation benefits of up to \$25,000 to assist with his move to the New York metropolitan area.

In addition, pursuant to Mr. Breslow's employment letter agreement, he received an option to purchase 710,197 shares of our common stock in 2013, as described in more detail above under "—Outstanding Equity Awards at 2014 Fiscal-Year End." In addition, for information regarding the vesting acceleration provisions applicable to Mr. Breslow's stock options, see "—Change in Control Benefits" below.

If Mr. Breslow's employment is involuntarily terminated, he will be entitled to the severance benefits described below under "—Severance Benefits" or "—Change in Control Benefits."

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# **Severance and Change in Control Benefits**

Prior to the completion of this offering, only Mr. Dickerson was provided severance benefits. In connection with this offering, our board adopted the severance plan and change in control severance plan described below.

## **Severance Benefits**

### *Severance Plan*

In 2015, our board of directors adopted a severance plan for key employees, including our named executive officers, effective upon the completion of this offering. Under the severance plan, if we terminate a named executive officer's employment without cause or if a named executive officer terminates employment for good reason other than in the 3 months before or 12 months after a change in control, then, if the named executive officer signs a release of claims, he or she will be entitled to receive continued salary payments for 12 months, in the case of Mr. Dickerson, and 6 months, in the case of Ms. Salen and Mr. Breslow. The named executive officer will also be entitled to receive reimbursement for healthcare continuation coverage for the lesser of the number of months in the severance period or until healthcare continuation coverage ends or the named executive officer becomes eligible for substantially equivalent coverage. This severance plan supersedes Mr. Dickerson's prior severance benefits.

### *Chad Dickerson*

Prior to the completion of this offering, Mr. Dickerson was provided severance benefits pursuant to his employment letter agreement. Under this agreement, if we terminated Mr. Dickerson's employment without cause or if he resigned for good reason, we would continue to pay his base salary for a period of six months. The salary continuation would be subject to Mr. Dickerson's resignation from our board of directors and the boards of directors of any of our subsidiaries and execution of a release of claims.

## **Change in Control Benefits**

### *Change in Control Severance Plan*

In 2015, our board of directors also adopted a change in control severance plan for key employees, including our named executive officers, effective upon the completion of this offering. Under this change in control severance plan, if we terminate a named executive officer's employment without cause or if a named executive officer terminates employment for good reason in the 3 months before or 12 months after a change in control, then, if the named executive officer signs a release of claims, he or she will be entitled to receive continued salary payments for 24 months, in the case of Mr. Dickerson, and 12 months, in the case of Ms. Salen and Mr. Breslow. The named executive officer will also be entitled to receive reimbursement for healthcare continuation coverage for the lesser of the number of months in the severance period or until healthcare continuation coverage ends or the executive becomes eligible for substantially equivalent

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coverage. Finally, the named executive officer will be entitled to full vesting of any outstanding equity awards then held by the named executive officer. This change in control severance plan supersedes Mr. Dickerson's prior change in control severance benefits.

### *Chad Dickerson*

Prior to the completion of this offering, only Mr. Dickerson was provided severance benefits in connection with a change in control. Pursuant to Mr. Dickerson's stock option agreements, in the event that we experienced a change in control and, within 12 months following such change in control, Mr. Dickerson was terminated involuntarily, his stock options would fully vest.

## Equity Plans

### 2015 Equity Incentive Plan

Our board of directors adopted the 2015 Equity Incentive Plan in [REDACTED], and our stockholders approved it in [REDACTED]. The 2015 Plan became effective immediately on adoption although no awards will be made under it until the effective date of the registration statement of which this prospectus is a part. Our 2015 Stock Equity Incentive will replace our 2006 Stock Plan described below, and no further grants will be made under our 2006 Stock Plan following completion of this offering. However, awards outstanding under the 2006 Stock Plan will continue to be governed by their existing terms.

*Share Reserve*. The number of shares of our common stock available for issuance under our 2015 Equity Incentive Plan will equal the sum of (a) [REDACTED] shares, (b) the number of shares of our common stock remaining available for issuance under our 2006 Stock Plan as of the effective date of the registration statement of which this prospectus is a part, and (c) the number of shares of our common stock subject to awards under our 2006 Stock Plan that subsequently expire or lapse unexercised and shares issued pursuant to such awards that are forfeited or repurchased by us (such combined number not to exceed [REDACTED] shares). The number of shares reserved for issuance under the 2015 Equity Incentive Plan will be increased automatically on the first business day of each of our fiscal years during the term of the plan, commencing in 2016, by a number equal to the smallest of:

- [REDACTED] shares;
- [REDACTED] % of the number of shares of common stock outstanding on December 31 of the prior year; and
- the number of shares determined by our board of directors.

In general, to the extent that any awards under the 2015 Equity Incentive Plan are forfeited, terminate, expire or lapse without the issuance of shares, or if we repurchase the shares subject to awards granted under the 2015 Equity Incentive Plan, those shares will again become available for issuance under the 2015 Equity Incentive Plan, as will shares applied to pay the exercise or purchase price of an award or to satisfy tax withholding obligations related to any award. All share numbers described in this summary of the 2015 Equity Incentive Plan will automatically adjust in the event of a stock split, a stock dividend, a reverse stock split or similar occurrence.

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*Administration*. Our compensation committee administers the 2015 Equity Incentive Plan. The compensation committee has complete discretion to make all decisions relating to the 2015 Equity Incentive Plan and outstanding awards, including repricing outstanding options and modifying outstanding awards.

*Eligibility*. Employees, non-employee directors and consultants are eligible to participate in our 2015 Equity Incentive Plan.

*Types of Award*. Our 2015 Equity Incentive Plan provides for the following types of awards:

- incentive and nonstatutory stock options;
- stock appreciation rights;
- restricted share awards;
- stock unit awards; and
- performance cash awards.

*Options and Stock Appreciation Rights*. The exercise price for options granted under the 2015 Equity Incentive Plan may not be less than 100% of the fair market value of our common stock on the grant date. Optionees may pay the exercise price in cash or, with the consent of the compensation committee and as set forth in the applicable option grant agreement:

- with shares of common stock that the optionee already owns;
- by an immediate sale of shares through a broker approved by us;
- through a net exercise procedure; or
- by other methods permitted by applicable law.

An optionee who exercises a stock appreciation right receives the increase in value of our common stock over the exercise price. The exercise price for stock appreciation rights may not be less than 100% of the fair market value of our common stock on the grant date. The settlement value of a stock appreciation right may be paid in cash, shares of our common stock or a combination of these forms of payment.

Options and stock appreciation rights vest as determined by the compensation committee at the time of grant. In most cases, they will vest over a four-year period following the date of grant. Options and stock appreciation rights expire at the time determined by the compensation committee but in no event more than ten years after they are granted. These awards generally expire earlier if the participant's service terminates earlier. No participant may be granted stock options and stock appreciation rights covering more than 2,000,000 shares (or stock options and/or stock appreciation rights covering more than 4,000,000 shares for a new hire) in any fiscal year.

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*Restricted Shares and Stock Units* . Restricted shares and stock units may be awarded under the 2015 Equity Incentive Plan in return for any lawful consideration, and participants who receive restricted shares or stock units generally are not required to pay cash for their awards. In general, these awards will be subject to vesting. Vesting may be based on length of service, the attainment of performance-based goals or a combination of both, as determined by the compensation committee. No participant may be granted restricted share awards and stock units covering more than 1,500,000 shares (or 3,000,000 restricted shares and/or restricted stock units for a new hire) in any fiscal year. This annual limit is in addition to any stock options and stock appreciation rights the participant may receive during a calendar year. Settlement of vested stock units may be made in the form of cash, shares of common stock or a combination of these forms of payment. The permissible performance goals to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code are listed under “—Performance Goals.”

*Performance Cash Awards* . Performance cash awards may be granted under the 2015 Equity Incentive Plan that qualify as performance-based compensation that is not subject to the income tax deductibility limitations imposed by Section 162(m) of the Internal Revenue Code, if the award is approved by our compensation committee and the grant or vesting of the award is tied solely to the attainment of performance goals during a designated performance period. The permissible performance goals to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code are listed under “—Performance Goals.” No participant may be paid more than \$1,500,000 in cash (or \$3,000,000 for a new hire) in any fiscal year pursuant to a performance cash award granted under the 2015 Equity Incentive Plan.

*Performance Goals* . Performance goals for the grant or vesting of awards under the 2015 Equity Incentive Plan may be based on any one of, or combination of, the following: budget performance, buyer acquisition, retention and/or growth, cash flow, cash flow return on investment, comparisons with various stock market indices, costs and expenses (including reduction of both), earnings or earnings per share (including earnings before taxes, earnings before interest and taxes, earnings before interest, taxes and depreciation, or earnings before interest, taxes, depreciation and amortization, including adjusted measures), employee satisfaction and/or retention, free cash flow or free cash flow per share, gross margin, gross profits, headcount, market share, net income (before or after taxes), operating income or EBIT (Earnings before Interest and Taxes) on a GAAP or non-GAAP basis, operating or EBIT margin, return on assets, investment or capital employed, return on equity or average stockholders’ equity, revenue (gross or net), GMS, seller acquisition, retention and/or growth, member satisfaction, stockholders’ equity, stock price return relative to market indices and/or peer group, total stockholder return and working capital.

Any of the above metrics may be measured either in absolute terms, compared to any incremental increase or decrease or compared to results of a peer group, to market performance indicators or to market indices.

To the extent a performance award is not intended to comply with Section 162(m) of the Internal Revenue Code, the compensation committee may select other measures of performance.

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*Corporate Transactions*. In the event we are a party to a merger, consolidation or certain change in control transactions, outstanding awards granted under the 2015 Equity Incentive Plan, and all shares acquired under the 2015 Equity Incentive Plan, will be subject to the terms of the definitive transaction agreement (or, if there is no such agreement, as determined by our compensation committee). Unless an award agreement provides otherwise, such treatment may include any of the following with respect to each outstanding award:

- the continuation, assumption or substitution of an award by us or the acquiror or surviving corporation;
- the cancellation of the unvested portion of an award without payment of any consideration;
- the cancellation of the vested portion of options and stock appreciation rights in exchange for a payment equal to the excess, if any, of the value that a holder of a share of our common stock receives in the transaction over the exercise or purchase price of such award;
- the cancellation of outstanding stock units (whether vested or unvested) in exchange for a payment equal to the value that a holder of a share of our common stock receives in such transaction; or
- the assignment of any repurchase or reacquisition rights held by us to the surviving or acquiring entity.

The compensation committee is not required to treat all awards, or portions thereof, in the same manner.

The compensation committee has the discretion to provide that an award granted under the 2015 Equity Incentive Plan will vest on an accelerated basis if we are subject to a change in control or if the participant is subject to an involuntary termination, either at the time such award is granted or afterwards.

A change in control includes:

- any person acquiring beneficial ownership of more than 50% of our total voting power;
- the sale or other disposition of all or substantially all of our assets;
- our merger or consolidation after which our voting securities represent 50% or less of the total voting power of the surviving or acquiring entity; or
- individuals who are members of our board of directors or individuals who were approved or recommended by members of our board of directors cease to constitute a majority of our board of directors over a 12-month period.

*Changes in Capitalization*. In the event that there is a specified type of change in the capital structure of our common stock, such as a stock split, reverse stock split or dividend paid in common stock, proportionate adjustments will automatically be made to the kind and maximum number of shares:

- reserved for issuance under the 2015 Equity Incentive Plan;

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- by which the share reserve may increase automatically each year;
- that may be granted to a participant in a year (as established under the 2015 Equity Incentive Plan pursuant to Section 162(m) of the Internal Revenue Code);
- that may be issued upon the exercise of incentive stock options; and
- covered by each outstanding option, stock appreciation right and stock unit;

as well as the exercise price applicable to each outstanding option and stock appreciation right and the repurchase price, if any, applicable to restricted shares.

In the event that there is a declaration of an extraordinary dividend payable in a form other than our common stock in an amount that has a material effect on the price of our common stock, a recapitalization, a spin-off or a similar occurrence, the compensation committee may make such adjustments as it deems appropriate, in its sole discretion.

*Amendments or Termination* . Our board of directors may amend or terminate the 2015 Equity Incentive Plan at any time . If our board of directors amends the 2015 Equity Incentive Plan, it does not need to ask for stockholder approval of the amendment unless required by applicable law, regulation or rules . The 2015 Equity Incentive Plan will continue in effect for ten years from the later of its adoption date or the date of approval of the latest share increase, unless our board of directors decides to terminate the plan earlier.

*Forfeiture* . Awards under the 2015 Equity Incentive Plan are subject to recovery to the extent required by any law, government regulation, stock exchange listing requirement or company policy.

## 2006 Stock Plan

Our board of directors adopted our 2006 Stock Plan in May 2006, and our stockholders approved it in June 2006. The most recent amendment to the 2006 Stock Plan was adopted by our board of directors in December 2013, and we obtained stockholder approval of that amendment in January 2014. No further awards will be made under our 2006 Stock Plan after this offering. The awards outstanding after this offering under the 2006 Stock Plan will continue to be governed by their existing terms.

*Share Reserve* . We have reserved 48,505,935 shares of our common stock for issuance under the 2006 Stock Plan, all of which may be issued as incentive stock options. In general, if options or shares awarded under the 2006 Stock Plan are reacquired or repurchased by us or otherwise forfeited by a 2006 Stock Plan participant, then those shares or option shares will again become available for awards under the 2006 Stock Plan.

*Administration* . Our board of directors administered the 2006 Stock Plan before this offering, and the compensation committee will administer the 2006 Stock Plan after this offering. Before this offering, our board of directors had, and after this offering, our compensation committee will have, complete discretion to make all decisions relating to our 2006 Stock Plan.

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*Eligibility*. Employees, members of our board of directors who are not employees and consultants are eligible to participate in our 2006 Stock Plan.

*Types of Award*. Our 2006 Stock Plan provides for the following types of awards:

- incentive and nonstatutory stock options; and
- direct award or sale of shares of our common stock, including restricted shares (subject to a right of repurchase by us upon the participant's termination with respect to unvested shares).

Options and restricted shares vest at the times determined by our board of directors. Both options and restricted shares generally vest over a four-year period following the date of grant. Options expire not more than 10 years after they are granted but generally expire earlier if the participant's service terminates earlier.

*Options*. The exercise price for options granted under the 2006 Stock Plan may not be less than 100% of the fair market value of our common stock on the option grant date. Participants may pay the exercise price of options, or the purchase price of shares, by using cash or cash equivalents. In addition, at the discretion of our board of directors, payment may be made by using:

- a full-recourse promissory note, against which the purchased shares are pledged as security for payment of the principal amount of, and interest on, the note;
- shares of common stock that the optionee already owns;
- an immediate sale of the option shares through a broker designated by us;
- in the case of a sale of shares, services rendered to us; or
- any other form of payment permitted by applicable law.

*Restricted Stock*. We may grant or sell restricted stock to participants under the 2006 Stock Plan.

*Change in Control*. In the event we are a party to a merger or consolidation, outstanding options granted under the 2006 Stock Plan will be subject to the terms of the definitive transaction agreement. Such treatment shall include any of the following:

- the continuation, assumption or substitution of the option by us or the acquiror or surviving corporation;
- the full exercisability of outstanding options and full vesting of the common shares subject to options, followed by cancellation of such options; or
- the cancellation of the outstanding options in exchange for a payment equal to the excess, if any, of the value that a holder of a share of our common stock receives in the transaction over the exercise price of the option.

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*Changes in Capitalization*. In the event that there is a specified type of change in the capital structure of our common stock, such as a stock split, reverse stock split or dividend paid in common stock, proportionate adjustments will automatically be made to the kind and maximum number of shares:

- reserved for issuance under the 2006 Stock Plan;
- that may be issued upon the exercise of incentive stock options; and
- covered by each outstanding option;

as well as the exercise price applicable to each outstanding option.

In the event that there is a declaration of an extraordinary dividend payable in a form other than our common stock in an amount that has a material effect on the price of our common stock, a recapitalization, a spin-off or a similar occurrence, the compensation committee may make such adjustments as it deems appropriate, in its sole discretion.

*Amendments or Termination*. Our board of directors may amend or terminate the 2006 Stock Plan at any time. If our board of directors amends the 2006 Stock Plan, it does not need to ask for stockholder approval of the amendment unless the amendment increases the number of shares available for issuance, materially changes the class of persons eligible to receive incentive stock options or is otherwise required by applicable law. The 2006 Stock Plan will continue in effect for ten years from the later of its adoption date or the date of approval of the latest share increase, unless our board of directors decides to terminate the plan earlier.

## 2015 Employee Stock Purchase Plan

*General*. Our board of directors adopted our 2015 Employee Stock Purchase Plan, or our ESPP, in \_\_\_\_\_, and our stockholders approved it in \_\_\_\_\_.

The ESPP will become effective as of the effective date of the registration statement of which this prospectus is a part. Our ESPP is intended to qualify under Section 423 of the Internal Revenue Code.

*Share Reserve*. We have reserved \_\_\_\_\_ shares of our common stock for issuance under the ESPP. The number of shares reserved for issuance under the ESPP will automatically be increased on the first business day of each of our fiscal years, commencing in 2016, by a number equal to the smallest of:

- \_\_\_\_\_ shares;
- \_\_\_\_\_ % of the shares of common stock outstanding on the last business day of the prior fiscal year; or
- the number of shares determined by our board of directors.

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The number of shares reserved under the ESPP will automatically be adjusted in the event of a stock split, stock dividend, extraordinary dividend payable in a form other than our common stock in an amount that has a material effect on the price of our common stock or a reverse stock split (including an adjustment to the per-purchase period share limit).

*Administration* . The compensation committee will administer the ESPP.

*Eligibility* . All of our employees are eligible to participate if we employ them for 20 or more hours per week and for more than five months per year. Eligible employees may begin participating in the ESPP at the start of any offering period.

*Offering Periods* . Each offering period will last a number of months determined by the compensation committee, not to exceed 27 months. A new offering period will begin periodically, as determined by the compensation committee. Offering periods may overlap or may be consecutive. Unless otherwise determined by the compensation committee, two offering periods of six months' duration will begin in each year on January 1 and July 1. However, our compensation committee has not yet determined when to commence operation of the ESPP, so we currently do not expect an offering period to commence in July 2015.

*Amount of Contributions* . Our ESPP permits each eligible employee to purchase common stock through payroll deductions. Each employee's payroll deductions may not exceed 15% of the employee's cash compensation. Each participant may purchase up to the number of shares determined by the compensation committee on any purchase date, not to exceed \_\_\_\_\_ shares. The value of the shares purchased in any calendar year may not exceed \$25,000. Participants may withdraw their contributions at any time before the date 10 days before stock is purchased.

*Purchase Price* . The price of each share of common stock purchased under our ESPP will not be less than 85% of the lower of the fair market value per share of common stock on the first day of the applicable offering period or the fair market value per share of common stock on the purchase date.

*Other Provisions* . Employees may end their participation in the ESPP at any time. Participation ends automatically upon termination of employment with us. If we experience a change in control, our ESPP will end and shares will be purchased with the payroll deductions accumulated to date by participating employees. Our board of directors or our compensation committee may amend or terminate the ESPP at any time. If our board of directors amends the ESPP, it does not need to ask for stockholder approval of the amendment unless the amendment increases the number of shares available for issuance, extends the term of the ESPP or is otherwise required by applicable law. The ESPP will continue in effect for twenty years from its adoption date unless our board of directors decides to terminate the ESPP earlier.

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### Management Cash Incentive Plan

Our board of directors adopted the Management Cash Incentive Plan, or the Bonus Plan, in March 2015 and our stockholders approved it in 2015. The Bonus Plan became effective upon adoption by our board of directors.

*General*. The Bonus Plan is intended to motivate participants to achieve performance goals through cash incentive awards and is intended to permit awards that meet the requirements of the performance-based compensation exemption from Section 162(m) of the Internal Revenue Code to the extent that it is applicable to us and the Bonus Plan.

*Administration*. Our compensation committee has the authority to administer and interpret the Bonus Plan, including the authority to determine which employees shall be granted awards, the terms and conditions of awards and achievement of performance goals.

*Performance Criteria*. To the extent Section 162(m) of the Internal Revenue Code is applicable to us and an award under the Bonus Plan is intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code, our compensation committee establishes the performance goal or goals applicable to that award by the 90th day of the performance period (and no later than the date on which 25% of the performance period has lapsed). To the extent Section 162(m) of the Internal Revenue Code is applicable to us and an award under the Bonus Plan is intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code, the performance criteria will be based on any one of, or combination of, the following: budget performance, buyer acquisition, retention and/or growth, cash flow, cash flow return on investment, comparisons with various stock market indices, costs and expenses (including reduction of both), earnings or earnings per share (including earnings before taxes, earnings before interest and taxes, earnings before interest, taxes and depreciation, or earnings before interest, taxes, depreciation and amortization, including adjusted measures), employee satisfaction and/or retention, free cash flow or free cash flow per share, gross margin, gross profits, headcount, market share, net income (before or after taxes), operating income or EBIT (Earnings before Interest and Taxes) on a GAAP or non-GAAP basis, operating or EBIT margin, return on assets, investment or capital employed, return on equity or average stockholders' equity, revenue (gross or net), GMS, seller acquisition, retention and/or growth, member satisfaction, stockholders' equity, stock price return relative to market indices and/or peer group, total stockholder return and working capital.

Any of the above metrics may be measured either in absolute terms, compared to any incremental increase or decrease or compared to results of a peer group, to market performance indicators or to market indices.

Our compensation committee can establish other performance goals for any award under the Bonus Plan not intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code.

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*Maximum Award; Discretion* . The maximum award amount payable under the Bonus Plan is \$7,500,000. Our compensation committee has the discretion to reduce awards under the Bonus Plan for any reason or increase awards that are not intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code, up to the maximum award amount. Awards intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code cannot be increased beyond the award achieved based on actual performance.

*Forfeiture* . Awards under the Bonus Plan are subject to recovery to the extent required by any law, government regulation, stock exchange listing requirement or company policy.

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# Certain Relationships and Related Person Transactions

In addition to the compensation arrangements with directors and executive officers described under “Executive Compensation” and “Management” and the registration rights described under “Description of Capital Stock—Registration Rights,” the following is a description of each transaction since January 1, 2012 and each currently proposed transaction in which:

- we have been or are to be a participant;
- the amount involved exceeds or will exceed \$120,000; and
- any of our directors, executive officers or beneficial holders of more than 5% of our capital stock, or any immediate family member of, or person sharing the household with, any of these individuals (other than tenants or employees), had or will have a direct or indirect material interest.

## Equity Financings

### Series F Preferred Stock

In May 2012, we sold an aggregate of 11,594,203 shares of our Series F preferred stock at a purchase price of \$3.45 per share, for an aggregate purchase price of approximately \$40,000,000. The following table summarizes purchases of our Series F preferred stock by beneficial holders of more than 5% of our outstanding capital stock and an entity founded and managed by one of our directors:

Name of Stockholder	Shares of Series F Preferred Stock	Total Purchase Price
Entities affiliated with Accel Partners(1)(2)	4,968,944	\$ 17,142,856.80
Breyer Capital L.L.C.(3)	552,105	1,904,762.25
Entities affiliated with Index Ventures(4)(5)	3,450,656	11,904,763.20
Union Square Ventures Opportunity Fund, L.P.(6)	1,380,262	4,761,903.90

- (1) Affiliates of Accel Partners holding our securities, whose shares are aggregated for purposes of reporting the above share ownership information, are Accel London II L.P., Accel London Investors 2008 L.P., Accel Growth Fund II L.P., Accel Growth Fund II Strategic Partners L.P. and Accel Growth Fund Investors 2012 L.L.C.
- (2) James W. Breyer, a member of our board of directors, is a partner at Accel Partners.
- (3) Mr. Breyer, a member of our board of directors, is the manager of Breyer Capital L.L.C.
- (4) Affiliates of Index Ventures holding our securities, whose shares are aggregated for purposes of reporting the above share ownership, are Index Ventures Growth I (Jersey), L.P., Index Ventures Growth I Parallel Entrepreneur Fund (Jersey), L.P. and Yucca (Jersey) SLP.
- (5) Daniel Rimer, a member of our board of directors from April 2012 to March 2015, is a partner at Index Ventures.
- (6) Fred Wilson, a member of our board of directors, is a partner at Union Square Ventures.

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### **Common Stock**

On April 1, 2014, we sold an aggregate of 6,603,774 shares of our common stock to Tiger Global Private Investment Partners VII, L.P., or Tiger Global PIP VII, and a principal of Tiger Global PIP VII at a purchase price of \$5.30 per share, for an aggregate purchase price of approximately \$35,000,000. Tiger Global PIP VII, a beneficial holder of more than 5% of our outstanding capital stock, purchased 6,601,273 shares of such shares for a total purchase price of \$34,986,747.

## **Third-Party Tender Offers**

### **2012 Third-Party Tender Offer**

In May 2012, we entered into a letter agreement with certain holders of our capital stock pursuant to which we agreed to waive certain transfer restrictions in connection with, and assist in the administration of, a tender offer that such holders proposed to commence. In May 2012, these holders commenced a tender offer to purchase shares of our capital stock from certain of our securityholders at a price of \$3.45 per share, less transaction costs, pursuant to an Offer to Purchase to which we were not a party.

Chad Dickerson and Kellan Elliott-McCrea, each of whom is an executive officer, as well as other Etsy employees, sold shares of our capital stock in the tender offer. In addition, Handmade Partners LLC, an entity controlled by Albert Wenger, who is a partner of Union Square Ventures, a beneficial holder of more than 5% of our outstanding capital stock, also sold shares of our capital stock in the tender offer.

An aggregate of 4,289,778 shares of our capital stock were tendered pursuant to the tender offer, of which entities affiliated with Accel Partners purchased 1,839,027 shares for an aggregate purchase price of \$6,280,338, entities affiliated with Index Ventures purchased 1,276,639 shares for an aggregate purchase price of \$4,359,765, Union Square Ventures Opportunity Fund, L.P. purchased 510,484 shares for an aggregate purchase price of \$1,743,320 and Breyer Capital L.L.C. purchased 204,193 shares for an aggregate purchase price of \$697,326. Each of Accel Partners, Index Ventures and Union Square Ventures Opportunity Fund, L.P., together with its respective affiliated entities, is a beneficial holder of more than 5% of our outstanding capital stock. In addition, certain of our directors are affiliated with the purchasers.

### **2014 Third-Party Tender Offer**

In January 2014, we entered into a letter agreement with certain third parties, pursuant to which we agreed to waive certain transfer restrictions in connection with, and assist in the administration of, a tender offer that such parties proposed to commence. In January 2014, these parties commenced a tender offer to purchase shares of our capital stock from certain of our securityholders at a price of \$5.30 per share, pursuant to an Offer to Purchase to which we were not a party.

Chad Dickerson and Kellan Elliott-McCrea were among the Etsy employees who participated in selling shares in the tender offer. In addition, Albert Wenger, who is a partner of Union Square Ventures, a beneficial holder of more than 5% of our outstanding capital stock, Handmade Partners LLC, an entity

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controlled by Mr. Wenger, and John Buttrick, who is a partner of Union Square Ventures, also sold shares of our capital stock in the tender offer.

An aggregate of 6,308,440 shares of our capital stock were tendered pursuant to the tender offer.

## **Investor Rights Agreement**

Pursuant to a sixth amended and restated investor rights agreement, dated May 1, 2012 and most recently amended on May 2, 2014, certain holders of our preferred stock, including entities with which certain of our directors are affiliated, are entitled to rights with respect to the registration of their shares, including demand registration rights, following this offering. These registration rights will terminate as to any stockholder at such time as all of such stockholder's securities (together with any affiliate of the stockholder with whom such stockholder must aggregate its sales) could be sold pursuant to Rule 144 of the Securities Act, but in any event no later than the five-year anniversary of this offering. For a description of these registration rights, see "Description of Capital Stock—Registration Rights."

## **Right of First Refusal**

Pursuant to certain of our equity compensation plans and certain agreements with our stockholders, including a third amended and restated first refusal and co-sale agreement dated May 1, 2012 and most recently amended on May 2, 2014, we or our assignees have a right to purchase shares of our capital stock that stockholders propose to sell to other parties. Since January 1, 2012, we have waived or assigned our right of first refusal in connection with the sale of certain shares of our capital stock, resulting in the purchase of such shares by certain holders of more than 5% of our capital stock in a series of transactions. Since January 2014, pursuant to agreements entered into in January 2014, as amended most recently in May 2014, we were obligated to assign all of our contractual rights of first refusal to Tiger Global PIP VII and Tiger Global Private Investment Partners VIII, L.P., or the Tiger Global funds, which funds collectively hold more than 5% of our capital stock, and two principals of the Tiger Global funds until the earlier of December 31, 2014 and such time as certain conditions have been satisfied. Thereafter, we were obligated to assign our contractual rights of first refusal pro rata to entities affiliated with each of Accel Partners, Index Ventures and Union Square Ventures and the Tiger Global funds until the earlier of December 31, 2014 and such time as certain conditions have been satisfied. Our obligation to assign our rights of first refusal to these various funds terminated on December 31, 2014, and our rights of first refusal will terminate upon the completion of this offering.

## **Agreements to Vote**

We are party to a sixth amended and restated voting agreement dated May 1, 2012 and most recently amended on November 5, 2012 under which certain holders of our capital stock, including entities with which certain of our directors are affiliated, have agreed to vote their shares of our capital stock on certain

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matters, including with respect to the election of directors. Upon the completion of this offering, this voting agreement will terminate and none of our stockholders will have any special rights regarding the election or designation of members of our board of directors.

Pursuant to certain stock transfer and other agreements, if our board of directors approves an amendment to our certificate of incorporation specifying that we become a “public benefit corporation” subject to the requirements of Chapter 1, Subchapter XV of the Delaware General Corporation Law, certain holders of more than 5% of our capital stock have an obligation to vote all voting securities held by such holders, or over which such holders otherwise exercise voting or investment authority, in favor of such amendment. Upon the completion of this offering, the obligation will terminate and none of our stockholders will have any obligation to vote in favor of any such amendment.

## Indemnification Agreements

Our amended and restated certificate of incorporation, which will be effective upon the completion of this offering, contains provisions limiting the liability of directors, and our amended and restated bylaws, which will be effective upon the completion of this offering, provide that we will indemnify each of our directors to the fullest extent permitted under Delaware law. Our certificate of incorporation and bylaws also provide our board of directors with discretion to indemnify our officers and employees when determined appropriate by our board of directors.

We also intend to enter into indemnification agreements with each of our directors and officers. The indemnification agreements will provide that we will indemnify each such person against any and all expenses incurred by such person because of his or her status as one of our directors or officers, to the fullest extent permitted by Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws. In addition, the indemnification agreements will provide that, to the fullest extent permitted by Delaware law, we will advance all expenses incurred by our directors and officers in connection with a legal proceeding involving his or her status as a director or officer.

## Policies and Procedures for Related Person Transactions

Our audit committee has the primary responsibility for the review, approval and oversight of any “related person transaction,” which is any transaction, arrangement or relationship (or series of similar transactions, arrangements or relationships) in which we are, were or will be a participant and the amount involved exceeds \$120,000, and in which the related person had, has or will have a direct or indirect material interest. We intend to adopt a written related person transaction policy to be effective upon the completion of this offering. Under our related person transaction policy, our management will be required to submit any related person transaction not previously approved or ratified by our audit committee to our audit committee. In approving or rejecting the proposed transactions, our audit committee will take into account the relevant facts and circumstances and will approve only those transactions that are in, or are not inconsistent with, our best interests and the best interests of our stockholders.

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Although we have not had a written policy prior to this offering for the review and approval of related person transactions, our board of directors has historically reviewed and approved any transaction where a director or officer had a financial interest, including the transactions described above. Prior to approving such a transaction, the material facts as to a director's or officer's relationship or interest as to the agreement or transaction were disclosed to our board of directors, which took this information into account when evaluating the transaction and determining whether such transaction was fair to us and in the best interest of our stockholders.

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## Principal and Selling Stockholders

The following table sets forth certain information with respect to the beneficial ownership of our common stock as of January 31, 2015, and as adjusted to reflect the sale of common stock offered by us and the selling stockholders in this offering, for:

- each of our named executive officers;
- each of our directors;
- all of our executive officers and directors as a group;
- each stockholder, or group of affiliated persons, known by us to be the beneficial owner of more than 5% of our outstanding shares of common stock; and
- each of the selling stockholders.

We have determined beneficial ownership in accordance with the rules of the SEC, which generally define beneficial ownership to include any shares over which a person exercises sole or shared voting or investment power. Such determination is not necessarily indicative of beneficial ownership for any other purpose. Except as indicated by the footnotes below, we believe, based on the information furnished to us, that the persons and entities named in the table below have sole voting and investment power with respect to all shares of common stock that they beneficially own, subject to applicable community property laws.

Applicable percentage ownership is based on 196,381,160 shares of common stock outstanding at January 31, 2015, after giving effect to the conversion of all outstanding shares of preferred stock as of that date into an aggregate of 106,896,493 shares of our common stock, which will occur immediately prior to the completion of this offering. For purposes of computing percentage ownership after this offering, we have assumed the issuance and sale by us of shares of common stock in this offering and that the underwriters will not exercise their option to purchase additional shares. In computing the number of shares of common stock beneficially owned by a person and the percentage ownership of that person, we deemed to be outstanding all shares of common stock subject to options or warrants held by that person or entity that are currently exercisable or that will become exercisable within 60 days of January 31, 2015. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person.

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Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o Etsy, Inc., 55 Washington Street, Suite 512, Brooklyn, New York 11201.

Name of Beneficial Owner	Beneficial Ownership Prior to this Offering		Shares Being Offered	Beneficial Ownership After this Offering	
	Number	Percent		Number	Percent
<b>Named Executive Officers and Directors:</b>					
Jordan Breslow(1)	236,732	*			
James W. Breyer(2)	58,871,865	30.0%			
M. Michele Burns(3)	63,323	*			
Chad Dickerson(4)	4,224,206	2.1%			
Jonathan D. Klein(5)	535,326	*			
Kristina Salen(6)	792,630	*			
Fred Wilson(7)	29,917,245	15.2%			
All executive officers and directors as a group (8 persons)(8)	95,059,043	47.4%			
<b>5% Stockholders:</b>					
Entities affiliated with Accel Partners(9)	52,984,798	27.0%			
Entities affiliated with Index Ventures(10)	25,160,628	12.8%			
Entities affiliated with Tiger Global Management(11)	14,237,651	7.3%			
Entities affiliated with Union Square Ventures(12)	29,917,245	15.2%			
<b>Selling Stockholders:</b>					

\* Less than 1 percent.

- (1) Consists of 236,732 shares of common stock issuable pursuant to options exercisable within 60 days of January 31, 2015.
- (2) Consists of (i) 52,984,798 shares of common stock held by entities affiliated with Accel Partners, as reflected in footnote 9 below; (ii) 2,347,070 shares of common stock held by Mr. Breyer, Trustee of James W. Breyer 2005 Trust dated March 25, 2005; (iii) 2,333,570 shares of common stock held by Mr. Breyer, Trustee of The James W. Breyer 2011 Annuity Trust 3, dated March 10, 2011; and (iv) 1,206,427 shares of common stock held by Breyer Capital L.L.C. Mr. Breyer, a member of our board of directors, is a partner of Accel Partners, and therefore, may be deemed to share voting and investment power with regard to the shares held directly by Accel Partners. Mr. Breyer is the manager of Breyer Capital L.L.C. and has sole voting and investment power with regard to the shares held directly by this limited liability company. The address for Mr. Breyer is c/o Accel Partners, 428 University Avenue, Palo Alto, California 94301.
- (3) Consists of 63,323 shares of common stock issuable pursuant to options exercisable within 60 days of January 31, 2015.
- (4) Consists of (i) 1,506,713 shares of common stock held by Mr. Dickerson and Nancy Suess Dickerson as joint tenants with right of survivorship and (ii) 2,717,493 shares of common stock issuable pursuant to options exercisable within 60 days of January 31, 2015.
- (5) Consists of (i) 43,479 shares of common stock held by Mr. Klein and Deborah A. Klein; (ii) 43,478 shares of common stock held by the JD Klein Family Settlement Trust; (iii) 428,442 shares of common stock held by Mr. Klein and Deborah A. Klein as community property; and (iv) 19,927 shares of common stock issuable pursuant to options exercisable within 60 days of January 31, 2015. Abacus Trust Co., Ltd. (Abacus) is the trustee of the JD Klein Family Settlement Trust and has sole voting and investment power with respect to the shares held directly by the trust. Eimear Mary Dowling, Stewart Henderson Fleming, Andrew James Cardwell, Martin Heaney, Paul Terence Kneen and John Paul Watterson are the directors of Abacus and, therefore, each may be deemed to share voting and investment power over the securities held by the JD Klein Family Settlement Trust. The address for Mr. Klein is c/o Getty Images, 75 Varick Street, Suite 500, New York, New York 10013.
- (6) Consists of 792,630 shares of common stock issuable pursuant to options exercisable within 60 days of January 31, 2015.
- (7) Consists of 29,917,245 shares of common stock held by entities affiliated with Union Square Ventures, as reflected in footnote 12 below. Mr. Wilson, a member of our board of directors, is a general partner of Union Square Ventures, and therefore, may be deemed to share voting and investment power with regard to the shares held directly by Union Square Ventures. The address for Mr. Wilson is c/o Union Square Ventures, 915 Broadway, 19th Floor, New York, New York 10010.

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- (8) Includes (i) 90,811,222 shares of common stock beneficially owned by our directors and named executive officers; (ii) 3,830,105 shares of common stock issuable to our directors and named executive officers pursuant to options exercisable within 60 days of January 31, 2015; (iii) 100,000 shares of common stock held by an executive officer who is not a named executive officer; and (iv) 317,716 shares of common stock issuable to an executive officer who is not a named executive officer pursuant to options exercisable within 60 days of January 31, 2015.
- (9) Consists of (i) 29,756,265 shares of common stock held by Accel X L.P. (A10); (ii) 2,571,895 shares of common stock held by Accel X Strategic Partners L.P. (A10SP); (iii) 3,129,765 shares of common stock held by Accel Investors 2008 L.L.C. (Accel Investors 2008); (iv) 6,442,660 shares of common stock held by Accel Growth Fund II L.P. (AGF); (v) 466,657 shares of common stock held by Accel Growth Fund II Strategic Partners L.P. (AGFSP); (vi) 627,212 shares of common stock held by Accel Growth Fund Investors 2012 L.L.C. (AGF Investors 2012); (vii) 9,663,899 shares of common stock held by Accel London II L.P. (Accel London); and (viii) 326,445 shares of common stock held by Accel London Investors 2008 L.P. (Accel London 2008). Accel X Associates L.L.C. (A10A) is the general partner of A10 and A10SP and has sole voting and investment power over the shares held directly by the limited partnerships. Andrew G. Braccia, Mr. Breyer, Kevin J. Efrusy, Sameer K. Gandhi, Ping Li, Tracy L. Sedlock and Richard P. Wong are the managing members of A10A and Accel Investors 2008 and, therefore, may be deemed to share voting and investment power with regard to the shares held directly by A10, A10SP and Accel Investors 2008. Accel Growth Fund II Associates L.L.C. (AGFA) is the general partner of AGF and AGFSP and has sole voting and investment power with regard to the shares held directly by the limited partnerships. Andrew G. Braccia, Mr. Breyer, Sameer K. Gandhi, Ping Li, Tracy Sedlock, Ryan J. Sweeney and Richard P. Wong are the managing members of AGFA and AGF Investors 2012 and, therefore, may be deemed to share voting and investment power with regard to the shares held directly by AGF, AGFSP and AGF Investors 2012. Accel London II Associates L.L.C. (ALA L.L.C.) is the general partner of Accel London 2008 and Accel London II Associates L.P., which is the general partner of Accel London, and has sole voting and investment power with regard to the shares held directly by Accel London 2008 and Accel London. Jonathan Biggs, Kevin Comolli, Bruce Golden and Hendrik Nelis are the managers of ALA L.L.C. and, therefore, may be deemed to share voting and investment power with regard to the shares held directly by Accel London and Accel London 2008. We refer to A10A, AGFA, Accel Investors 2008, AGF Investors 2012, ALA L.L.C., Accel London 2008 and affiliated entities as Accel Partners. The address for Accel Partners is 428 University Avenue, Palo Alto, California 94301.
- (10) Represents (i) 24,190,729 shares of common stock held by Index Ventures Growth I (Jersey), L.P. (Index Growth); (ii) 844,034 shares of common stock held by Index Ventures Growth I Parallel Entrepreneur Fund (Jersey), L.P. (Index Parallel); and (iii) 125,865 shares of common stock held by Yucca (Jersey) SLP (Yucca). Index Venture Growth Associates I Limited is the managing general partner of Index Growth and Index Parallel and is an affiliate of Yucca, and has sole voting and investment power with regard to the shares held directly by the entities. Bernard Dallé, David Hall, Phil Balderson, Ian Henderson, Nigel Greenwood and Sinéad Meehan are the directors of Index Venture Growth Associates I Limited and, therefore, may be deemed to share voting and investment power with regard to the shares held directly by Index Growth, Index Parallel and Yucca. We refer to Index Growth, Index Parallel and Yucca as Index Ventures. The address for Index Growth and Index Parallel is No. 1 Seaton Place, St. Helier, Jersey JE48YJ, Channel Islands and for Yucca is c/o Elian Employee Benefit Services Limited, 44 Esplanade, St. Helier, Jersey JE49WG, Channel Islands.
- (11) Represents (i) 13,449,299 shares of common stock held by Tiger Global Private Investment Partners VII, L.P. (Tiger Global PIP VII) and (ii) 788,352 shares of common stock held by Tiger Global Private Investment Partners VIII, L.P. (Tiger Global PIP VIII). Tiger Global PIP VII and Tiger Global PIP VIII are ultimately controlled by Chase Coleman, Lee Fixel and Scott Shleifer. We refer to Tiger Global PIP VII and Tiger Global PIP VIII as Tiger Global Management. The address for Tiger Global Management is 9 West 57th Street, 35th Floor, New York, New York 10019.
- (12) Represents (i) 26,491,160 shares of common stock held by Union Square Ventures 2004, L.P. (USV 2004); (ii) 527,710 shares of common stock held by Union Square Principals 2004, L.L.C. (USV Principals); and (iii) 2,898,375 shares of common stock held by Union Square Ventures Opportunity Fund, L.P. (USV OP). Union Square GP 2004, L.L.C. (USV GP) is the general partner of USV 2004 and USV Principals and has sole voting and investment power with regard to the shares held directly by these limited partnerships. Union Square Opportunity Fund GP, L.L.C. (USV OPGP) is the general partner of USV OP and has sole voting and investment power with regard to the shares held directly by the limited partnership. We refer to USV GP, USV OPGP and affiliated entities as Union Square Ventures. Mr. Wilson, Brad Burnham, Albert Wenger, Andy Weissman and John Buttrick are partners at Union Square Ventures and, therefore, may be deemed to share voting and investment power with regard to the shares held directly by Union Square Ventures. The address for Union Square Ventures is 915 Broadway, 19th Floor, New York, New York 10010.

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# Description of Capital Stock

This section contains a description of our capital stock and the material provisions of our amended and restated certificate of incorporation and amended and restated bylaws that will be in effect upon the completion of this offering and is qualified by reference to the forms of our amended and restated certificate of incorporation and our amended and restated bylaws filed as exhibits to the registration statement relating to this prospectus, and by the applicable provisions of Delaware law.

## General

Upon the completion of this offering, our amended and restated certificate of incorporation will authorize        shares of undesignated preferred stock, the rights, preferences and privileges of which may be designated from time to time by our board of directors.

Upon the completion of this offering, our authorized capital stock will consist of        shares, all with a par value of \$0.001 per share, of which:

- shares are designated common stock; and
- shares are designated preferred stock.

As of December 31, 2014, and after giving effect to the automatic conversion of all of our outstanding preferred stock into common stock in connection with this offering, there were outstanding:

- 195,258,466 shares of our common stock held of record by 312 stockholders;
- 23,050,594 shares of our common stock issuable upon exercise of outstanding stock options; and
- 406,060 shares of our common stock issuable upon exercise of outstanding warrants.

Additionally, in January 2015, we issued 376,471 shares of common stock to Etsy.org.

## Common Stock

### Dividend Rights

Subject to preferences that may apply to shares of preferred stock outstanding at the time, the holders of outstanding shares of our common stock are entitled to receive dividends out of funds legally available if our board of directors, in its discretion, determines to issue dividends and only then at the times and in the amounts that our board of directors may determine. Under Delaware law, we can only pay dividends either out of “surplus” or out of the current or the immediately preceding year’s net profits. Surplus is defined as the excess, if any, at any given time, of the total assets of a corporation over its total liabilities and statutory

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capital. The value of a corporation's assets can be measured in a number of ways and may not necessarily equal their book value. See "Dividend Policy" for more information.

### Voting Rights

The holders of our common stock are entitled to one vote per share. Stockholders do not have the ability to cumulate votes for the election of directors. Our amended and restated certificate of incorporation and amended and restated bylaws that will be in effect upon completion of this offering will provide for a classified board of directors consisting of three classes of approximately equal size, each serving staggered three-year terms. Only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms.

### No Preemptive or Similar Rights

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

### Right to Receive Liquidation Distributions

Upon our dissolution, liquidation or winding-up, the assets legally available for distribution to our stockholders are distributable ratably among the holders of our common stock, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights and payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

## Preferred Stock

Upon the completion of this offering, no shares of preferred stock will be outstanding. However, we will be authorized, subject to limitations prescribed by Delaware law, to issue preferred stock in one or more series, to establish from time to time the number of shares to be included in each series, and to fix the designation, powers, preferences and rights of the shares of each series and any of its qualifications, limitations or restrictions. Our board of directors also can increase or decrease the number of shares of any series, but not below the number of shares of that series then outstanding, without any further vote or action by our stockholders. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control of our company and may adversely affect the market price of our common stock and the voting and other rights of the holders of common stock. We have no current plan to issue any shares of preferred stock.

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## **Options**

As of December 31, 2014, we had options to purchase 23,050,594 shares of our common stock outstanding under our 2006 Stock Plan. Subsequent to December 31, 2014, we granted options to purchase 2,037,490 shares of our common stock under our 2006 Stock Plan.

## **Warrants**

As of December 31, 2014, we had outstanding immediately exercisable warrants to purchase (i) an aggregate of 11,373 shares of our Series C preferred stock at an exercise price of \$2.67 per share, or the Series C warrant, (ii) an aggregate of 24,510 shares of our Series D preferred stock at an exercise price of \$6.63 per share, or the Series D warrant, and (iii) an aggregate of 4,723 shares of our Series E preferred stock at an exercise price of \$15.88 per share, or the Series E warrant. Immediately following this offering, the Series C warrant will be exercisable for 113,730 shares of our common stock at an exercise price of \$0.267 per share, the Series D warrant will be exercisable for 245,100 shares of our common stock at an exercise price of \$0.663 per share and the Series E warrant will be exercisable for 47,230 shares of our common stock at an exercise price of \$1.588 per share. The Series C warrant expires on November 14, 2017. The Series D warrant expires on the later of May 15, 2015 and five years from the date of this offering. The Series E warrant expires on the later of August 9, 2017 and five years from the date of this offering.

## **Registration Rights**

Following the completion of this offering, holders of an aggregate of      shares of our common stock will have registration rights. These shares are referred to as registrable securities. The holders of these registrable securities possess registration rights pursuant to the terms of our sixth amended and restated investor rights agreement dated May 1, 2012, as amended, or investor rights agreement, which terms are described in additional detail below. We originally entered into the investor rights agreement in connection with our Series A-1 preferred stock financing and amended it mostly recently on May 2, 2014.

### **Demand Registration Rights**

Under our investor rights agreement, at any time commencing on the date that is 180 days following the effective date of our first registration statement, upon the written request of the holders of not less than 30% of the registrable securities then outstanding that we file a registration statement under the Securities Act with an anticipated aggregate price to the public of at least \$7.5 million, we will be obligated to use our commercially reasonable efforts to register the sale of all registrable securities that holders may request in writing to be registered within 20 days of the mailing of a notice by us to all holders of such registration. We are required to effect no more than two registration statements that are declared or ordered effective, subject to certain exceptions. We may postpone the filing of a registration statement for up to 120 days twice in any 12-month period if in the good faith judgment of our board of directors such registration would

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be seriously detrimental to us, and we are not required to effect the filing of a registration statement during the period beginning 90 days prior to our good faith estimate of the date of the filing of, and ending on a date 180 days following the effective date of, a registration initiated by us.

### **Piggyback Registration Rights**

If we register any of our securities for public sale, we will be obligated to use all commercially reasonable efforts to register all registrable securities that the holders of such securities request in writing be registered within 10 days of mailing of notice by us to all holders of the proposed registration. However, this right does not apply to a registration relating solely to employee benefit plans, a registration relating to the offer and sale of debt securities or a registration relating to a corporate reorganization or other transaction under Rule 145 of the Securities Act. The managing underwriter of any underwritten offering will have the right to limit, due to marketing reasons, the number of shares registered by these holders to 25% of the total shares covered by the registration statement, except for in this offering, in which these holders may be excluded entirely if the underwriters determine that the sale of their shares may jeopardize the success of the offering.

### **Form S-3 Registration Rights**

At any time commencing on the date that is 180 days following the effective date of our first registration statement, the holders of the registrable securities can request that we register all or a portion of their shares on Form S-3 if we are eligible to file a registration statement on Form S-3 and the aggregate price to the public of the shares offered is at least \$3 million. We are required to file no more than two registration statements on Form S-3 per 12-month period upon exercise of these rights, subject to certain exceptions. We may postpone the filing of a registration statement for up to 120 days twice in any 12-month period if in the good faith judgment of our board of directors such registration would be seriously detrimental to us, and we are not required to effect the filing of a registration statement during the period beginning 90 days prior to our good faith estimate of the date of the filing of, and ending on a date 180 days following the effective date of, a registration initiated by us.

### **Registration Expenses**

We will pay all expenses (other than underwriting discounts, selling commissions and stock transfer taxes) of the holders incurred in connection with each of the registrations described above. However, we will not pay for any expenses of any demand or Form S-3 registration if the request is subsequently withdrawn at the request of the holders of a majority of the registrable securities to be registered, subject to limited exceptions.

### **Termination of Registration Rights**

The registration rights described above will survive this offering and will terminate as to any stockholder at such time as all of such stockholder's securities (together with any affiliate of the stockholder with whom

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such stockholder must aggregate its sales) could be sold pursuant to Rule 144 of the Securities Act, but in any event no later than the five-year anniversary of this offering.

## **Anti-Takeover Provisions**

### **Section 203 of the Delaware General Corporation Law**

Upon the completion of this offering, we will be governed by the provisions of Section 203 of the Delaware General Corporation Law regulating corporate takeovers. This section prevents some Delaware corporations from engaging, under some circumstances, in a business combination. A business combination includes a merger or sale of at least 10% of the corporation's assets with any interested stockholder, meaning a stockholder who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of the corporation's outstanding voting stock, unless:

- the transaction is approved by the board of directors prior to the time that the interested stockholder became an interested stockholder; or
- subsequent to such time that the stockholder became an interested stockholder the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders by at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

A Delaware corporation may "opt out" of these provisions with an express provision in its original certificate of incorporation or an express provision in its certificate of incorporation or amended and restated bylaws resulting from a stockholders' amendment approved by a majority of the outstanding voting shares. We have not opted out of these provisions. As a result, mergers or other takeover or change in control attempts of us may be discouraged or prevented.

### **Certificate of Incorporation and Bylaw Provisions**

Upon the completion of this offering, our amended and restated certificate of incorporation and our amended and restated bylaws will include a number of provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in control of our management team, including the following:

*Board of Directors Vacancies* . Our amended and restated certificate of incorporation and amended and restated bylaws will authorize only our board of directors to fill vacant directorships. In addition, the number of directors constituting our board of directors will be set only by resolution adopted by a majority vote of our entire board of directors. These provisions will prevent a stockholder from increasing the size of our board of directors and gaining control of our board of directors by filling the resulting vacancies with its own nominees.

*Classified Board* . Our amended and restated certificate of incorporation and amended and restated bylaws will provide that our board of directors will be classified into three classes of directors, each of whom will hold office for a three-year term. In addition, directors may only be removed from our board of directors for

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cause and only by the approval of our then outstanding shares of our common stock. The existence of a classified board could delay a successful tender offeror from obtaining majority control of our board of directors, and the prospect of that delay might deter a potential offeror.

*Stockholder Action; Special Meeting of Stockholders*. Our amended and restated certificate of incorporation will provide that stockholders will not be able to take action by written consent, and will only be able to take action at annual or special meetings of our stockholders. Stockholders will not be permitted to cumulate their votes for the election of directors. Our amended and restated bylaws will further provide that special meetings of our stockholders may be called only by a majority vote of our entire board of directors, the chairman of our board of directors or our chief executive officer.

*Advance Notice Requirements for Stockholder Proposals and Director Nominations*. Our amended and restated bylaws will provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at any meeting of stockholders. Our amended and restated bylaws will also specify certain requirements regarding the form and content of a stockholder's notice. These provisions may preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our meetings of stockholders.

*Issuance of Undesignated Preferred Stock*. Our board of directors will have the authority, without further action by the holders of common stock, to issue up to      shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock will enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise.

## **Choice of Forum**

Upon the completion of this offering, our amended and restated certificate of incorporation will provide that the Court of Chancery of the State of Delaware will be the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable.

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### **Transfer Agent and Registrar**

Upon the completion of this offering, the transfer agent and registrar for our common stock will be American Stock Transfer & Trust Company, LLC. The transfer agent's address is 6201 15th Avenue, Brooklyn, New York 11219, and its telephone number is (800) 937-5449.

### **Listing**

We intend to apply to have our common stock listed on the Nasdaq Global Select Market under the symbol "ETSY."

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# Shares Available for Future Sale

Before this offering, there has not been a public market for shares of our common stock. Future sales of substantial amounts of shares of our common stock, including shares issued upon the exercise of outstanding options, in the public market following this offering or the possibility of these sales occurring could cause the prevailing market price for our common stock to fall or impair our ability to raise equity capital in the future.

Following this offering, we will have       outstanding shares of our common stock, based on the number of shares outstanding as of December 31, 2014. Of these outstanding shares, all of the       shares of common stock sold in this offering will be freely tradable, except that any shares purchased in this offering by our affiliates, as that term is defined in Rule 144 under the Securities Act, can only be sold in compliance with Rule 144.

The remaining shares of common stock that are not sold in this offering will be “restricted securities,” as that term is defined in Rule 144 under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rule 144 or Rule 701 under the Securities Act, which are summarized below.

In addition, all of our executive officers and directors and the holders of substantially all of our capital stock are subject to lock-up agreements with us or the underwriters of this offering that restrict the stockholders’ ability to transfer shares, subject to specific exceptions, of our common stock for periods of at least 180 days, and for a portion of the shares, 270 and 360 days from the date of this prospectus, as described below. As a result of these agreements and the provisions of our investors’ rights agreement described above under “Description of Capital Stock—Registration Rights,” subject to the provisions of Rule 144 or Rule 701, shares will be available for sale in the public market as follows:

- beginning on the date of this prospectus, the shares sold in this offering will be immediately available for sale in the public market;
- beginning 181 days after the date of this prospectus, up to an aggregate of       additional shares will become eligible for sale in the public market, of which       shares will be held by affiliates and subject to the volume and other restrictions of Rule 144, as described below;
- beginning 271 days after the date of this prospectus, up to an aggregate of       additional shares will become eligible for sale in the public market, of which       shares will be held by affiliates and subject to the volume and other restrictions of Rule 144, as described below;
- beginning 361 days after the date of this prospectus, up to an aggregate of       additional shares will become eligible for sale in the public market, of which       shares will be held by affiliates and subject to the volume and other restrictions of Rule 144, as described below;

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- the remainder of the shares will be eligible for sale in the public market from time to time thereafter, subject in some cases to the volume and other restrictions of Rule 144, as described below.

## Lock-Up Agreements

Our executive officers, directors and stockholders holding substantially all of our outstanding capital stock are subject to lock-up agreements with the underwriters of this offering that restrict the stockholders' ability to transfer shares of our common stock, subject to certain exceptions, for periods of at least 180 days, and for a portion of the shares, 270 and 360 days from the date of this prospectus, except with the prior written consent of Goldman, Sachs & Co. In addition, substantially all other holders of our common stock, options and warrants have previously entered into lock-up agreements with us not to sell or otherwise transfer any of their common stock or securities convertible into or exchangeable for shares of common stock for a period that extends until 181 days after the date of this prospectus.

See "Underwriting" for a more complete description of the lock-up agreements with the underwriters.

## Rule 144

In general, under Rule 144 as currently in effect, a person who has beneficially owned shares of our restricted common stock for at least six months would be entitled to sell their securities provided that such person is not deemed to have been one of our affiliates at the time of, or at any time during the 90 days preceding, a sale, and we are subject to the periodic reporting requirements of the Exchange Act, for at least 90 days before the sale. In addition, under Rule 144, any person who is not an affiliate of ours and has held their shares for at least one year, including the holding period of any prior owner other than one of our affiliates, would be entitled to sell an unlimited number of shares immediately upon the completion of this offering without regard to whether current public information about us is available. Persons who have beneficially owned shares of our restricted common stock for at least six months but who are our affiliates at the time of, or any time during the 90 days preceding, a sale, would be subject to additional restrictions, by which such person would be entitled to sell within any three-month period only a number of securities that does not exceed the greater of either of the following:

- 1% of the number of common shares then outstanding, which will equal approximately \_\_\_\_\_ shares immediately after this offering assuming no exercise of the underwriters' option to purchase additional shares, based on the number of common shares outstanding as of December 31, 2014; or
- the average weekly trading volume of our common shares during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale;

provided, in each case, that we are subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale. Such sales both by affiliates and by non-affiliates must also comply with the manner of sale, current public information and notice provisions of Rule 144.

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### Rule 701

Any of our service providers who purchased shares under a written compensatory plan or contract prior to this offering may be entitled to rely on the resale provisions of Rule 701. Rule 701, as currently in effect, permits resales of shares, including by affiliates, in reliance upon Rule 144 but without compliance with certain restrictions, including the holding period requirement, of Rule 144. Rule 701 further provides that non-affiliates may sell such shares in reliance on Rule 144 without having to comply with the public information, volume limitation or notice provisions of Rule 144. All holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling such shares if such resale is done under Rule 701. All Rule 701 shares are, however, subject to lock-up agreements and will only become eligible for sale upon the expiration of these lock-up agreements.

### Registration Rights

Upon completion of this offering, the holders of \_\_\_\_\_ shares of our common stock will have registration rights. See “Description of Capital Stock—Registration Rights.” All such shares are covered by lock-up agreements. Following the expiration of the lock-up period, registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares purchased by our affiliates.

### Form S-8 Registration Statements

We intend to file a registration statement on Form S-8 under the Securities Act covering all of the shares of common stock subject to options outstanding, as well as reserved for future issuance, under our stock plans. We expect to file this registration statement as soon as practicable after this offering. However, none of the shares registered on Form S-8 will be eligible for resale until the expiration of the lock-up agreements to which they are subject.

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# Material U.S. Federal Income Tax Considerations for Non-U.S. Holders of Common Stock

The following is a discussion of the material U.S. federal income tax considerations with respect to the ownership and disposition of shares of common stock applicable to non-U.S. holders who acquire such shares in this offering and hold such shares as a capital asset within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended (the “Code”) (generally, property held for investment). For purposes of this discussion, a “non-U.S. holder” means a beneficial owner of our common stock (other than an entity or arrangement that is treated as a partnership for U.S. federal income tax purposes) that is not, for U.S. federal income tax purposes, any of the following:

- a citizen or resident of the United States;
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized in the United States or under the laws of the United States, any state thereof or the District of Columbia, or any other corporation treated as such;
- an estate, the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more “U.S. persons,” as defined under the Code, have the authority to control all substantial decisions of the trust or (ii) such trust has made a valid election to be treated as a U.S. person for U.S. federal income tax purposes.

This discussion is based on current provisions of the Code, Treasury regulations promulgated thereunder, judicial opinions, published positions of the Internal Revenue Service and other applicable authorities, all of which are subject to change (possibly with retroactive effect). This discussion does not address all aspects of U.S. federal income taxation that may be important to a particular non-U.S. holder in light of that non-U.S. holder’s individual circumstances, nor does it address any aspects of the unearned income Medicare contribution tax pursuant to the Health Care and Education Reconciliation Act of 2010, any U.S. federal estate and gift taxes, any U.S. alternative minimum taxes or any state, local or non-U.S. taxes. This discussion may not apply, in whole or in part, to particular non-U.S. holders in light of their individual circumstances or to holders subject to special treatment under the U.S. federal income tax laws (such as insurance companies, tax-exempt organizations, financial institutions, brokers or dealers in securities, “controlled foreign corporations,” “passive foreign investment companies,” non-U.S. holders that hold our common stock as part of a straddle, hedge, conversion transaction or other integrated investment and certain U.S. expatriates).

If a partnership (or other entity or arrangement treated as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of a partner therein will generally depend on the status of the partner and the activities of the partnership. Partners of a partnership holding our common

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stock should consult their tax advisor as to the particular U.S. federal income tax consequences applicable to them.

THIS SUMMARY IS FOR GENERAL INFORMATION ONLY AND IS NOT INTENDED TO CONSTITUTE A COMPLETE DESCRIPTION OF ALL TAX CONSEQUENCES FOR NON-U.S. HOLDERS RELATING TO THE OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK. PROSPECTIVE HOLDERS OF OUR COMMON STOCK SHOULD CONSULT WITH THEIR TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM (INCLUDING THE APPLICATION AND EFFECT OF ANY STATE, LOCAL, NON-U.S. INCOME AND OTHER TAX LAWS) OF THE OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK.

## Dividends

In general, the gross amount of any distribution we make to a non-U.S. holder with respect to its shares of common stock will be subject to U.S. withholding tax at a rate of 30% to the extent the distribution constitutes a dividend for U.S. federal income tax purposes, unless the non-U.S. holder is eligible for a reduced rate of withholding tax under an applicable tax treaty and the non-U.S. holder provides proper certification of its eligibility for such reduced rate (generally an applicable Internal Revenue Service Form W-8). A distribution will constitute a dividend for U.S. federal income tax purposes to the extent of our current or accumulated earnings and profits as determined for U.S. federal income tax purposes. To the extent any distribution does not constitute a dividend, it will be treated first as reducing the adjusted basis in the non-U.S. holder's shares of common stock and then, to the extent it exceeds the adjusted basis in the non-U.S. holder's shares of common stock, as gain from the sale or exchange of such stock. Any such gain will be subject to the treatment described below under “—Gain on Sale or Other Disposition of Common Stock.”

Dividends we pay to a non-U.S. holder that are effectively connected with its conduct of a trade or business within the United States (and, if required by an applicable tax treaty, are attributable to a U.S. permanent establishment of such non-U.S. holder) will not be subject to U.S. withholding tax, as described above, if the non-U.S. holder complies with applicable certification and disclosure requirements. Instead, such dividends generally will be subject to U.S. federal income tax on a net income basis, at regular U.S. federal income tax rates. Dividends received by a non-U.S. corporation that are effectively connected with its conduct of trade or business within the United States may be subject to an additional branch profits tax at a rate of 30% (or such lower rate as may be specified by an applicable tax treaty).

## Gain on Sale or Other Disposition of Common Stock

In general, a non-U.S. holder will not be subject to U.S. federal income tax on any gain realized upon the sale or other disposition of the non-U.S. holder's shares of common stock unless:

- the gain is effectively connected with a trade or business carried on by the non-U.S. holder within the United States (and, if required by an applicable tax treaty, is attributable to a U.S. permanent establishment of such non-U.S. holder);

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- the non-U.S. holder is an individual and is present in the United States for 183 days or more in the taxable year of disposition and certain other conditions are met; or
- we are or have been a U.S. real property holding corporation for U.S. federal income tax purposes at any time within the shorter of the five-year period preceding such disposition or such non-U.S. holder's holding period of our common stock, and the non-U.S. holder has held, at any time during said period, more than 5% of the class of our stock being sold.

Gain that is effectively connected with the conduct of a trade or business in the United States (or so treated) generally will be subject to U.S. federal income tax on a net income tax basis, at regular U.S. federal income tax rates. If the non-U.S. holder is a non-U.S. corporation, the branch profits tax described above also may apply to such effectively connected gain. An individual non-U.S. holder who is subject to U.S. federal income tax because the non-U.S. holder was present in the United States for 183 days or more during the year of sale or other disposition of our common stock will be subject to a flat 30% tax on the gain derived from such sale or other disposition, which may be offset by U.S. source capital losses. We believe that we are not and we do not anticipate becoming a U.S. real property holding corporation for U.S. federal income tax purposes.

## Withholdable Payments to Foreign Financial Institutions and Other Non-U.S. Entities

The Foreign Account Tax Compliance Act, or FATCA, will impose a U.S. federal withholding tax of 30% on certain payments to foreign financial institutions, investment funds and certain other non-U.S. persons that fail to comply with certain information reporting and certification requirements pertaining to their direct and indirect U.S. securityholders and/or U.S. accountholders. Such payments would include our dividends and the gross proceeds from the sale or other disposition of our common stock. Under applicable Treasury Regulations, this withholding will apply to payments of dividends on our common stock, and to payments of gross proceeds from a sale or other disposition of our common stock made on or after January 1, 2017. Prospective investors are encouraged to consult with their own tax advisors regarding the possible implications of this legislation on their investment in our common stock.

## Backup Withholding, Information Reporting and Other Reporting Requirements

We must report annually to the Internal Revenue Service and to each non-U.S. holder the amount of dividends paid to, and the tax withheld with respect to, each non-U.S. holder. These reporting requirements apply regardless of whether withholding was reduced or eliminated by an applicable tax treaty. Copies of this information reporting may also be made available under the provisions of a specific tax treaty or agreement with the tax authorities in the country in which the non-U.S. holder resides or is established.

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A non-U.S. holder will generally be subject to backup withholding for dividends on our common stock paid to such holder unless such holder certifies under penalties of perjury (generally by providing an applicable Internal Revenue Service form W-8) that, among other things, it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that such holder is a U.S. person) or otherwise establishes an exemption.

Information reporting and backup withholding generally are not required with respect to the amount of any proceeds from the sale or other disposition of our common stock by a non-U.S. holder outside the United States through an office outside the United States of a non-U.S. broker that does not have certain specified connections to the United States. However, if a non-U.S. holder sells or otherwise disposes of its shares of common stock through a U.S. broker or the U.S. offices of a non-U.S. broker, the broker will generally be required to report the amount of proceeds paid to the non-U.S. holder to the Internal Revenue Service and also backup withhold on that amount unless such non-U.S. holder provides appropriate certification to the broker of its status as a non-U.S. person (and the payor does not have actual knowledge or reason to know that such holder is a U.S. person) or otherwise establishes an exemption. Information reporting will also apply if a non-U.S. holder sells its shares of common stock through a non-U.S. broker deriving more than a specified percentage of its income from U.S. sources or having certain other connections to the United States, unless such broker has documentary evidence in its records that such non-U.S. holder is a non-U.S. person (and the payor does not have actual knowledge or reason to know that such holder is a U.S. person) and certain other conditions are met, or such non-U.S. holder otherwise establishes an exemption.

Backup withholding is not an additional income tax. Any amounts withheld under the backup withholding rules from a payment to a non-U.S. holder generally can be credited against the non-U.S. holder's U.S. federal income tax liability, if any, or refunded, provided that the required information is furnished to the Internal Revenue Service in a timely manner. Non-U.S. holders should consult their tax advisors regarding the application of the information reporting and backup withholding rules to them.

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# Underwriting

The company, the selling stockholders and the underwriters named below have entered into an underwriting agreement with respect to the shares being offered. Subject to certain conditions, each underwriter has severally agreed to purchase the number of shares indicated in the following table. Goldman, Sachs & Co. is the representative of the underwriters.

<u>Underwriters</u>	<u>Number of Shares</u>
Goldman, Sachs & Co.	
Morgan Stanley & Co. LLC	
Allen & Company LLC	
Total	

The underwriters are committed to take and pay for all of the shares being offered, if any are taken, other than the shares covered by the option described below unless and until this option is exercised.

The underwriters have an option to buy up to an additional        shares from the company to cover sales by the underwriters of a greater number of shares than the total number in the table above. They may exercise that option for 30 days. If any shares are purchased pursuant to this option, the underwriters will severally purchase shares in approximately the same proportion as in the table above.

The following tables show the per share and total estimated underwriting discounts and commissions to be paid to the underwriters by the company and the selling stockholders. Such amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase        additional shares.

<u>Paid by the Company</u>	<u>No Exercise</u>	<u>Full Exercise</u>
Per Share	\$	\$
Total	\$	\$

<u>Paid by the Selling Stockholders</u>	<u>No Exercise</u>	<u>Full Exercise</u>
Per Share	\$	\$
Total	\$	\$

Shares sold by the underwriters to the public will initially be offered at the initial public offering price on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to \$        per share from the initial public offering price. After the initial offering of the shares, the representative may change the offering price and the other selling terms. The offering of the shares by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

The company and its officers, directors and holders of substantially all of the company's capital stock, including the selling stockholders, have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any of their common stock or securities convertible into or exchangeable for shares of

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common stock during periods of at least 180 days, and for a portion of the shares, 270 and 360 days from the date of this prospectus, except with the prior written consent of Goldman, Sachs & Co. This agreement does not apply to any existing employee benefit plans. See “Shares Available for Future Sale” for a discussion of certain transfer restrictions.

Prior to the offering, there has been no public market for the shares. The initial public offering price will be negotiated among the company and the representative. Among the factors to be considered in determining the initial public offering price of the shares, in addition to prevailing market conditions, will be the company’s historical performance, estimates of the business potential and earnings prospects of the company, an assessment of the company’s management and the consideration of the above factors in relation to market valuation of companies in related businesses.

The company intends to apply to list the common stock on the Nasdaq Global Select Market under the symbol “ETSY.”

In connection with the offering, the underwriters may purchase and sell shares of common stock in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering, and a short position represents the amount of such sales that have not been covered by subsequent purchases. A “covered short position” is a short position that is not greater than the amount of additional shares for which the underwriters’ option described above may be exercised. The underwriters may cover any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to cover the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase additional shares pursuant to the option described above. “Naked” short sales are any short sales that create a short position greater than the amount of additional shares for which the option described above may be exercised. The underwriters must cover any such naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representative has repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Purchases to cover a short position and stabilizing transactions, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of the company’s stock, and together with the imposition of the penalty bid, may stabilize, maintain or

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otherwise affect the market price of the common stock. As a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. The underwriters are not required to engage in these activities and may end any of these activities at any time. These transactions may be effected on [REDACTED], in the over-the-counter market or otherwise.

The underwriters do not expect sales to discretionary accounts to exceed five percent of the total number of shares offered.

The company and the selling stockholders estimate that the total expenses of the offering, including registration, filing and listing fees, printing fees and legal and accounting expenses and the expenses of Financial Industry Regulatory Authority, or FINRA, qualification, but excluding estimated underwriting discounts and commissions, will be approximately \$ [REDACTED]. We have agreed to reimburse the underwriters for up to \$ [REDACTED] of expenses relating to clearance of this offering with FINRA.

The company and the selling stockholders have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended.

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the issuer and to persons and entities with relationships with the issuer, for which they received or will receive customary fees and expenses. For example, affiliates of Goldman, Sachs & Co. and Morgan Stanley & Co. LLC are lenders under our Credit Agreement.

In the ordinary course of their various business activities, the underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the issuer (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the issuer. The underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments. In addition, M. Michele Burns, a member of the company's board of directors, is also a member of the board of directors of The Goldman Sachs Group, Inc., an affiliate of Goldman, Sachs & Co., an underwriter in this offering.

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### IPO Participation Program

At our request, the underwriters have reserved up to 5% of the shares of common stock offered by this prospectus for sale, at the initial public offering price, to individual investors. We call this our IPO Participation Program, or IPP. The purpose of the IPP is to allow our U.S.-based Etsy community and other individual investors to participate in our IPO.

Sales in the IPP will be made at our direction by Morgan Stanley & Co. LLC, an underwriter of this offering, or its affiliates. We do not know if individual investors will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available in the overall offering. Any reserved shares not purchased in the IPP will be offered by the underwriters to the general public on the same terms as the other shares of common stock.

### Notice to Prospective Investors in the European Economic Area

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a Relevant Member State), each underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the Relevant Implementation Date) it has not made and will not make an offer of shares to the public in that Relevant Member State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of shares to the public in that Relevant Member State at any time:

- (a) to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (b) to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;
- (c) to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the representative for any such offer; or
- (d) in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer of shares to the public” in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to

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purchase or subscribe the shares, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

## Notice to Prospective Investors in the United Kingdom

Each underwriter has represented and agreed that:

- (a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the shares in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer; and
- (b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares in, from or otherwise involving the United Kingdom.

## Notice to Prospective Investors in Hong Kong

The shares may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), or (ii) to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

## Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”), (ii) to a relevant person, or any person

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pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 by a relevant person which is: (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for 6 months after that corporation or that trust has acquired the shares under Section 275 except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) by operation of law.

## Notice to Prospective Investors in Japan

The securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and each underwriter has agreed that it will not offer or sell any securities, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

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# **Legal Matters**

The validity of the shares of common stock offered by this prospectus will be passed upon for us by Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, New York, New York. As of the date of this prospectus, an investment fund associated with Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP beneficially owned less than 0.25% of the outstanding shares of our common stock. The underwriters have been represented by Davis Polk & Wardwell LLP, Menlo Park, California.

# **Experts**

The consolidated financial statements of Etsy, Inc. as of December 31, 2013 and 2014 and for each of the three years in the period ended December 31, 2014 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The financial statements of Jarvis Labs, Inc. as of December 31, 2012 and 2013, for the period from June 11, 2012 (inception) to December 31, 2012 and for the year ended December 31, 2013 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The financial statements of Incubart SAS as of December 31, 2012 and 2013 and for each of the two years in the period ended December 31, 2013 included in this prospectus have been so included in reliance of the report of PricewaterhouseCoopers Audit, independent accountants, given on the authority of said firm as experts in auditing and accounting.

# **Where You Can Find More Information**

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits filed therewith. For further information about us and the common stock offered hereby, reference is made to the registration statement and the exhibits filed therewith. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and in each instance we refer you to the copy of such contract or other document filed as an exhibit to the registration statement.

You may inspect a copy of the registration statement and the exhibits and schedules to the registration statement without charge at the offices of the SEC at 100 F Street, N.E., Washington, D.C. 20549. You may obtain copies of all or any part of the registration statement from the public reference section of the SEC, 100 F Street, N.E., Washington, D.C. 20549 upon the payment of the prescribed fees. You may obtain

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information on the operation of the public reference room by calling the SEC at 1-800-SEC-0330. The SEC maintains a website at [www.sec.gov](http://www.sec.gov) that contains reports, proxy and information statements and other information regarding registrants like us that file electronically with the SEC. You can also inspect our registration statement on this website.

Upon the completion of this offering, we will be subject to the information reporting requirements of the Securities Act and we will file reports, proxy statements and other information with the SEC. These reports, proxy statements and other information will be available for inspection and copying at the public reference room and website of the SEC referred to above. We also maintain a website at [www.etsy.com](http://www.etsy.com), at which you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. Information contained on our website is not incorporated by reference into this prospectus, and you should not consider information contained on our website to be part of this prospectus or in deciding whether to invest in our common stock.

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## Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of Etsy, Inc.:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, comprehensive (loss) income, changes in convertible preferred stock and stockholders' (deficit) equity and cash flows present fairly, in all material respects, the financial position of Etsy, Inc. (the "Company") and its subsidiaries at December 31, 2014 and 2013, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2014 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP  
New York, New York  
March 4, 2015

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# Etsy, Inc.

## Consolidated Balance Sheets

(In thousands except share and per share data)

	As of December 31, 2013	As of December 31, 2014	Pro Forma as of December 31, 2014 (Unaudited)
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 36,795	\$ 69,659	\$ 69,659
Short-term investments	18,075	19,184	19,184
Accounts receivable, net of allowance for doubtful accounts of \$1,279 and \$1,841 as of December 31, 2013 and 2014, respectively	11,102	15,404	15,404
Prepaid and other current assets	3,721	12,241	12,241
Deferred tax assets—current	1,802	2,932	2,932
Funds receivable and seller accounts	<u>5,290</u>	<u>10,573</u>	<u>10,573</u>
Total current assets	76,785	129,993	129,993
Restricted cash	—	5,341	5,341
Property and equipment, net	23,107	75,538	75,538
Goodwill	5,346	30,831	30,831
Intangible assets, net	493	5,410	5,410
Other assets	428	2,022	2,022
Total assets	<u>\$ 106,159</u>	<u>\$ 249,135</u>	<u>\$ 249,135</u>
<b>LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY</b>			
Current liabilities:			
Accounts payable	\$ 5,346	\$ 8,231	\$ 8,231
Accrued expenses and other current liabilities	5,043	17,442	17,442
Capital lease obligations—current portion	780	1,755	1,755
Funds payable and amounts due to sellers	5,290	10,573	10,573
Deferred revenue	<u>2,760</u>	<u>3,452</u>	<u>3,452</u>
Total current liabilities	19,219	41,453	41,453
Capital lease obligations—net of current portion	38	3,148	3,148
Warrant liability	1,428	1,920	—
Deferred tax liabilities	1,259	3,081	3,081
Facility financing obligation	—	50,320	50,320
Other liabilities	—	1,913	1,913
Total liabilities	<u>21,944</u>	<u>101,835</u>	<u>99,915</u>

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# Etsy, Inc. Consolidated Balance Sheets

(In thousands except share and per share data)

	As of December 31, 2013	As of December 31, 2014	Pro Forma as of December 31, 2014
			(Unaudited)
Commitments and contingencies			
Convertible preferred stock:			
Series A and A-1 convertible preferred stock (\$0.001 par value, 2,363,786 shares authorized; 2,363,786 shares issued and outstanding as of December 31, 2013 and 2014 and no shares issued and outstanding pro forma; \$808 aggregate liquidation preference as of December 31, 2013 and 2014)	808	808	—
Series B convertible preferred stock (\$0.001 par value, 1,128,431 shares authorized; 1,128,425 shares issued and outstanding as of December 31, 2013 and 2014 and no shares issued and outstanding pro forma; \$903 aggregate liquidation preference as of December 31, 2013 and 2014)	865	865	—
Series C convertible preferred stock (\$0.001 par value, 1,234,084 shares authorized; 1,222,282 shares issued and outstanding as of December 31, 2013 and 2014 and no shares issued and outstanding pro forma; \$3,263 aggregate liquidation preference as of December 31, 2013 and 2014)	3,361	3,361	—
Series D and D-1 convertible preferred stock (\$0.001 par value, 4,240,120 shares authorized; 4,215,610 shares issued and outstanding as of December 31, 2013 and 2014 and no shares issued and outstanding pro forma; \$27,949 aggregate liquidation preference as of December 31, 2013 and 2014)	27,870	27,870	—
Series E convertible preferred stock (\$0.001 par value, 401,450 shares authorized; 396,727 shares issued and outstanding as of December 31, 2013 and 2014 and no shares issued and outstanding pro forma; \$6,300 aggregate liquidation preference as of December 31, 2013 and 2014)	6,201	6,201	—
Series 1 convertible preferred stock (\$0.001 par value, 203,399 shares authorized; 203,399 shares issued and outstanding as of December 31, 2013 and 2014 and no shares issued and outstanding pro forma; \$1,312 aggregate liquidation preference as of December 31, 2013 and 2014)	1,322	1,322	—
Series F convertible preferred stock (\$0.001 par value, 11,594,203 shares authorized; 11,594,203 shares issued and outstanding as of December 31, 2013 and 2014 and no shares issued and outstanding pro forma; \$40,000 aggregate liquidation preference as of December 31, 2013 and 2014)	39,785	39,785	—
Total convertible preferred stock	<u>80,212</u>	<u>80,212</u>	<u>—</u>
Stockholders' equity:			
Common stock (\$0.001 par value, 205,000,000 shares authorized as of December 31, 2013 and 240,000,000 shares authorized as of December 31, 2014 and pro forma December 31, 2014; 66,165,965, 88,361,973 and 195,258,466 shares issued and outstanding as of December 31, 2013 and December 31, 2014 and pro forma December 31, 2014, respectively)	66	88	195
Additional paid-in capital	20,911	103,311	185,336
Accumulated deficit	(17,134)	(32,377)	(32,377)
Accumulated other comprehensive (loss) income	160	(3,934)	(3,934)
Total stockholders' equity	<u>4,003</u>	<u>67,088</u>	<u>149,220</u>
Total liabilities, convertible preferred stock and stockholders' equity	<u>\$ 106,159</u>	<u>\$ 249,135</u>	<u>\$ 249,135</u>

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

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# Etsy, Inc.

## Consolidated Statements of Operations

(In thousands except share and per share data)

	Year Ended December 31,		
	<b>2012</b>	<b>2013</b>	<b>2014</b>
Revenue	\$ 74,602	\$ 125,022	\$ 195,591
Cost of revenue	24,493	47,779	73,633
Gross profit	50,109	77,243	121,958
Operating expenses:			
Marketing	10,902	17,850	39,655
Product development	18,653	27,548	36,634
General and administrative	21,909	31,112	51,920
Total operating expenses	51,464	76,510	128,209
(Loss) income from operations	(1,355)	733	(6,251)
Other (expense) income:			
Interest expense and amortization of deferred financing costs	(486)	(302)	(590)
Interest and dividend income	48	46	41
Net unrealized loss on warrant and other liabilities	(737)	(419)	(411)
Foreign exchange loss	—	—	(3,049)
Total other expense	(1,175)	(675)	(4,009)
(Loss) income before income taxes	(2,530)	58	(10,260)
Benefit (provision) for income taxes	145	(854)	(4,983)
Net loss	\$ (2,385)	\$ (796)	\$ (15,243)
Deemed dividend to investors in relation to the tender offer	(256)	—	—
Net loss attributable to common stockholders—basic	\$ (2,641)	\$ (796)	\$ (15,243)
Undistributed earnings reallocated from convertible preferred stock	—	—	—
Net loss attributable to common stockholders—diluted	\$ (2,641)	\$ (796)	\$ (15,243)
Net loss per share attributable to common stockholders:			
Basic	\$ (0.04)	\$ (0.01)	\$ (0.19)
Diluted	\$ (0.04)	\$ (0.01)	\$ (0.19)
Weighted average common shares outstanding:			
Basic	60,563,723	65,334,548	80,493,407
Diluted	60,563,723	65,334,548	80,493,407
Pro forma net loss per share attributable to common stockholders (unaudited):			
Basic			\$ (0.08)
Diluted			\$ (0.08)
Pro forma weighted average common shares outstanding (unaudited):			
Basic			187,389,900
Diluted			187,389,900

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

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# Etsy, Inc.

## Consolidated Statements of Comprehensive (Loss) Income (In thousands)

	Year Ended December 31,		
	2012	2013	2014
Net loss	\$ (2,385)	\$ (796)	\$ (15,243)
Other comprehensive (loss) income:			
Cumulative translation adjustment	(26)	221	(4,091)
Unrealized losses on marketable securities, net of tax	—	(9)	(3)
Other comprehensive (loss) income	(26)	212	(4,094)
Comprehensive loss	<u>\$ (2,411)</u>	<u>\$ (584)</u>	<u>\$ (19,337)</u>

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

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# Etsy, Inc.

## Consolidated Statements of Changes in Convertible Preferred Stock and Stockholders' (Deficit) Equity

(In thousands except share and per share data)

	Series A and A-1 Convertible Preferred Stock		Series B Convertible Preferred Stock		Series C Convertible Preferred Stock		Series D and D-1 Convertible Preferred Stock		Series E Convertible Preferred Stock		Series I Convertible Preferred Stock		Series F Convertible Preferred Stock		Common Stock		Treasury Stock		Additional Paid-in Capital		Accum- ulated Deficit		Accum- ulated Other Compre- hensive (Loss) Income		Total									
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount								
Balance as of December 31, 2011	2,363,786	\$ 808	1,128,431	\$ 865	1,217,230	\$ 3,207	4,215,610	\$ 27,870	396,727	\$ 6,201	203,399	\$ 1,322	—	\$ —	59,571,970	\$ 59	(1,277,590)	\$ (1)	\$ 6,553	\$ (13,697)	\$ (26)	\$ (7,112)												
Stock options expense	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	4,297	—	—	—	4,297										
Exercise of vested options	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	5,889,452	6	—	—	4,628	—	—	—	4,634										
Exercise of Convertible Series C Warrants	—	—	—	—	—	5,056	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—									
Issuance of Series F Preferred Shares at \$3.45 per share, net of issuance cost of \$215,262	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—								
Repurchase of shares	—	—	(6)	—	(4)	—	—	—	—	—	—	—	—	—	—	—	—	(20,000)	—	(60)	—	—	(60)											
Fair value of exercised warrants	—	—	—	—	—	154	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—								
Deemed dividend on share transaction	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	256	(256)	—	—	—	—	—								
Other comprehensive loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(2,385)	—	(26)	(2,385)	—	—	—								
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(2,385)	—	(2,385)	—	—	—	—								
Balance as of December 31, 2012	2,363,786	808	1,128,425	865	1,222,282	3,361	4,215,610	27,870	396,727	6,201	203,399	1,322	11,594,203	39,785	65,461,422	65	(1,297,590)	(1)	15,674	(16,338)	(52)	(652)												
Stock options expense	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	4,077	—	—	4,077	—	—	—								
Exercise of vested options	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	2,049,133	2	—	—	1,326	—	—	1,328	—	—	—							
Repurchase of shares	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(47,000)	—	(188)	—	—	(188)	—	—	—								
Retirement of repurchased shares	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(1,344,590)	(1)	1,344,590	1	—	—	—	—	—	—	—							
Excess tax benefit from the exercise of stock options	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	22	—	—	22	—	—	—								
Other comprehensive income	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	212	—	212	—	(796)	(796)						
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(796)	—	—	(796)	—	—	—	—	—						
Balance as of December 31, 2013	2,363,786	808	1,128,425	865	1,222,282	3,361	4,215,610	27,870	396,727	6,201	203,399	1,322	11,594,203	39,785	66,165,965	66	—	—	20,911	(17,134)	160	4,003												
Stock options expense	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	6,110	—	—	6,110	—	—	—	—	—						
Exercise of vested options	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	8,431,282	8	—	—	7,948	—	—	7,956	—	—	—							
Issuance of common stock	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	6,603,774	7	—	—	34,993	—	—	35,000	—	—	—							
Issuance of stock at acquisition date	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	7,160,952	7	—	—	27,716	—	—	27,723	—	—	—							
Stock expense-acquisitions	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	756	—	—	756	—	—	—	—	—						
Excess tax benefit from the exercise of stock options	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	4,877	—	—	4,877	—	—	—	—	—						
Other comprehensive loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(15,243)	—	(4,094)	(4,094)	—	(15,243)	—	—	—						
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	88,361,973	\$ 88	—	—	\$ 103,311	\$ (32,377)	\$ (3,934)	\$ 67,088	—	—	—							
Balance as of December 31, 2014	2,363,786	\$ 808	1,128,425	\$ 865	1,222,282	\$ 3,361	4,215,610	\$ 27,870	396,727	\$ 6,201	203,399	\$ 1,322	11,594,203	\$ 39,785	88,361,973	\$ 88	—	—	\$ 103,311	\$ (32,377)	\$ (3,934)	\$ 67,088												

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

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# Etsy, Inc.

## Consolidated Statements of Cash Flows

(In thousands)

	Year Ended December 31,		
	<b>2012</b>	<b>2013</b>	<b>2014</b>
Cash flows from operating activities			
Net loss	\$ (2,385)	\$ (796)	\$ (15,243)
Adjustments to reconcile net loss to net cash provided by operating activities:			
Stock-based compensation expense	4,094	3,834	5,920
Stock-based compensation expense-acquisitions	—	—	4,130
Depreciation and amortization expense	7,930	12,380	17,223
Bad debt expense	1,295	1,002	1,881
Foreign exchange loss	—	—	3,049
Amortization of debt issuance costs	14	8	68
Net unrealized loss on warrant and other liabilities	737	419	411
Loss on disposal of assets	125	677	79
Deferred income taxes	(736)	1,282	(817)
Excess tax benefit from exercise of stock options	—	(22)	(4,877)
Changes in operating assets and liabilities, net of acquisitions:			
Accounts receivable	(4,046)	(4,832)	(6,197)
Funds receivable and seller accounts	(2,258)	(2,907)	(3,975)
Prepaid expenses and other current assets	(426)	(1,667)	(5,820)
Other assets	(83)	(295)	(1,446)
Accounts payable	2,340	1,712	1,046
Accrued liabilities	430	1,960	11,463
Funds payable and amounts due to sellers	2,258	2,993	3,880
Deferred revenue	395	794	693
Other liabilities	—	—	619
Net cash provided by operating activities	<u>9,684</u>	<u>16,542</u>	<u>12,087</u>
Cash flows from investing activities			
Acquisition of businesses, net of cash acquired	(200)	(675)	(4,688)
Purchases of property and equipment	(6,528)	(7,762)	(1,304)
Development of internal-use software	(7,418)	(9,310)	(8,280)
Purchase of U.S. Government and agency bills	(16,081)	(39)	(21,698)
Sale of marketable securities	1,350	2,761	20,588
Net increase in restricted cash	—	—	(5,341)
Net cash used in investing activities	<u>(28,877)</u>	<u>(15,025)</u>	<u>(20,723)</u>
Cash flows from financing activities			
Proceeds from the issuance of preferred stock	39,785	—	—
Repurchase of stock	(60)	(188)	—
Proceeds from the issuance of common stock	—	—	35,000
Proceeds from exercise of stock options	4,634	1,328	7,956
Excess tax benefit from the exercise of stock options	—	22	4,877
Payments on capitalized lease obligations	(1,387)	(1,265)	(1,480)
Deferred payments on acquisition of business	—	—	(75)
Payments relating to public offering	—	—	(1,041)
Net cash provided by (used in) financing activities	<u>42,972</u>	<u>(103)</u>	<u>45,237</u>
Effect of exchange rate changes on cash	(27)	446	(3,737)
Net increase in cash and cash equivalents	23,752	1,860	32,864
Cash and cash equivalents at beginning of period	11,183	34,935	36,795
Cash and cash equivalents at end of period	<u>\$ 34,935</u>	<u>\$ 36,795</u>	<u>\$ 69,659</u>
Supplemental cash flow disclosures:			
Cash paid for interest	<u>\$ 431</u>	<u>\$ 233</u>	<u>\$ 342</u>
Cash paid for income taxes	<u>\$ 264</u>	<u>\$ 206</u>	<u>\$ 217</u>

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**Etsy, Inc.**  
**Consolidated Statements of Cash Flows**  
**(In thousands)**

	Year Ended December 31,		
	2012	2013	2014
Supplemental non-cash disclosures			
Equipment acquired under capital lease obligations	\$ 581	\$ —	\$ 5,564
Stock-based compensation capitalized in development of capitalized software	\$ 203	\$ 243	\$ 190
Fair value of exercised liability-classified warrants	\$ 154	\$ —	\$ —
Non-cash additions to development of internal-use software and property and equipment	\$ 414	\$ 398	\$ 2,510
Non-cash addition to construction in progress related to build-to-suit lease and facility financing obligation	\$ —	\$ —	\$ 50,320
Non-cash addition to capitalized public offering costs	\$ —	\$ —	\$ 1,413
Fair value of common stock issued in acquisition	\$ —	\$ —	\$ 27,723

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

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### **Note 1—Basis of Presentation and Summary of Significant Accounting Policies**

#### ***Description of Business***

Etsy, Inc. (the “Company” or “Etsy”) was incorporated in Delaware in February 2006. Etsy operates a marketplace where people around the world connect, both online and offline, to make, sell and buy unique goods. The Company generates revenue primarily from transaction and listing fees, Promoted Listings, Direct Checkout fees, and Shipping Label sales.

#### ***Evaluation of Subsequent Events***

The Company has evaluated subsequent events that occurred after December 31, 2014 through March 4, 2015, the date on which the consolidated financial statements for the year ended December 31, 2014 were issued.

#### ***Basis of Consolidation***

The consolidated financial statements include the accounts of Etsy and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation. The 2012 and 2013 financial statements have been revised to correct certain errors. See Note 15—Revisions to Consolidated Financial Statements.

#### ***Unaudited Pro Forma Financial Information***

Upon the consummation of the initial public offering contemplated by the Company, all of the outstanding shares of convertible preferred stock will convert into shares of common stock. The December 31, 2014 unaudited pro forma consolidated balance sheet data has been prepared assuming the conversion of the outstanding convertible preferred stock into 106,896,493 shares of common stock.

#### ***Use of Estimates***

The preparation of the Company’s consolidated financial statements in conformity with accounting principles generally accepted in the United States of America (“GAAP”) requires management to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The accounting estimates that require management’s most difficult and subjective judgments include revenue recognition, income taxes, website development costs and internal-use software, purchase price allocations for business combinations, valuation of goodwill and intangible assets and stock based compensation. The Company evaluates its estimates and judgments on an ongoing basis and revises them when necessary. Actual results may differ from the original or revised estimates.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### ***Revenue Recognition***

The Company operates a platform for third-party sellers. Its business model is based on shared success: the Company makes money when Etsy sellers make money. The Company does not compete with Etsy sellers, hold inventory or sell goods. The Company's revenue is diversified, generated from a mix of marketplace activities and the services the Company provides Etsy sellers to help them create and grow their businesses. The Company's revenue consists of Marketplace revenue, Seller Services revenue and Other revenue. The Company's revenue is recorded net of actual and expected refunds. Marketplace revenue includes the fee an Etsy seller pays for each completed transaction and the listing fee an Etsy seller pays for each item she lists. Seller Services revenue includes fees an Etsy seller pays for services such as prominent placement in search results via Promoted Listings, payment processing via Direct Checkout and purchases of shipping labels through the Company's platform via Shipping Labels. The Company deducts its cost of shipping labels and estimated refunds from gross shipping fees to determine net shipping fees. Other revenue includes the fees the Company receives from a third-party payment processor.

The Company recognizes revenue when all of the following conditions are satisfied: (1) there is persuasive evidence of an arrangement; (2) the service has been provided to the Etsy seller; (3) the collection of fees is reasonably assured; and (4) the amount of fees to be paid by the Etsy seller is fixed or determinable. The Company evaluates whether it is appropriate to recognize revenue on a gross or net basis based upon its evaluation of whether it is the primary obligor in a transaction, has inventory risk and has latitude in establishing pricing and selecting suppliers. Based on its evaluation of these factors, revenue is recorded net of merchandise values associated with the transaction.

***Marketplace revenue***. Marketplace revenue consists of the 3.5% fee that an Etsy seller pays for each completed transaction on the Company's platform, exclusive of shipping fees charged. Marketplace revenue also consists of a listing fee of \$0.20 per item that she lists in its marketplace. Revenue from completed Wholesale transactions is also included in Marketplace revenue, whereas revenue from Wholesale enrollment is included in Seller Services revenue. Transaction fees are recognized when the corresponding transaction is made. Listing fees are recognized ratably over a four-month listing period, unless the item is sold or the seller relists it, at which time any remaining listing fee is recognized.

***Seller Services revenue***. Seller Services revenue consists of fees an Etsy seller pays the Company for the Seller Services she uses, including Promoted Listings, Direct Checkout, Shipping Labels and Wholesale enrollment.

- Revenue from Promoted Listings consists of cost-per-click based fees an Etsy seller pays the Company for prominent placement of her listings in search results generated by Etsy buyers in its marketplace. Revenue is recognized when the Promoted Listing is clicked.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

- Revenue from Direct Checkout consists of fees an Etsy seller pays the Company to process credit, debit and Etsy Gift Card payments. Direct Checkout fees vary between 3-4% of the item's total sale price plus a flat fee per order, depending on the country in which her bank account is located. Direct Checkout fees are based on the item's total sale price, including shipping. Revenue from Direct Checkout is recognized when the corresponding transaction is made. Revenue from breakage on Etsy Gift Cards is recognized when the amount is probable and estimable. Given the lack of historical experience related to gift card activity, there has been no breakage revenue recorded to date.
- Revenue from Shipping Labels consists of fees an Etsy seller pays the Company when she purchases shipping labels directly through its platform, net of the cost it incurs in purchasing those shipping labels. The Company provides its sellers shipping labels from the United States Postal Service and Canada Post at a discounted price due to the volume of purchases through its platform. The Company recognizes Shipping Label revenue when an Etsy seller purchases a shipping label. The Company recognizes Shipping Label revenue on a net basis as it is not the primary obligor in the delivery of these services.
- Revenue from Wholesale consists of fees an Etsy seller pays the Company when she is approved to enroll in its Wholesale program. The one-time Wholesale enrollment fee is recognized ratably over the estimated customer life. Revenue from completed Wholesale transactions is included in Marketplace revenue.

*Other revenue*. Other revenue includes the fees the Company receives from a third-party payment processor. Other revenue is recognized as the transactions are processed by the third-party payment processor.

The following table summarizes revenue by type of service (in thousands):

	Year Ended December 31,		
	2012	2013	2014
Marketplace	\$ 55,330	\$ 78,544	\$ 108,732
Seller Services	15,863	42,817	82,502
Other	3,409	3,661	4,357
Revenue	<u>\$ 74,602</u>	<u>\$ 125,022</u>	<u>\$ 195,591</u>

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### ***Cost of Revenue***

Cost of revenue consists primarily of expenses associated with the operation and maintenance of the Company's platform and data centers, including depreciation and amortization, employee-related costs, including stock-based compensation expense, and energy and bandwidth costs. Cost of revenue also includes the cost of interchange and other fees for credit card processing services, credit card verification service fees and credit card chargebacks to support Direct Checkout revenue, as well as employee-related costs, including stock-based compensation expense, for our member support staff, and costs of refunds made to Etsy buyers that the Company is not able to collect from Etsy sellers.

### ***Accounts Receivable and Allowance for Doubtful Accounts***

The Company's trade accounts receivable are recorded at amounts billed to Etsy sellers and are presented on the consolidated balance sheet net of the allowance for doubtful accounts. The allowance is determined by a number of factors, including age of the receivable, current economic conditions, historical losses and management's assessment of the financial condition of Etsy sellers. Receivables are written off once they are deemed uncollectible, which may arise when Etsy sellers file for bankruptcy or are otherwise deemed unable to repay the amounts owed to the Company. Estimates of uncollectible accounts receivable are recorded to general and administrative expense.

The following table summarizes the allowance activity during the periods indicated (in thousands):

	Year Ended December 31,		
	2012	2013	2014
Balance as of the beginning of period	\$ 998	\$ 1,357	\$ 1,279
Bad debt expense	1,295	1,002	1,881
Write-offs, net of recoveries and other adjustments	(936)	(1,080)	(1,319)
Balance as of the end of period	<u>\$ 1,357</u>	<u>\$ 1,279</u>	<u>\$ 1,841</u>

### ***Funds Receivable and Seller Accounts and Funds Payable and Amounts due to Sellers***

The Company records funds receivable and seller accounts and funds payable and amounts due to sellers as current assets and liabilities, respectively, on the consolidated balance sheet. Funds receivable and seller accounts represent amounts received or expected to be received from Etsy buyers via third-party credit card processors, which flow through an Etsy bank account for payment to Etsy sellers. This cash and related receivable represent the total amount due to sellers, and as such a liability for the same amount is recorded to funds payable and amounts due to Etsy sellers.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### ***Property and Equipment***

Property and equipment, consisting principally of computer equipment and purchased software, are recorded at cost. The Company capitalizes construction in progress for build-to-suit lease agreements where we are the owner, for accounting purposes only, during the construction period. Depreciation and amortization are recognized using the straight-line method in amounts sufficient to relate the cost of depreciable and amortizable assets to operations over their estimated useful lives. Repairs and maintenance are charged to operations as incurred.

### ***Internal-use Software and Website Development Costs***

Costs incurred to develop software for internal use and the Company's website are capitalized and amortized over the estimated useful life of the software, generally three years. The Company also capitalizes costs related to upgrades and enhancements when it is probable the expenditures will result in additional functionality or will extend the useful life of existing functionality. Costs related to the design or maintenance of internal-use software and website development are expensed as incurred. The Company periodically reviews internal-use software and website development costs to determine whether the projects will be completed, placed in service, removed from service, or replaced by other internally developed or third-party software. If the asset is not expected to provide any future benefit, the asset is retired and any unamortized cost is expensed.

### ***Depreciable/Amortizable Tangible Long-Lived Assets***

When events or changes in circumstances require, the Company assesses the likelihood of recovering the cost of tangible long-lived assets based on its expectations of future profitability, undiscounted cash flows and management's plans with respect to operations to determine if the asset is impaired and subject to write-off. Measurement of any impairment loss is based on the excess of the carrying value of the asset over the fair value.

### ***Leases***

The Company leases office space and certain computer equipment in multiple locations under non-cancelable lease agreements. The leases are reviewed for classification as operating or capital leases. For operating leases, rent is recognized on a straight-line basis over the lease period. For capital leases, the Company records the leased asset with a corresponding liability. Payments are recorded as reductions to the liability with an appropriate interest charge recorded based on the then-outstanding remaining liability.

The Company considers the nature of the renovations and the Company's involvement during the construction period of newly leased office space to determine if it is considered to be the owner of the

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

construction project during the construction period. If the Company determines that it is the owner of the construction project, it is required to capitalize the fair value of the building as well as the construction costs incurred on its consolidated balance sheet along with a corresponding financing liability (“build-to-suit accounting”). Upon occupancy for build-to-suit leases, the Company assesses whether the circumstances qualify for sales recognition under the sale-leaseback accounting guidance. If the lease meets the sale-leaseback criteria, the Company will remove the asset and related financial obligation from the balance sheet and treat the building lease as an operating lease. If upon completion of construction, the project does not meet the sale-leaseback criteria, the leased property will be treated as a capital lease for financial reporting purposes.

### ***Business Combinations***

The Company has completed a number of acquisitions of other businesses in the past and may acquire additional businesses or technologies in the future. The results of businesses acquired in a business combination are included in the Company’s consolidated financial statements from the date of acquisition. The Company allocates the purchase price, which is the sum of the consideration provided and may consist of cash, equity or a combination of the two, in a business combination to the identifiable assets and liabilities of the acquired business at their acquisition date fair values. The excess of the purchase price over the amount allocated to the identifiable assets and liabilities, if any, is recorded as goodwill. Determining the fair value of assets acquired and liabilities assumed requires management to use significant judgment and estimates, including the selection of valuation methodologies, estimates of future revenue and cash flows, discount rates and selection of comparable companies.

When the Company issues stock-based or cash awards to an acquired company’s stockholders, the Company evaluates whether the awards are contingent consideration or compensation for post-acquisition services. The evaluation includes, among other things, whether the vesting of the awards is contingent on the continued employment of the acquired company’s stockholder beyond the acquisition date. If continued employment is required for vesting, the awards are treated as compensation for post-acquisition services and recognized as expense over the requisite service period.

The Company carries intangible assets at cost, and it amortizes them on a straight-line basis over their estimated useful lives, typically three years. When circumstances indicate that the carrying value of these assets may not be recoverable, the Company reviews its identifiable amortizable intangible assets for impairment.

To date, the assets acquired and liabilities assumed in the Company’s business combinations have primarily consisted of goodwill and finite-lived intangible assets, consisting primarily of developed technologies, customer relationships and trademarks. The estimated fair values and useful lives of identifiable intangible

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

assets are based on many factors, including estimates and assumptions of future operating performance and cash flows of the acquired business, the nature of the business acquired, and the specific characteristics of the identified intangible assets. The estimates and assumptions used to determine the fair values and useful lives of identified intangible assets could change due to numerous factors, including market conditions, technological developments, economic conditions and competition. In connection with determination of fair values, the Company may engage independent appraisal firms to assist with the valuation of intangible and certain tangible assets acquired and certain assumed obligations.

Acquisition-related transaction costs incurred by the Company are not included as a component of consideration transferred, but are accounted for as an expense in the period in which the costs are incurred.

### ***Goodwill***

Goodwill represents the excess of the aggregate fair value of the consideration transferred in a business combination over the fair value of the assets acquired, net of liabilities assumed. Goodwill is not amortized, but is subject to an annual impairment test. Management has determined that the Company has a single reporting unit and performs its annual goodwill impairment test during the fourth quarter or more frequently if events or changes in circumstances indicate that the goodwill may be impaired.

Events or changes in circumstances which could trigger an impairment review include significant changes in the manner of the Company's use of the acquired assets or the strategy for the Company's overall business, significant negative industry or economic trends, significant underperformance relative to historical or projected future results of operations, a significant adverse change in the business climate, an adverse action or assessment by a regulator, unanticipated competition or a loss of key personnel.

The Company has the option to first assess qualitative factors to determine whether the existence of events or circumstances leads to a determination that it is more likely than not that the fair value of the reporting unit is less than its carrying amount. If, after assessing the totality of events or circumstances, an entity determines it is not more likely than not that the fair value of the reporting unit is less than its carrying amount, then additional impairment testing is not required. However, if an entity concludes otherwise, then it is required to perform the first of a two-step impairment test.

The first step involves comparing the estimated fair value of the reporting unit with its respective book value, including goodwill. If the estimated fair value exceeds book value, goodwill is considered not to be impaired and no additional steps are necessary. If, however, the fair value of the reporting unit is less than book value, then a second step is required that compares the carrying amount of the goodwill with its implied fair value. The estimate of implied fair value of goodwill may require valuations of certain

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

internally-generated and unrecognized intangible and tangible net assets. If the carrying amount of goodwill exceeds the implied fair value of the goodwill, an impairment loss is recognized in an amount equal to the excess.

The Company completed a Step 1 analysis during the fourth quarter of 2014. No impairment of goodwill was recorded at December 31, 2013 or 2014.

### ***Intangible Assets***

Intangible assets are amortized over the estimated useful life of the acquired technology, customer relationships and trademarks, generally three years.

### ***Stock-Based Compensation***

For employee stock-based awards, the Company calculates the fair value of the award on the date of grant using the Black-Scholes option-pricing model and the expense is recognized over the service period for awards expected to vest. For non-employee stock-based awards, the Company calculates the fair value of the award on the date of grant in the same manner as employee awards over the contractual term; however, the unvested portion of the awards is revalued at the end of each reporting period until such time as the non-employee award is fully vested.

We account for stock-based compensation arrangements in restricted shares, subject to a put option that allows the holder of the shares to put the shares back to the Company for cash, as liability-classified stock awards. These awards are re-measured at each reporting period, with changes in fair value being charged to the statement of operations. Compensation expense is recognized using a graded vesting methodology for each separately vesting tranche as though the award were, in substance, multiple awards. Unless the put option is exercised, the restricted shares will be reclassified from a liability to an equity classified award upon the termination of the put option.

For the years ended December 31, 2012, 2013 and 2014, the Company recognized expenses of approximately \$3.9 million, \$3.7 million and \$5.9 million for employee stock options, respectively, and \$0.2 million, \$0.2 million and \$0.1 million for non-employee stock options, respectively.

Additionally, the Company recorded \$4.1 million in acquisition-related stock-based compensation expense for the year ended December 31, 2014, of which \$3.4 million relates to liability-classified awards.

### ***Cash and Cash Equivalents***

The Company considers all investments with an original maturity of three months or less at time of purchase to be cash equivalents.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### ***Concentration of Credit Risk***

Financial instruments that potentially subject the Company to concentrations of credit risk consist of cash and cash equivalents. The Company reduces credit risk by placing its cash and cash equivalents with major financial institutions with high credit ratings. At times, such amounts may exceed Federally insured limits.

### ***Fair Value of Financial Instruments***

Management believes that the fair value of financial instruments, consisting of cash and cash equivalents, accounts receivable and accounts payable, approximates carrying value due to the immediate or short-term maturity associated with its cash and cash equivalents, accounts receivable and accounts payable.

### ***Income Taxes***

Income tax benefit (provision) is based on (loss) income before income taxes and is accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized as income in the period that includes the enactment date. Management assesses the need for a valuation allowance on an annual basis to reduce deferred tax assets to the amounts expected to be realized.

The Company accounts for uncertainty in income taxes using a recognition threshold and a measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by the taxing authorities. The amount recognized is measured as the largest amount of benefit that has a greater than 50% likelihood of being realized upon ultimate audit settlement. The Company has no unrecognized tax benefits at December 31, 2012 and 2013 and has an unrecognized tax benefit of \$0.4 million at December 31, 2014.

The Company recognizes interest and penalties, if any, associated with income tax matters as part of the income tax provision and includes accrued interest and penalties with the related income tax liability in the consolidated balance sheet.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### ***Marketing***

Marketing expenses consist primarily of targeted online marketing costs, such as search engine marketing, and offline marketing expenses, such as television advertising. Marketing expenses also include employee-related costs, including stock-based compensation expense, for our employees involved in marketing, public relations and communications activities. Marketing expenses are expensed as incurred.

### ***Net (Loss) Income Per Share***

The Company follows the two-class method when computing net (loss) income per share as the Company has issued shares that meet the definition of participating securities. The two-class method determines net (loss) income per 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 available to common stockholders for the period to be allocated between common stock and participating securities based upon their respective rights to receive dividends as if all income for the period had been distributed.

The Company's convertible preferred stock contractually entitles the holders of such shares to participate in dividends, but does not contractually require the holders of such shares to participate in losses of the Company. Accordingly, the two-class method does not apply for periods in which the Company reports a net loss or a net loss attributable to common stockholders resulting from dividends, accretion or modifications to its convertible preferred stock.

Basic net (loss) income per share attributable to common stockholders is computed by dividing the net (loss) income attributable to common stockholders by the weighted average number of common shares outstanding for the period. Diluted net (loss) income attributable to common stockholders is computed by adjusting net (loss) income attributable to common stockholders to reallocate undistributed earnings based on the potential impact of dilutive securities, including outstanding common stock options, convertible preferred stock and warrants to purchase common stock and convertible preferred stock.

Diluted net (loss) income per share attributable to common stockholders is computed by dividing the diluted net (loss) income attributable to common stockholders by the weighted average number of common shares, including potential dilutive common shares assuming the dilutive effect of outstanding common stock options, convertible preferred stock and warrants to purchase common stock and convertible preferred stock. For periods in which the Company has reported net losses, diluted net loss per share attributable to common stockholders is the same as basic net loss per share attributable to common stockholders, because dilutive common shares are not assumed to have been issued if their effect is anti-dilutive.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### ***Segment Data***

The Company identifies operating segments as components of an entity for which discrete financial information is available and is regularly reviewed by the chief operating decision maker, or decision-making group, in making decisions regarding resource allocation and performance assessment. The Company defines the term “chief operating decision maker” to be its chief executive officer. The Company has determined it operates in one operating segment and one reportable segment, as its chief operating decision maker reviews financial information presented on only a consolidated basis for purposes of allocating resources and evaluating financial performance.

### ***Foreign Currency***

The Company has determined that the functional currency for each of its foreign operations is the local currency in which the operation is located. All assets and liabilities are translated into U.S. dollars using exchange rates in effect at the balance sheet date. Revenue and expenses are translated using average exchange rates during the period. Foreign currency translation adjustments are reflected in stockholders’ equity as a component of other comprehensive (loss) income. Transaction gains and losses including intercompany transactions denominated in a currency other than the functional currency of the entity involved are included in foreign exchange loss within other (expense) income in the statement of operations.

### ***Excess Tax Benefits from Exercise of Stock Options***

The Company uses the “with and without” approach in determining the order in which tax attributes are utilized. As a result, the Company recognizes a tax benefit from stock-based awards in additional paid-in capital only if an incremental tax benefit is realized after all other tax attributes currently available to the Company have been utilized. When tax deductions from stock-based awards are less than the cumulative book compensation expense, the tax effect of the resulting difference (“shortfall”) is charged first to additional paid-in capital, to the extent of the Company’s pool of windfall tax benefits, with any remainder recognized in income tax expense. The Company determined that it had a sufficient windfall pool available through December 31, 2014 to absorb any shortfalls.

### ***Recent Accounting Pronouncements***

Under the Jumpstart Our Business Startups Act (“JOBS Act”), the Company meets the definition of an emerging growth company. The Company has irrevocably elected to opt out of the extended transition period for complying with new or revised accounting standards pursuant to Section 107(b) of the JOBS Act.

In March 2013, the FASB issued new accounting guidance clarifying the accounting for the release of cumulative translation adjustment into net income when a company either sells a part or all of its

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# **Etsy, Inc.**

## **Notes to Consolidated Financial Statements**

investment in a foreign entity or no longer holds a controlling financial interest in a subsidiary or group of assets that is a nonprofit activity or a business within a foreign entity. The new guidance is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2013. The adoption of this guidance did not have an impact on the Company's consolidated financial statements.

In May 2014, the FASB issued an accounting standards update that replaces existing revenue recognition guidance. Among other things, the updated guidance requires companies to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The new guidance is effective for the Company beginning January 1, 2017. The Company is currently evaluating the effect the guidance will have on its consolidated financial statements.

In August 2014, the FASB issued an accounting standard update under which management will be required to assess an entity's ability to continue as a going concern and provide related disclosures in certain circumstances. The new guidance is effective for annual periods beginning after December 15, 2016 and for annual and interim periods thereafter. The adoption of this guidance is not expected to have an impact on the Company's financial statements or disclosures.

### **Note 2—Business Combinations**

In April 2012, the Company acquired the assets of Trunkt LLC for a purchase price of \$200,000, plus two additional contingent payments of \$100,000 that were tied to continued employment with the Company and were recognized as post-acquisition compensation expense and paid out by the Company in 2013. Acquired assets consisted of customer information, domain access rights, certain web services and a trademark. The purchase price was allocated to the acquired technology intangible assets in the Company's consolidated financial statements. This acquisition did not have any measureable impact on consolidated revenue or (loss) income from operations.

In January 2013, the Company acquired the assets of The Lascaux Company, Inc., owners of the "Mixel" iOS mobile application, for a purchase price of \$750,000, which consisted of \$675,000 paid on the closing date and \$75,000 due on the first anniversary of the closing date, subject to indemnification provisions. In connection with the acquisition, the Company granted options to purchase 362,320 shares of common stock to certain key employees of the acquired company. Acquired assets consisted of the Mixel iOS mobile application and related source code and domain name registration. The purchase price was allocated between acquired technology intangible assets and goodwill in the Company's consolidated financial statements. This acquisition did not have any measureable impact on consolidated revenue or (loss) income from operations.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

On April 29, 2014, the Company completed the acquisition of Jarvis Labs, Inc., owners of the “Grand St.” online technology marketplace. Total consideration for the acquisition was approximately \$3.2 million, consisting of \$1.0 million in cash and 425,104 shares of the Company’s common stock with a fair value of \$2.2 million on the acquisition date. Additionally, the Company issued 657,160 shares of common stock, with a fair value of \$3.4 million on the acquisition date, which are tied to continued employment with the Company and are being accounted for as post-acquisition stock-based compensation expense over the three-year vesting period. Because the Company is not publicly traded, the Company utilizes equity valuations based on comparable publicly-traded companies, discounted cash flows, an analysis of the Company’s enterprise value and any other factors deemed relevant in estimating the fair value of its common stock for purposes of calculating the fair value of the purchase price.

The following table summarizes the components of the Grand St. purchase price and the allocation of the purchase price at fair value (in thousands):

Cash paid	\$ 1,040
Common shares	2,202
Total purchase consideration	<u>\$ 3,242</u>
Working capital	\$ 85
Developed technology	2,000
Customer relationships	600
Trademarks	200
Goodwill	991
Deferred tax liability	(634)
Net assets acquired	<u>\$ 3,242</u>

Included in working capital is approximately \$0.1 million of cash acquired.

The amounts allocated to developed technology, customer relationships and trademark (the acquired intangible assets) total \$2.8 million. The fair value assigned to developed technology was determined primarily using the cost approach, which estimates the cost to reproduce the asset, adjusted for loss due to functional and economic obsolescence. The fair value of the Company’s customer relationships was determined primarily using the income approach, which discounts expected future cash flows to present value using estimates and assumptions determined by management. The fair value assigned to trademark was determined using the relief from royalty method, where the owner of the asset realizes a benefit from owning the intangible asset rather than paying a rental or royalty rate for use of the asset. The acquired identifiable intangible assets are being amortized on a straight-line basis over three years, which approximates the pattern in which the assets are utilized. None of the goodwill recorded in the acquisition is deductible for tax purposes.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

On June 18, 2014, the Company completed the acquisition of Incubart SAS, a societe par actions simplifiee organized under the laws of France, which operates the online marketplace A Little Market (“ALM”). Total consideration for the acquisition was \$30.8 million, consisting of \$5.3 million in cash, of which \$4.2 million was paid on the closing date and \$0.3 million is due to be paid on March 31, 2015 and \$0.8 million is due to be paid on February 16, 2016, and 4,879,693 shares of the Company’s common stock with a fair value of \$25.5 million on the acquisition date. Because the Company is not publicly traded, the Company utilizes equity valuations based on comparable publicly-traded companies, discounted cash flows, an analysis of the Company’s enterprise value and any other factors deemed relevant in estimating the fair value of its common stock for purposes of calculating the fair value of the purchase price. The terms of the purchase agreement provide for the sale of put options to certain of the former shareholders of ALM. The put options enable the holders of the options to sell up to all of their shares back to the Company, subject to certain vesting and restrictions, at fair value, but not to exceed \$4.13 per share and not less than \$2.00 per share. The put right terminates with respect to a share on the earlier of one year from when such share is vested or the liquidation date, as defined in the agreement containing the put option. The holders of the options paid an aggregate of \$0.1 million cash to the Company at the date of acquisition and the Company recorded a \$0.1 million liability for the fair value of the put options at that time. Additionally, the Company issued 1,198,995 shares of common stock, with a fair value of \$6.3 million on the acquisition date, which are tied to continued employment with the Company and are being accounted for as post-acquisition stock-based compensation expense over the three-year vesting period. Since the put options relate in part to these shares, these restricted shares will be recorded as liability-classified stock awards as earned.

The following table summarizes the components of the purchase price at fair value and the allocation of the purchase price at fair value (in thousands):

Cash paid	\$ 5,290
Common shares	25,521
<b>Total purchase consideration</b>	<b>\$ 30,811</b>
Working capital	\$ 625
Property and equipment and other assets	95
Developed technology	1,636
Customer relationships	1,693
Trademarks	775
Goodwill	27,309
Deferred tax liability	(757)
Other long-term liabilities	(565)
<b>Net assets acquired</b>	<b>\$ 30,811</b>

Included in working capital is approximately \$0.5 million of cash and cash equivalents acquired.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

The amount allocated to developed technology, customer relationships and trademark (the acquired intangible assets) total \$4.1 million. The fair value assigned to developed technology was determined primarily by using the cost approach, which estimates the cost to reproduce the asset, adjusted for loss due to functional and economic obsolescence. The fair value of the Company's customer relationships was determined primarily by using the income approach, which discounts expected future cash flows to present value using estimates and assumptions determined by management. The fair value assigned to trademark was determined using the relief from royalty method, where the owner of the asset realizes a benefit from owning the intangible asset rather than paying a rental or royalty rate for use of the asset. The acquired identifiable intangible assets are being amortized on a straight-line basis over three years, which approximates the pattern in which the assets are utilized. Goodwill of \$27.3 million, none of which is deductible for tax purposes, was recorded in connection with the ALM acquisition, which is primarily attributed to synergies arising from the acquisition and the value of the acquired workforce.

The Company incurred approximately \$2.1 million in acquisition-related costs, included in general and administrative expenses. These acquisitions increased revenue by \$1.8 million and contributed \$5.7 million to the Company's consolidated net loss in the year ended December 31, 2014. The impact to net loss was primarily due to amortization of intangibles and stock-based compensation associated with the acquisitions.

The following unaudited pro forma financial information presents the combined operating results of the Company, Grand St. and ALM as if each acquisition had occurred as of January 1, 2013. The unaudited pro forma financial information includes the accounting effects of the business combinations, including adjustments to the amortization of intangible assets and professional fees associated with the acquisition. The unaudited pro forma information does not necessarily reflect the actual results that would have been achieved, nor is it necessarily indicative of our future consolidated results.

The unaudited pro forma financial information is presented in the table below for the years ended December 31, 2013 and 2014 (in thousands except per share amounts):

	<b>Year Ended December 31,</b>	
	<b>2013</b>	<b>2014</b>
Revenue	\$ 127,838	\$ 197,395
Net loss	(7,533)	(15,403)
Basic net loss per share	(0.11)	(0.19)
Diluted net loss per share	(0.11)	(0.19)

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### Note 3—Marketable Securities

Short-term investments consist of marketable securities that are available-for-sale. The cost and fair value of available-for-sale securities were as follows as of the dates indicated (in thousands):

	<u>Cost</u>	<u>Gross Unrealized Holding Loss</u>	<u>Gross Unrealized Holding Gain</u>	<u>Fair Value</u>
December 31, 2013				
U.S. Government and agency bills	\$ 18,073	\$ (1)	\$ 3	\$ 18,075
	<u>\$ 18,073</u>	<u>\$ (1)</u>	<u>\$ 3</u>	<u>\$ 18,075</u>
December 31, 2014				
U.S. Government and agency bills	\$ 19,188	\$ (5)	\$ 1	\$ 19,184
	<u>\$ 19,188</u>	<u>\$ (5)</u>	<u>\$ 1</u>	<u>\$ 19,184</u>

The Company's investments in marketable securities consist primarily of investments in Corporate Certificates of Deposit and AAA-rated U.S. Government and agency bills. When evaluating investments for other-than-temporary impairment, the Company reviews factors such as length of time and extent to which fair value has been below cost basis, the financial condition of the issuer and the Company's ability and intent to hold the investment for a period of time, which may be sufficient for anticipated recovery in market value. The Company evaluates fair values for each individual security in the investment portfolio.

### Note 4—Property and Equipment

Property and equipment consisted of the following as of the dates indicated (in thousands):

	<u>Estimated useful lives</u>	<u>As of December 31,</u>	
		<u>2013</u>	<u>2014</u>
Computer equipment	3 years	\$ 13,837	\$ 16,876
Furniture and equipment	4 years	1,630	1,987
Software	1 - 3 years	2,380	1,146
Leasehold improvements	Shorter of life of asset or lease term	2,706	3,134
Construction in progress(1)	Not applicable	—	51,796
Website development	3 years	<u>23,897</u>	<u>31,156</u>
		<u>44,450</u>	<u>106,095</u>
Less: Accumulated depreciation and amortization		21,343	30,557
		<u>\$ 23,107</u>	<u>\$ 75,538</u>

(1) The Company capitalizes construction in progress and records a corresponding long-term liability for build-to-suit lease arrangements where it is considered the owner, for accounting purposes, during the construction period.

Depreciation and amortization expense on property and equipment was \$7.7 million, \$12.1 million and \$15.7 million for the years ended December 31, 2012, 2013 and 2014, respectively, which includes amortization expense for equipment acquired under capital leases of \$1.5 million, \$1.2 million and

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

\$1.5 million for the years ended December 31, 2012, 2013 and 2014, respectively. The gross balance of leased equipment as of December 31, 2013 and 2014 was \$3.3 million and \$6.0 million, respectively. The related accumulated amortization of equipment under capital leases was \$2.6 million and \$1.2 million at December 31, 2013 and 2014, respectively.

The following table summarizes capitalized website development and internal-use software activities during the periods indicated (in thousands):

	Year Ended December 31,	
	2013	2014
Balance as of the beginning of the period	\$ 14,993	\$ 23,897
Additions to website development, excluding stock-based compensation	9,600	8,281
Additions to website development—stock-based compensation	243	190
Less: Retirements	939	1,212
	<u>23,897</u>	<u>31,156</u>
Less: Accumulated amortization	12,003	18,968
	<u>\$ 11,894</u>	<u>\$ 12,188</u>

For the years ended December 31, 2012, 2013 and 2014, the Company recorded amortization expense relating to capitalized website development and internal-use software of \$3.7 million, \$6.3 million and \$8.1 million, respectively. The loss on write-off for website development and internal-use software assets that were retired during the years ended December 31, 2012, 2013 and 2014 was \$0.1 million, \$0.7 million and \$0.1 million, respectively.

### Note 5—Goodwill and Intangible Assets

The following table summarizes the changes in the carrying amount of goodwill for the periods indicated (in thousands):

	Year Ended December 31,	
	2013	2014
Balance as of the beginning of the period	\$ 5,166	\$ 5,346
Acquisitions	180	28,300
Other adjustments(1)	—	(2,815)
Balance as of the end of the period	<u>\$ 5,346</u>	<u>\$ 30,831</u>

(1) Primarily includes the effect of foreign currency translation.

The Company did not recognize any goodwill impairments during the years ended December 31, 2012, 2013 and 2014.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

At December 31, 2013 and 2014, the gross book value and accumulated amortization of intangible assets were as follows (in thousands):

	As of December 31, 2013			As of December 31, 2014		
	Gross book value	Accumulated amortization	Net book value	Gross book value	Accumulated amortization	Net book value
Trademarks	\$ —	\$ —	\$ —	\$ 892	\$ (169)	\$ 723
Technology	1,045	(641)	404	4,505	(1,547)	2,958
Customer relationships	200	(111)	89	2,313	(584)	1,729
Intangible assets, net	<u>\$ 1,245</u>	<u>\$ (752)</u>	<u>\$ 493</u>	<u>\$ 7,710</u>	<u>\$ (2,300)</u>	<u>\$ 5,410</u>

Amortization expense for the years ended December 31, 2012, 2013 and 2014 was \$0.2 million, \$0.3 million and \$ 1.5 million, respectively.

Based on amounts recorded at December 31, 2014, the Company will recognize intangible asset amortization expense in each of the years ending December 31 as follows (in thousands):

2015	\$ 2,368
2016	2,171
2017	871
2018	—
Thereafter	—
Total amortization expense	<u>\$ 5,410</u>

### Note 6—Warrants

The Company has outstanding warrants to purchase 11,373 shares of its Series C Preferred stock with an exercise price of \$2.67 per share, 24,510 shares of its Series D Preferred stock with an exercise price of \$6.63 per share, and 4,723 shares of its Series E Preferred stock with an exercise price of \$15.88 per share (see Note 8). All of these warrants were originally issued in connection with previous lines of credit and were fair valued on the date of issuance, and the fair value amount was recognized as debt issuance costs and amortized to interest expense over the original life of the line of credit. As these warrants are exercisable into shares of Preferred stock, which include certain redemption rights that are outside of the control the Company, in accordance with ASC Topic 480 *Distinguishing Liabilities from Equity*, the warrants are accounted for as liabilities and are revalued at each balance sheet date. The warrants were fully vested at issuance.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

The Company determined the fair value of the convertible preferred stock warrants utilizing the Black-Scholes model with the following weighted-average assumptions:

	Series C		
	December 31,		
	2012	2013	2014
Risk-free interest rate	0.7%	1.3%	1.1%
Expected term (in years)	5.0	4.0	3.0
Estimated dividend yield	0%	0%	0%
Weighted-average estimated volatility	40.0%	41.0%	43.1%
Fair value (in thousands)	\$ 319	\$ 442	\$ 579

	Series D		
	December 31,		
	2012	2013	2014
Risk-free interest rate	0.3%	0.3%	0.5%
Expected term (in years)	2.5	1.5	0.5
Estimated dividend yield	0%	0%	0%
Weighted-average estimated volatility	39.0%	36.0%	38.9%
Fair value (in thousands)	\$ 597	\$ 859	\$ 1,156

	Series E		
	December 31,		
	2012	2013	2014
Risk-free interest rate	0.7%	1.3%	1.1%
Expected term (in years)	5.0	4.0	3.0
Estimated dividend yield	0%	0%	0%
Weighted-average estimated volatility	39.0%	41.0%	43.1%
Fair value (in thousands)	\$ 93	\$ 127	\$ 185

During the years ended December 31, 2012, 2013 and 2014, the Company recorded an unrealized loss of \$0.7 million, \$0.4 million and \$0.5 million, respectively, from the remeasurement of the warrants to fair value.

In June 2012, the Company issued 5,056 shares of Series C preferred stock to convert 5,481 warrants at an exercise price of \$2.67 per share. The fair market value of a share of common stock at the time of exercise was \$3.45. The warrant holder exercised the right to convert this warrant in a cashless transaction and 425 shares were forfeited to the Company as payment of the exercise price. The Company revalued the warrant at the time of exercise and reclassified approximately \$0.2 million in warrant liability to Series C preferred stock.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### Note 7—Debt

#### *Credit Agreement*

In May 2014, the Company entered into a \$35.0 million senior secured revolving credit facility pursuant to a Revolving Credit and Guaranty Agreement with several lenders (the “Credit Agreement”). The Credit Agreement will mature in May 2019. The Credit Agreement includes a letter of credit sublimit of \$10.0 million and a swingline loan sublimit of \$15.0 million.

Borrowings under the Credit Agreement (other than swingline loans) bear interest, at the Company’s option, at (i) a base rate equal to the highest of (a) the prime rate, (b) the federal funds rate plus 0.50% and (c) an adjusted LIBOR rate for a one-month interest period plus 1.00%, in each case plus a margin ranging from 0.00% to 0.25% or (ii) an adjusted LIBOR rate plus a margin ranging from 1.00% to 1.25%. Swingline loans under the Credit Agreement bear interest at the same base rate (plus the margin applicable to borrowings bearing interest at the base rate). These margins are determined based on the total leverage ratio for the preceding four fiscal quarter period. The Company is also obligated to pay other customary fees for a credit facility of this size and type, including an unused commitment fee and fees associated with letters of credit. The Credit Agreement also permits the Company, in certain circumstances, to request an increase in the facility by an amount of up to \$50.0 million (and in minimum amounts of \$10.0 million) at the same maturity, pricing and other terms.

The Credit Agreement contains customary representations and warranties applicable to the Company and its subsidiaries and customary affirmative and negative covenants applicable to the Company and its restricted subsidiaries. The negative covenants include restrictions on, among other things, indebtedness, liens, investments, mergers, dispositions, transactions with affiliates and dividends and other distributions. These restrictions do not prohibit a subsidiary of the Company from making pro rata payments to the Company or any other person that owns an equity interest in such subsidiary. The Credit Agreement contains a financial covenant that requires the Company and its subsidiaries to maintain a total leverage ratio (defined as net debt to adjusted EBITDA) not to exceed 3.50 to 1.00.

The Credit Agreement includes customary events of default, including a change in control and a cross-default on the Company’s material indebtedness. The Company’s obligations under the Credit Agreement are secured by substantially all of the Company and its subsidiaries’ assets, and its obligations under the Credit Agreement are guaranteed by certain of the Company’s subsidiaries.

At December 31, 2014, the Company did not have any borrowings under the Credit Agreement. In January 2015, the Company implemented a revised corporate structure to more closely align its structure with its global operations and future expansion plans outside the United States. The amendment to the Credit

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# **Etsy, Inc.**

## **Notes to Consolidated Financial Statements**

Agreement described below includes a waiver with respect to the Company's compliance with certain restrictions in the Credit Agreement, to the extent that actions taken to implement its revised corporate structure could be construed as breaches or defaults under the Credit Agreement.

### ***Subsequent Event***

In March 2015, the Company amended the Credit Agreement (the "Amended Credit Agreement") to increase the senior secured revolving credit facility to \$50.0 million. The Amended Credit Agreement contains the same pricing covenants and other material terms as the Credit Agreement.

### ***Facility Financing Obligation***

As a result of the nature of and the Company's involvement in the renovations during the construction period of the newly leased office space in Brooklyn, NY, it is considered to be the owner, for accounting purposes only, of the construction project and is required to capitalize the fair value of the building as well as the construction costs incurred by the landlord on its consolidated balance sheet ("build-to-suit accounting"). Under the build-to-suit accounting guidance, through December 31, 2014 the Company has recorded a facility financing obligation of \$50.3 million, equal to the fair market value of the assets received from the landlord as of the lease signing date in May 2014 and the estimated fair value of the subsequent construction costs incurred by the landlord through December 31, 2014.

### ***Note 8—Stockholders' Equity***

At December 31, 2013 and 2014, the authorized capital stock of the Company consisted of 205,000,000 and 240,000,000 shares of common stock, respectively, and 21,165,473 shares of convertible preferred stock. The convertible preferred stock, with the exclusion of Series 1 preferred stock, is referred to as "senior preferred stock."

#### ***Common Stock***

At December 31, 2012, there were 65,461,422 and 64,163,832 shares of common stock issued and outstanding, respectively. At December 31, 2013, there were 66,165,965 shares of common stock issued and outstanding. At December 31, 2014, there were 88,361,973 shares of common stock issued and outstanding. Holders of common stock are entitled to one vote per share. Holders of common stock are not entitled to receive dividends unless declared by the board of directors. The voting, dividend and liquidation rights of

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

the holders of common stock are subject to and qualified by the rights and preferences of the holders of convertible preferred stock. No dividends have been declared through December 31, 2014. The common stock has a \$0.001 par value.

### ***Convertible Preferred Stock***

In May 2012, the Company entered into the Series F Stock Purchase Agreement with several investors to sell 11,594,203 shares of Series F preferred stock at \$3.45 per share for an aggregate value of \$40.0 million. The Company recorded stock issuance costs of approximately \$0.2 million as additional paid-in-capital in connection with the Series F preferred stock financing.

At December 31, 2013 and 2014, the Company's outstanding convertible preferred stock consisted of the following (in thousands, except share data):

	<b>Shares Authorized</b>	<b>Shares Outstanding</b>	<b>Carrying Values</b>
Series A and A-1 preferred stock	2,363,786	2,363,786	\$ 808
Series B preferred stock	1,128,431	1,128,425	865
Series C preferred stock	1,234,084	1,222,282	3,361
Series D and D-1 preferred stock	4,240,120	4,215,610	27,870
Series E preferred stock	401,450	396,727	6,201
Series 1 preferred stock	203,399	203,399	1,322
Series F preferred stock	11,594,203	11,594,203	39,785
Total convertible preferred stock	<u>21,165,473</u>	<u>21,124,432</u>	<u>\$ 80,212</u>

The rights and preferences of the convertible preferred stock are as follows:

**Voting Rights.** Each holder of convertible preferred stock is entitled to one vote for each share of common stock into which such holder's shares of convertible preferred stock are then convertible. Except as provided by law or the Company's Certificate of Incorporation, the holders of the convertible preferred stock and common stock vote together as a single class. The holders of preferred stock are entitled to voting rights for the election of board of director members as follows: Series A-1, Series B and Series C vote together as a single class to elect one director, Series D and Series D-1 vote as a single class to elect one director and Series E votes to elect one director. Additionally, the holders of common stock elect one director. All remaining directors are elected by the holders of preferred stock and common stock voting together as a single class.

**Dividends.** The holders of the convertible preferred stock are entitled, when, as and if declared by the board of directors, and prior and in preference to common stock, to receive non-cumulative dividends at a rate of 8% of the original purchase price per share (listed in the table below). Payment of any dividends to the holders of the convertible preferred stock shall be made on a pro rata, pari passu basis in proportion to the

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

dividend rates for each series of convertible preferred stock. The right to receive dividends on shares of convertible preferred stock shall not be cumulative, and no right to such dividends shall accrue to holders of cumulative preferred stock by reason of the fact that dividends on said shares are not declared or paid in any calendar year.

*Liquidation.* In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of the senior preferred stock shall be entitled to receive, prior and in preference to any distribution to the holders of the Series 1 preferred stock and common stock, an amount per share equal to the sum of the liquidation preference (presented below) and all declared but unpaid dividends (if any). If amounts available to be distributed are insufficient to pay the liquidation preferences of the senior preferred stock in full, then the entire assets of the Company legally available for distribution shall be distributed to the holders of the senior preferred stock ratably in proportion to the preferential amount each holder would have otherwise been entitled to receive. After payment of the liquidation preferences to the senior preferred stock, if assets remain available for distribution to the Company's stockholders, the holders of Series 1 preferred stock shall be entitled to receive, prior and in preference to any distribution to the holders of common stock, an amount per share equal to the sum of the liquidation preference applicable to the Series 1 preferred stock and all declared but unpaid dividends (if any). If the remaining amounts available to be distributed are insufficient to pay the liquidation preferences of the Series 1 preferred stock in full, then the entire assets of the Company legally available for distribution shall be distributed ratably in proportion to the preferential amount each holder would have otherwise been entitled to receive. After payment of the liquidation preferences to the convertible preferred stock, all remaining assets shall be distributed to the holders of the common stock of the Company in proportion to the number of shares of common stock held by them.

The liquidation preference provisions of the convertible preferred stock are considered contingent redemption provisions because there are certain elements that are not solely within the control of the Company, such as a change in control of the Company. Accordingly, the Company has presented the convertible preferred stock within the mezzanine portion of the accompanying consolidated balance sheets.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

*Conversion.* Each outstanding share of convertible preferred stock is convertible, at the holder's option or automatically upon certain events as described below, into shares of common stock at a conversion rate determined by dividing the original issue price for such share by the then Conversion Price for such share. The original issue price, conversion price and liquidation preference price of each series of preferred stock are as follows:

	Price Per Share		
	Original Issue Price	Conversion Price	Liquidation Preference
Series A preferred stock	\$ 0.2429	\$ 0.02429	\$ 0.2429
Series A-1 preferred stock	0.3915	0.03915	0.3915
Series B preferred stock	0.80	0.080	0.80
Series C preferred stock	2.67	0.267	2.67
Series D preferred stock	6.63	0.663	6.63
Series D-1 preferred stock	6.63	0.663	6.63
Series E preferred stock	15.88	1.588	15.88
Series 1 preferred stock	6.45	0.645	6.45
Series F preferred stock	3.45	3.45	3.45

The conversion price is subject to adjustment in the event of certain anti-dilutive issuances of shares of common stock. The conversion price per share in the table above reflects the adjustment for the 10-for-1 stock split of the Company's common stock effective in May 2011.

Each share of convertible preferred stock will convert into shares of common stock at its then effective conversion rate upon the earlier of (A) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement under the Securities Act of 1933, with gross proceeds to the Company of not less than \$30 million, or (B) upon receipt by the Company of a written request for such conversion from the holders of not less than a majority of the convertible preferred stock, voting together as a single class on an as-converted basis. No shares of Series F preferred stock shall be converted into shares of common stock unless either (i) such conversion is in connection with a public offering where the price per share is equal to or greater than \$5.18, or (ii) the holders of a majority of the Series F preferred stock, voting as a separate class, otherwise consent to such conversion.

*Redemption.* The convertible preferred stock is not redeemable at the option of the holder.

### Tender Offers

In connection with the May 2012 Series F Preferred Stock financing, the Series F investors participated in a tender offer to purchase up to an aggregate of 12,753,623 shares of common stock and preferred stock (on an as-converted basis) at a price of \$3.45 per share (on an as-converted basis) from the Company's employees and existing stockholders with the maximum aggregate offer price of up to \$44.0 million. The terms of the tender offer were further limited to a maximum of 30% of a participant's fully-vested stock and options and

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

warrants to purchase stock. The tender offer was made on May 15, 2012 and expired on July 6, 2012. At the close of the transaction, the Company recorded approximately \$0.9 million as compensation expense related to the excess of the selling price per share paid to the Company's employees and former employees over the fair value of the tendered shares, and approximately \$0.3 million as a deemed dividend in relation to the excess of the selling price per share paid to existing investors over the fair value of the shares tendered.

On January 13, 2014, certain investors participated in a tender offer to purchase up to an aggregate of 14,000,000 shares of common stock and preferred stock (on an as-converted basis) at a price of \$5.30 per share (on an as-converted basis) from the Company's employees and existing stockholders with the maximum aggregate offer price of up to \$74.2 million. The terms of the tender offer were limited to a maximum of one-half of an employee's fully-vested stock and options and warrants to purchase stock and a minimum of one-half of a former employee's or non-employee's fully-vested stock and options and warrants to purchase stock. At the close of the transaction, 6,308,440 shares were tendered for a total price of \$33.4 million.

### ***Common Stock Issuances***

In April 2014, the Company issued 6,603,774 shares of common stock to certain investors at \$5.30 per share for an aggregate value of \$35.0 million.

Additionally, the Company issued a total of 7,160,952 shares of common stock in connection with the acquisitions of Grand St. and ALM, of which 5,304,797 shares with an aggregate fair value of \$27.7 million on the applicable acquisition dates are included in the Company's purchase price and 1,856,155 shares with an aggregate fair value of \$9.7 million on the applicable acquisition dates are tied to continued employment with the Company and are being accounted for as post-acquisition compensation expense.

### ***Stock Repurchases***

In 2012, the board of directors authorized the repurchase of 20,000 shares of outstanding common stock at a cost of \$0.1 million, 6 shares of outstanding Series B preferred stock at a cost of \$297, and 4 shares of outstanding Series C preferred stock at a cost of \$126. These repurchased shares were retired and removed from the number of shares issued in the consolidated balance sheet.

In 2013, the board of directors authorized the repurchase and retirement of 47,000 shares of outstanding common stock at a cost of \$0.2 million. The repurchased shares were retired and have been removed from both the issued and outstanding number of shares in the consolidated balance sheet and consolidated statement of stockholders' equity.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### *Secondary Transactions*

In the year ended December 31, 2014, the Company recorded \$0.5 million as compensation expense related to the excess of the selling price per share paid to certain of the Company's former employees over the fair value of the shares sold to an investor by these former employees in secondary transactions.

### **Note 9—Stock-based Compensation**

The Company maintains the 2006 Stock Plan (the "Stock Plan"). Under the Stock Plan, incentive and nonqualified stock options or rights to purchase common stock may be granted to eligible participants. Options are generally granted for a term of 10 years. Options granted under the Stock Plan generally vest 25% after the first year of service and ratably each month over the remaining 36-month period contingent on continued employment with the Company on each vesting date. At December 31, 2013 and 2014, 43,432,935 and 48,505,935 shares were authorized under the Stock Plan, respectively, and 3,063,945 and 3,036,004 shares were available for future grant, respectively.

The fair value of each option award is estimated on the date of grant using the Black-Scholes option-pricing model. Since the Company is not publicly traded, the Company utilizes equity valuations based on comparable publicly-traded companies, discounted free cash flows, an analysis of the Company's enterprise value and any other factors deemed relevant in estimating the fair value of its common stock. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of grant. Expected volatilities are based on implied volatilities from market comparisons of certain publicly traded companies and other factors. The expected term of stock options granted has been determined using the simplified method, which uses the midpoint between the vesting date and the contractual term. The requisite service period is generally four years from the date of grant.

The fair value of options granted in each year using the Black-Scholes pricing model has been based on the following assumptions:

	Year Ended December 31,		
	2012	2013	2014
Volatility	42.7% - 43.9%	45.7% - 50.3%	43.0% - 49.0%
Risk-free interest rate	0.7% - 1.1%	0.9% - 1.9%	1.7% - 2.1%
Expected term (in years)	5.12 - 6.08	5.48 - 6.08	5.46 - 6.08
Dividend rate	—%	—%	—%

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

The following table summarizes the activity for the Company's options:

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contract Term (in years)	Aggregate Intrinsic Value
Outstanding at January 1, 2012	25,037,740	\$ 0.73		
Granted	7,717,321	2.33		
Exercised	(5,889,452)	0.79		
Forfeited/Canceled	<u>(2,993,224)</u>	1.15		
Outstanding at December 31, 2012	23,872,385	1.18		
Granted	6,152,210	2.76		
Exercised	(2,049,133)	0.65		
Forfeited/Canceled	<u>(1,594,527)</u>	1.90		
Outstanding at December 31, 2013	26,380,935	1.55	7.42	
Granted	6,413,435	5.14		
Exercised	(8,431,282)	0.94		
Forfeited/Canceled	<u>(1,312,494)</u>	3.29		
Outstanding at December 31, 2014	<u>23,050,594</u>	2.67	7.57	\$ 134,386,069
Total exercisable at December 31, 2014	11,212,671	1.44	6.32	79,212,034
Total vested and expected to vest at December 31, 2014	21,663,138	2.57	7.48	128,508,325

The weighted-average grant date fair value of options granted in the years ended December 31, 2012, 2013 and 2014 was \$0.97, \$1.30 and \$2.43, respectively. The total intrinsic value of options exercised in the years ended December 31, 2012, 2013 and 2014 was \$9.0 million, \$4.0 million and \$24.8 million, respectively, and the total fair value of awards that vested in the years ended December 31, 2012, 2013 and 2014 was \$2.5 million, \$3.5 million and \$4.7 million, respectively. The total unrecognized compensation at December 31, 2014 was \$16.6 million, which will be recognized over a weighted-average period of 2.99 years.

Total stock-based compensation expense included in the consolidated statements of operations is as follows (in thousands):

	Year Ended December 31,		
	2012	2013	2014
Cost of revenue	\$ 166	\$ 200	\$ 1,113
Marketing	57	79	216
Product development	436	785	1,461
General and administrative	3,435	2,770	7,260
	<u>\$ 4,094</u>	<u>\$ 3,834</u>	<u>\$ 10,050</u>

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

The total stock-based compensation expense in the year ended December 31, 2014 includes \$4.1 million in acquisition-related stock-based compensation expense.

### Note 10—Income Taxes

The following are the domestic and foreign components of the Company's (loss) income before income taxes (in thousands):

	Year Ended December 31,		
	2012	2013	2014
Domestic	\$ (2,873)	\$ (544)	\$ 6,084
International	343	602	(16,344)
(Loss) income before income taxes	<u>\$ (2,530)</u>	<u>\$ 58</u>	<u>\$ (10,260)</u>

The income tax (benefit) provision is comprised of the following (in thousands):

	Year Ended December 31,		
	2012	2013	2014
Current:			
Federal	\$ 89	\$ 91	\$ 5,378
State	353	(614)	21
Foreign	149	95	401
Total current	<u>591</u>	<u>(428)</u>	<u>5,800</u>
Deferred:			
Federal	(302)	871	(50)
State	(434)	411	(186)
Foreign	—	—	(581)
Total deferred	<u>(736)</u>	<u>1,282</u>	<u>(817)</u>
Total income tax (benefit) provision	<u>\$ (145)</u>	<u>\$ 854</u>	<u>\$ 4,983</u>

The current tax expense listed above does not reflect income tax benefits of \$0, \$22,000 and \$4.9 million for the years ended December 31, 2012, 2013 and 2014, respectively, related to excess tax deductions on share-based compensation because we recorded these benefits directly to additional paid-in capital.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

A reconciliation of the income tax (benefit) provision at the U.S. federal statutory income tax rate of 34% to the Company's total income tax (benefit) provision is as follows (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2012</b>	<b>2013</b>	<b>2014</b>
Income tax (benefit) provision at federal statutory rate	\$ (860)	\$ 20	\$ (3,488)
State and local taxes net of federal benefit	(67)	(135)	(109)
Foreign income tax rate differential	33	(131)	3,255
Non-deductible stock-based compensation	378	611	1,963
Net unrealized loss on warrant and other liabilities	251	143	140
Non-deductible items	68	114	152
Uncertain tax positions	—	—	398
Return to provision adjustment	32	240	36
Non-deductible acquisition costs	—	—	582
Change in valuation allowance	—	—	2,065
Other	20	(8)	(11)
Total income tax (benefit) provision	<u>\$ (145)</u>	<u>\$ 854</u>	<u>\$ 4,983</u>

Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets (liabilities) are as follows (in thousands):

	<b>As of December 31,</b>	
	<b>2013</b>	<b>2014</b>
<b>Deferred tax assets:</b>		
Net operating loss carryforwards	\$ 83	\$ 3,274
Stock-based compensation expense	1,502	2,222
Accrued VAT liability	573	612
Alternative minimum tax credit	176	163
Allowance for doubtful accounts	420	701
Deferred rent	136	108
Accrued vacation	169	413
Intangible assets	87	—
Unrealized loss on foreign currency	—	554
Other, net	504	1,041
Total deferred tax assets	<u>3,650</u>	<u>9,088</u>
Less valuation allowance	—	1,892
Total net deferred tax asset	<u>3,650</u>	<u>7,196</u>
<b>Deferred tax liabilities:</b>		
Depreciation	(3,107)	(5,467)
Other liabilities	—	(1,878)
Total deferred tax liabilities	<u>(3,107)</u>	<u>(7,345)</u>
Net deferred tax assets (liabilities)	<u>\$ 543</u>	<u>\$ (149)</u>

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

As of December 31, 2013, the Company had approximately \$10.6 million and \$5.0 million of federal and pre-apportionment New York City net operating loss ("NOL") carryforwards, respectively, as well as immaterial amounts of NOLs in other state and local jurisdictions. As of December 31, 2014, the Company had approximately \$6.9 million and \$4.3 million of federal and preapportionment New York City NOL carryforwards, respectively, as well as immaterial amounts of NOLs in other states. The federal NOLs will begin to expire in 2031 if unused. The New York City NOLs will expire in 2033 if unused. All of the federal NOLs and most of the other NOL carryforwards are attributable to excess tax deductions from stock option exercises. The benefit of these NOLs will be credited to additional paid in capital when the NOLs are utilized.

As of December 31, 2013 and 2014, the Company had approximately \$0.2 million of federal alternative minimum tax credits, which may be carried forward indefinitely.

The utilization of the Company's NOL carryforwards is subject to an annual limitation under Section 382 of the Internal Revenue Code due to a change of ownership. However, the Company does not believe such annual limitation will impact its realization of the NOL carryforwards.

The Company assesses the likelihood of its ability to realize the benefit of its deferred tax assets in each jurisdiction by evaluating all relevant positive and negative evidence. To the extent the Company determines that some or all of its deferred tax assets are not more likely than not to be realized, it establishes a valuation allowance. For the year ended December 31, 2014, the Company determined that the existence of a three-year cumulative loss incurred in certain foreign jurisdictions, inclusive of 2014, constituted sufficiently strong negative evidence to warrant the establishment of a valuation allowance. As a result, a valuation allowance of \$1.9 million as of December 31, 2014 has been recorded against certain of the Company's deferred tax assets. The amount of the deferred tax assets considered realizable is \$7.2 million.

The following table summarizes the valuation allowance activity for the periods indicated (in thousands):

	Year Ended December 31,		
	2012	2013	2014
Balance as of the beginning of period	\$ —	\$ —	\$ —
Additions charged to expense	—	—	3,915
Deletions credited to expense	—	—	(1,850)
Currency translation	—	—	(173)
Balance as of the end of period	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 1,892</u>

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

The Company has not recorded deferred income taxes with respect to undistributed earnings of foreign subsidiaries as such earnings are expected to remain reinvested indefinitely. Upon distribution as dividends or otherwise, such amounts would be subject to taxation in the U.S. However, U.S. tax liabilities would be offset, in whole or part, by allowable tax credits with respect to income taxes previously paid to foreign jurisdictions. The amount of undistributed earnings of non-U.S. subsidiaries at December 31, 2014, as well as the related deferred income tax, if any, is not material.

As of December 31, 2012 and December 31, 2013, the Company had no unrecognized income tax benefits. As of December 31, 2014 the Company had unrecognized income tax benefits of \$0.4 million.

The following table summarizes the unrecognized tax benefit activity for the periods indicated (in thousands):

	As of December 31,		
	2012	2013	2014
Balance as of the beginning of period	\$ —	\$ —	\$ —
Additions based on tax positions related to the current year	—	—	398
Additions for tax positions of prior years	—	—	—
Reductions for tax provisions of prior years	—	—	—
Settlements	—	—	—
Balance as of the end of period	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 398</u>

The Company files tax returns in the United States, New York and various other state and foreign jurisdictions.

Generally, tax returns filed for 2011 and later years remain open to examination. To the extent tax attributes generated in earlier, closed years are carried forward into years that are open to examination, they may be subject to adjustment in audit.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### Note 11—Fair Value Measurements

The Company has characterized its investments in marketable securities, based on the priority of the inputs used to value the investments, into a three-level fair value hierarchy. The fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1), and lowest priority to unobservable inputs (Level 3). If the inputs used to measure the investments fall within different levels of the hierarchy, the categorization is based on the lowest level input that is significant to the fair value measurement of the investment. Investments recorded in the accompanying consolidated balance sheet are categorized based on the inputs to valuation techniques as follows:

Level 1—These are investments where values are based on unadjusted quoted prices for identical assets in an active market that the Company has the ability to access.

Level 2—These are investments where values are based on quoted market prices in markets that are not active or model derived valuations in which all significant inputs are observable in active markets.

Level 3—These are liabilities where values are derived from techniques in which one or more significant inputs are unobservable.

The following are the major categories of assets and liabilities measured at fair value on a recurring basis as of December 31, 2013 and 2014 using quoted prices in active markets for identical assets (Level 1), significant other observable inputs (Level 2) and significant unobservable inputs (Level 3) (in thousands):

	As of December 31, 2013			
	Level 1	Level 2	Level 3	Total
<b>Asset</b>				
Cash equivalents:				
Money market funds	\$20,285	\$ —	\$ —	\$20,285
U.S. Government bills	<u>3,534</u>	<u>—</u>	<u>—</u>	<u>3,534</u>
	<u>23,819</u>	<u>—</u>	<u>—</u>	<u>23,819</u>
Short-term investments:				
U.S. Government and agency bills	<u>18,075</u>	<u>—</u>	<u>—</u>	<u>18,075</u>
	<u>\$41,894</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$41,894</u>
<b>Liability</b>				
Warrants classified as liability	\$ —	\$ —	\$1,428	\$ 1,428

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

	As of December 31, 2014			
	Level 1	Level 2	Level 3	Total
<b>Asset</b>				
Cash equivalents:				
Money market funds	\$ 20,288	\$ —	\$ —	\$ 20,288
U.S. Government bills	2,426	—	—	2,426
	<u>22,714</u>	<u>—</u>	<u>—</u>	<u>22,714</u>
Short-term investments:				
U.S. Government and agency bills	19,184	—	—	19,184
	<u>\$ 41,898</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 41,898</u>
<b>Liability</b>				
Put option classified as liability	\$ —	\$ —	\$ 16	\$ 16
Acquisition-related contingent consideration classified as liability	—	—	3,374	3,374
Warrants classified as liability	—	—	1,920	1,920
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 5,310</u>	<u>\$ 5,310</u>

Level 1 instruments include money market funds and Corporate Certificates of Deposit and AAA-rated U.S. Government and agency securities, which are valued based on inputs including quotes from broker-dealers or recently executed transactions in the same or similar securities.

The table below provides a reconciliation of the beginning and ending balances for the liabilities measured at fair value using significant unobservable inputs (Level 3) (in thousands):

	Year Ended December 31,	
	2013	2014
Balance at beginning of period	\$ 1,009	\$ 1,428
Acquired	—	97
Changes to liability-classified stock awards	—	3,374
Settled	—	—
Net increase in fair value	419	411
Balance at end of period	<u>\$ 1,428</u>	<u>\$ 5,310</u>

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### Note 12—Net Loss Per Share

The following table presents the calculation of basic and diluted net loss per share for periods presented (in thousands, except share and per share data):

	Year Ended December 31,		
	<b>2012</b>	<b>2013</b>	<b>2014</b>
Net loss	\$ (2,385)	\$ (796)	\$ (15,243)
Deemed dividend on share transaction	(256)	—	—
Net loss attributable to common stockholders (basic)	<u>\$ (2,641)</u>	<u>\$ (796)</u>	<u>\$ (15,243)</u>
Dilutive effect of allocated income related to participating preferred stock	—	—	—
Net loss attributable to common stockholders (dilutive)	<u>\$ (2,641)</u>	<u>\$ (796)</u>	<u>\$ (15,243)</u>
Basic shares:			
Weighted-average common shares outstanding	60,563,723	65,334,548	80,493,407
Diluted shares:			
Common equivalent shares from stock options to purchase common stockholders	—	—	—
Dilutive effect of assumed conversion of warrants	—	—	—
Weighted-average shares used to compute diluted net loss per share	<u>60,563,723</u>	<u>65,334,548</u>	<u>80,493,407</u>
Net loss per share attributable to common stockholders:			
Basic net loss per share applicable to common stockholders	<u>\$ (0.04)</u>	<u>\$ (0.01)</u>	<u>\$ (0.19)</u>
Diluted net loss per share applicable to common stockholders	<u>\$ (0.04)</u>	<u>\$ (0.01)</u>	<u>\$ (0.19)</u>

The following potential common shares were excluded from the calculation of diluted net loss per share attributable to common stockholders because their effect would have been anti-dilutive for the periods presented:

	Year Ended December 31,		
	<b>2012</b>	<b>2013</b>	<b>2014</b>
Stock options	25,488,714	24,844,659	22,616,546
Warrants	406,060	406,060	406,060
Convertible preferred stock	106,896,493	106,896,493	106,896,493
Total anti-dilutive securities	<u>132,791,267</u>	<u>132,147,212</u>	<u>129,919,099</u>

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

### ***Unaudited Pro Forma Net Loss Per Share***

The following table sets forth the computation of the Company's unaudited pro forma basic and diluted net loss per share of common stock (in thousands except share and per share data):

	<u>Year Ended December 31, 2014</u>
	(unaudited)
<b>Numerator:</b>	
Net loss for basic and diluted earnings per share	\$ (15,243)
Add: Net unrealized loss on warrants	492
Net loss for pro forma basic and diluted earnings per share	<u>\$ (14,751)</u>
<b>Denominator:</b>	
Weighted average common stock outstanding (basic)	80,493,407
Add: conversion of convertible preferred stock	106,896,493
Total weighted average shares outstanding used in basic pro forma net loss per share	187,389,900
Dilutive effect of stock options and warrants	—
Total weighted average shares outstanding used in diluted pro forma net loss per share	<u>187,389,900</u>
Pro forma basic net loss per share	\$ (0.08)
Pro forma diluted net loss per share	<u>\$ (0.08)</u>

The following potential common shares were excluded from the calculation of diluted pro forma net loss per share attributable to common stockholders because their effect would have been anti-dilutive for the periods presented:

	<u>Year Ended December 31, 2014</u>
Stock options	22,616,546
Warrants	406,060
<b>Total anti-dilutive</b>	<u>23,022,606</u>

### **Note 13—Segment and Geographic Information**

The Company has determined that it operates in one reportable segment that has been identified based on how the Company's chief operating decision maker manages the Company's business (see Note 1).

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

Revenue by country is based on the current billing address of the seller. The following table summarizes revenue by geographic area (in thousands):

	Year Ended December 31,		
	2012	2013	2014
United States	\$ 61,706	\$ 103,428	\$ 153,866
International	12,896	21,594	41,725
Revenue	<u>\$ 74,602</u>	<u>\$ 125,022</u>	<u>\$ 195,591</u>

No individual international country's revenue exceeds 5% of total revenue. All significant long-lived assets are located in the United States.

### Note 14—Commitments and Contingencies

#### *Lease Commitments*

##### *Capital Leases*

The Company entered into a credit agreement with ePlus Group, Inc (“ePlus”) on January 3, 2014, which provided the Company with a credit line of up to \$8.0 million for computer equipment leases (the “ePlus Line”). The ePlus Line allows the Company to order equipment from any approved vendor. ePlus purchases the equipment on behalf of the Company and leases it back to the Company. The leases have a 36-month term and are payable in equal monthly installments with a buy-out option of \$1 or fair market value at the end of the lease term depending on the equipment. As of December 31, 2014, the Company has leased approximately \$5.6 million of computer equipment using the ePlus Line.

The Company had a credit agreement with TriplePoint Capital, LLC (“TriplePoint”), which provided the Company with a credit line of up to \$20.0 million for computer equipment leases (the “TriplePoint Line”). The TriplePoint Line allowed the Company to order equipment from any vendor. TriplePoint purchased the equipment on behalf of the Company and leased it back to the Company. The leases have a 36-month term, interest rate of 8.25%, and are payable in equal monthly installments. The Company stopped buying equipment under the TriplePoint Line in June 2012 and is paying off the remaining lease obligations in accordance with the terms of the credit agreement. At December 31, 2014, the Company had leased approximately \$0.4 million of computer equipment using the TriplePoint Line.

In connection with the execution of the TriplePoint Line, the Company issued TriplePoint a warrant to purchase 4,723 shares of Series E Preferred Stock at an exercise price of \$15.88 per share (the “TriplePoint Series E Warrant”). The TriplePoint Series E Warrant was valued at \$43,000 on the date of issuance, which

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# **Etsy, Inc.**

## **Notes to Consolidated Financial Statements**

the Company recognized as debt issuance cost and amortized over 36 months from the date of issuance. The warrant was fully vested at issuance.

For the years ended December 31, 2012, 2013 and 2014, the accompanying consolidated statement of operations includes charges of approximately \$0.4 million, \$0.2 million and \$0.4 million for interest expense, respectively, related to the equipment leased using the TriplePoint Line and ePlus Lines.

### *Operating Leases*

In 2012, the Company amended its existing lease for office space in Brooklyn, NY to extend its expiration to 2016. The portion of deferred rent liability related to the prior lease of approximately \$0.3 million is being amortized and recorded as rent expense over the new lease term. During 2012, the Company also entered into a new lease for office space in San Francisco, CA expiring in 2017. In 2014, the Company entered into a new lease for office space in Dublin, Ireland expiring in 2024. Rent expense for these operating leases is recognized over the term of each respective lease on a straight-line basis. In addition, the Company leases other office facilities under shorter terms and cancellable leases.

Total rent expense for the years ended December 31, 2012, 2013 and 2014 was \$1.7 million, \$2.4 million and \$3.6 million, respectively.

### *Build-to-Suit Lease*

In May 2014, the Company entered into a 10-year lease agreement for approximately 199,000 rentable square feet of office space in Brooklyn, NY for the Company's new headquarters, which lease is expected to commence in 2015. Of the total new office space, approximately 172,000 rentable square feet is being accounted for as a build-to-suit lease and approximately 27,000 rentable square feet located in an adjacent building is being accounted for as an operating lease. In connection with the lease agreement, the Company established a \$5.3 million collateral account, reflected in the restricted cash balance on the consolidated balance sheet.

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

The following table represents the Company's commitments under its current capital, operating, and build-to-suit lease agreements as of December 31, 2014 (in thousands):

Periods ending	Capital Lease		Build-to-Suit Lease
	Obligations	Operating Leases	
2015	\$ 2,288	\$ 3,870	\$ —
2016	2,250	854	529
2017	1,257	1,845	9,155
2018	—	1,756	9,394
2019	—	1,767	9,464
Thereafter	—	10,952	61,772
Total minimum payments required	<u>\$ 5,795</u>	<u>\$ 21,044</u>	<u>\$ 90,314</u>
Amounts representing interest	892		
Present value of net minimum payments	4,903		
Current maturities	1,755		
Long-term payment obligations	<u>\$ 3,148</u>		

### Tax Contingencies

The Company had a reserve of \$2.5 million and \$3.5 million at December 31, 2013 and 2014, respectively, for certain non-income tax obligations, representing management's best estimate of its liability. In addition, the Company could be subject to examination in various jurisdictions related to income and non-income tax matters. The resolution of these types of matters, giving recognition to the recorded reserve, could have an adverse impact on the Company's business.

### Legal Proceedings

From time to time in the normal course of business, various claims and litigation have been asserted or commenced against the Company. Due to uncertainties inherent in litigation and other claims, the Company can give no assurance that it will prevail in any such matters, which could subject the Company to significant liability for damages. Any claims or litigation, regardless of their success, could have an adverse effect on the Company's consolidated results of operations or cash flows in the period the claims or litigation are resolved. As of December 31, 2014, the Company does not believe that there are any material litigation exposures.

### Note 15—Revisions to Consolidated Financial Statements

In the fourth quarter of 2014, the Company determined that its prior years' annual consolidated financial statements included an understatement in certain non-income tax-related expenses. This understatement

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

impacts the Company's consolidated statements of operations, comprehensive loss, balance sheets and statements of cash flows. The Company assessed the effect of the errors on prior periods' financial statements in accordance with Staff Accounting Bulletin ("SAB") No. 99—Materiality and SAB No. 108—Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements. Based on quantitative and qualitative factors, the Company determined that the errors were not material to any previously issued annual consolidated financial statements. The Company determined that the correction of the cumulative amounts of the errors would be material to the consolidated financial statements for the three months ended December 31, 2014 and, as such, has revised its previously issued consolidated financial statements for 2012 and 2013. The adjustments related to years prior to 2012 are reflected as a \$0.1 million adjustment to beginning accumulated deficit for fiscal year 2012. All financial information contained in the accompanying notes to these financial statements has been revised to reflect the correction of these errors.

The effects of the adjustments on the consolidated statements of operations and comprehensive loss are as follows (in thousands except per share amounts):

	Year Ended December 31, 2012			Year Ended December 31, 2013		
	As Originally		As Revised	As Originally		As Revised
	Reported	Adjustments		Reported	Adjustments	
Revenue	\$ 74,602	\$ —	\$74,602	\$ 125,022	\$ —	\$125,022
Cost of revenue	24,408	85	24,493	47,679	100	47,779
Gross profit	50,194	(85)	50,109	77,343	(100)	77,243
Operating expenses						
Marketing	10,789	113	10,902	17,621	229	17,850
Product development	18,629	24	18,653	27,527	21	27,548
General and administrative	21,867	42	21,909	31,060	52	31,112
Total operating expenses	51,285	179	51,464	76,208	302	76,510
(Loss) income from operations	(1,091)	(264)	(1,355)	1,135	(402)	733
Total other expense	(1,140)	(35)	(1,175)	(617)	(58)	(675)
(Loss) income before income taxes	(2,231)	(299)	(2,530)	518	(460)	58
Benefit (provision) for income taxes	32	113	145	(1,029)	175	(854)
Net loss	\$ (2,199)	\$ (186)	\$ (2,385)	\$ (511)	\$ (285)	\$ (796)
Net loss per share—basic and diluted	\$ (0.04)	\$ —	\$ (0.04)	\$ (0.01)	\$ —	\$ (0.01)
Net loss	\$ (2,199)	\$ (186)	\$ (2,385)	\$ (511)	\$ (285)	\$ (796)
Other comprehensive (loss) income	(26)	—	(26)	212	—	212
Comprehensive loss	\$ (2,225)	\$ (186)	\$ (2,411)	\$ (299)	\$ (285)	\$ (584)

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

The effects of the adjustments on the consolidated balance sheets are as follows (in thousands):

	As of December 31, 2012			As of December 31, 2013		
	As Originally		As Revised	As Originally		As Revised
	Reported	Adjustments		Reported	Adjustments	
Deferred tax assets-current	\$ 1,379	\$ 201	\$ 1,580	\$ 1,426	\$ 376	\$ 1,802
Total current assets	68,752	201	68,953	76,409	376	76,785
Total assets	92,635	201	92,836	105,783	376	106,159
Accrued expenses and other current liabilities	1,950	527	2,477	4,055	988	5,043
Total current liabilities	10,929	527	11,456	18,231	988	19,219
Total liabilities	12,748	527	13,275	20,956	988	21,944
Accumulated deficit	(16,011)	(327)	(16,338)	(16,522)	(612)	(17,134)
Total stockholders' (deficit) equity	(325)	(327)	(652)	4,615	(612)	4,003
Total liabilities, convertible preferred stock and stockholders' (deficit) equity	92,635	201	92,836	105,783	376	106,159

The effects of the adjustments on the consolidated statements of cash flow are as follows (in thousands):

	As of December 31, 2012			As of December 31, 2013		
	As Originally		As Revised	As Originally		As Revised
	Reported	Adjustments		Reported	Adjustments	
Net loss	\$ (2,199)	\$ (186)	\$ (2,385)	\$ (511)	\$ (285)	\$ (796)
Deferred income taxes	(622)	(114)	(736)	1,458	(176)	1,282
Accrued liabilities	130	300	430	1,499	461	1,960
Net cash provided by operating activities	9,684	—	9,684	16,542	—	16,542

### Note 16—Revisions and Restatements to Quarterly Consolidated Financial Statements (unaudited)

In the fourth quarter of 2014, the Company determined that certain of its 2013 and 2014 interim consolidated financial statements included misstatements of expenses due to period-end cutoff errors. The errors impact the Company's consolidated statements of operations, comprehensive income (loss), balance sheets and statements of cash flows in each period. The Company assessed the effect of the errors on prior periods' financial statements in accordance with SAB No. 99—Materiality and SAB No. 108—Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements and, based on quantitative and qualitative factors, determined that the errors, in combination with the understatement of non-income tax-related expenses described in Note 15, were material to the consolidated financial statements for the three months ended March 31, 2014, the three and six months ended June 30, 2014 and the nine months ended September 30, 2014. As such, the Company has restated its interim

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

consolidated financial statements for these periods. In addition, the impact of these adjustments to the consolidated financial statements was not material to the three months ended March 31, 2013, the three and six months ended June 30, 2013, the three and nine months ended September 30, 2013, the three months ended December 31, 2013 and the three months ended September 30, 2014 and therefore the Company has revised its interim consolidated financial statements for these periods.

The effects of the adjustments on the consolidated statements of operations are as follows (in thousands):

	Quarter Ended March 31, 2013			Quarter Ended June 30, 2013		
	As Originally		As Revised	As Originally		As Revised
	Reported	Adjustments		Reported	Adjustments	
Revenue	\$ 26,144	\$ —	\$26,144	\$ 27,364	\$ —	\$27,364
Cost of revenue	9,559	22	9,581	10,475	24	10,499
Gross profit	16,585	(22)	16,563	16,889	(24)	16,865
Operating expenses						
Marketing	2,962	42	3,004	3,180	43	3,223
Product development	6,686	4	6,690	6,750	4	6,754
General and administrative	6,610	9	6,619	7,474	15	7,489
Total operating expenses	16,258	55	16,313	17,404	62	17,466
Income (loss) from operations	327	(77)	250	(515)	(86)	(601)
Total other expense	(147)	(12)	(159)	(240)	(14)	(254)
Income (loss) before income taxes	180	(89)	91	(755)	(100)	(855)
(Provision) benefit for income taxes	(442)	34	(408)	1,865	38	1,903
Net (loss) income	\$ (262)	\$ (55)	\$ (317)	\$ 1,110	\$ (62)	\$ 1,048

	Quarter Ended September 30, 2013			Quarter Ended December 31, 2013		
	As Originally		As Revised	As Originally		As Revised
	Reported	Adjustments		Reported	Adjustments	
Revenue	\$ 29,957	\$ —	\$29,957	\$ 41,557	\$ —	\$41,557
Cost of revenue	11,524	24	11,548	16,121	30	16,151
Gross profit	18,433	(24)	18,409	25,436	(30)	25,406
Operating expenses						
Marketing	4,088	60	4,148	7,391	84	7,475
Product development	7,049	7	7,056	7,042	6	7,048
General and administrative	7,831	74	7,905	9,145	(46)	9,099
Total operating expenses	18,968	141	19,109	23,578	44	23,622
(Loss) income from operations	(535)	(165)	(700)	1,858	(74)	1,784
Total other expense	(143)	(15)	(158)	(87)	(17)	(104)
(Loss) income before income taxes	(678)	(180)	(858)	1,771	(91)	1,680
Benefit (provision) for income taxes	1,870	69	1,939	(4,322)	34	(4,288)
Net income (loss)	\$ 1,192	\$ (111)	\$ 1,081	\$ (2,551)	\$ (57)	\$ (2,608)

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

The effects of the adjustments on the consolidated statements of operations and comprehensive income (loss) for the six months ended June 30, 2013 and the nine months ended September 30, 2013 are as follows (in thousands except per share amounts):

	Six Months Ended June 30, 2013			Nine Months Ended September 30, 2013		
	As Originally		As Revised	As Originally		As Revised
	Reported	Adjustments		Reported	Adjustments	
Revenue	\$ 53,508	\$ —	\$53,508	\$ 83,465	\$ —	\$ 83,465
Cost of revenue	20,034	46	20,080	31,558	70	31,628
Gross profit	33,474	(46)	33,428	51,907	(70)	51,837
Operating expenses						
Marketing	6,142	85	6,227	10,230	145	10,375
Product development	13,436	8	13,444	20,485	15	20,500
General and administrative	14,084	24	14,108	21,915	98	22,013
Total operating expenses	33,662	117	33,779	52,630	258	52,888
Loss from operations	(188)	(163)	(351)	(723)	(328)	(1,051)
Total other expense	(387)	(26)	(413)	(530)	(41)	(571)
Loss before income taxes	(575)	(189)	(764)	(1,253)	(369)	(1,622)
Benefit for income taxes	1,423	72	1,495	3,293	141	3,434
Net income (loss)	\$ 848	\$ (117)	\$ 731	\$ 2,040	\$ (228)	\$ 1,812
Net loss per share—basic and diluted	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Net income (loss)	\$ 848	\$ (117)	\$ 731	\$ 2,040	\$ (228)	\$ 1,812
Other comprehensive income	84	—	84	201	—	201
Comprehensive income (loss)	\$ 932	\$ (117)	\$ 815	\$ 2,241	\$ (228)	\$ 2,013

The effects of the adjustments on the 2014 quarterly consolidated statements of operations are as follows (in thousands):

	Quarter Ended March 31, 2014			Quarter Ended June 30, 2014		
	As Originally		As Restated	As Originally		As Restated
	Reported	Adjustments		Reported	Adjustments	
Revenue	\$ 40,536	\$ —	\$40,536	\$ 42,509	\$ —	\$42,509
Cost of revenue	15,361	33	15,394	17,309	36	17,345
Gross profit	25,175	(33)	25,142	25,200	(36)	25,164
Operating expenses						
Marketing	7,258	210	7,468	8,804	(38)	8,766
Product development	7,981	61	8,042	8,782	10	8,792
General and administrative	8,768	445	9,213	10,809	591	11,400
Total operating expenses	24,007	716	24,723	28,395	563	28,958
(Loss) income from operations	1,168	(749)	419	(3,195)	(599)	(3,794)
Total other expense	(649)	(20)	(669)	260	(25)	235
(Loss) income before income taxes	519	(769)	(250)	(2,935)	(624)	(3,559)
(Provision) benefit for income taxes	(404)	191	(213)	400	8	408
Net income (loss)	\$ 115	\$ (578)	\$ (463)	\$ (2,535)	\$ (616)	\$ (3,151)

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

	Quarter Ended September 30, 2014		
	As Originally		
	Reported	Adjustments	As Revised
Revenue	\$ 47,634	\$ —	\$47,634
Cost of revenue	18,080	35	18,115
Gross profit	29,554	(35)	29,519
Operating expenses			
Marketing	8,563	245	8,808
Product development	10,067	10	10,077
General and administrative	13,722	(36)	13,686
Total operating expenses	32,352	219	32,571
Loss from operations	(2,798)	(254)	(3,052)
Total other expense	(1,116)	(28)	(1,144)
Loss before income taxes	(3,914)	(282)	(4,196)
(Provision) benefit for income taxes	(2,268)	193	(2,075)
Net loss	\$ (6,182)	\$ (89)	\$ (6,271)

The effects of the adjustments on the consolidated statements of operations and comprehensive loss for the six months ended June 30, 2014 and the nine months ended September 30, 2014 are as follows (in thousands except per share amounts):

	Six Months Ended June 30, 2014			Nine Months Ended September 30, 2014		
	As Originally			As Originally		
	Reported	Adjustments	As Restated	Reported	Adjustments	As Restated
Revenue	\$ 83,045	\$ —	\$83,045	\$ 130,679	\$ —	\$130,679
Cost of revenue	32,670	69	32,739	50,750	104	50,854
Gross profit	50,375	(69)	50,306	79,929	(104)	79,825
Operating expenses						
Marketing	16,062	172	16,234	24,625	417	25,042
Product development	16,763	71	16,834	26,830	81	26,911
General and administrative	19,577	1,036	20,613	33,299	1,000	34,299
Total operating expenses	52,402	1,279	53,681	84,754	1,498	86,252
Loss from operations	(2,027)	(1,348)	(3,375)	(4,825)	(1,602)	(6,427)
Total other expense	(389)	(45)	(434)	(1,505)	(73)	(1,578)
Loss before income taxes	(2,416)	(1,393)	(3,809)	(6,330)	(1,675)	(8,005)
Benefit (provision) for income taxes	(4)	199	195	(2,272)	392	(1,880)
Net loss	\$ (2,420)	\$ (1,194)	\$ (3,614)	\$ (8,602)	\$ (1,283)	\$ (9,885)
Net loss per share—basic and diluted	\$ (0.03)	\$ (0.02)	\$ (0.05)	\$ (0.11)	\$ (0.02)	\$ (0.13)
Net loss	\$ (2,420)	\$ (1,194)	\$ (3,614)	\$ (8,602)	\$ (1,283)	\$ (9,885)
Other comprehensive (loss) income	(173)	—	(173)	(2,756)	—	(2,756)
Comprehensive loss	\$ (2,593)	\$ (1,194)	\$ (3,787)	\$ (11,358)	\$ (1,283)	\$ (12,641)

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# Etsy, Inc.

## Notes to Consolidated Financial Statements

The effects of the adjustments on the consolidated balance sheets as of June 30 and September 30, 2014 are as follows (in thousands):

	As of June 30, 2014			As of September 30, 2014		
	As Originally		As Restated	As Originally		As Restated
	Reported	Adjustments		Reported	Adjustments	
Deferred tax assets—current	\$ 2,985	\$ 504	\$ 3,489	\$ 2,149	\$ 568	\$ 2,717
Total current assets	116,949	504	117,453	121,840	568	122,408
Total assets	224,006	504	224,510	237,711	568	238,279
Accrued expenses and other current liabilities	12,018	2,310	14,328	11,459	2,463	13,922
Total current liabilities	24,186	2,310	26,496	31,860	2,463	34,323
Total liabilities	68,653	2,310	70,963	88,371	2,463	90,834
Accumulated deficit	(18,942)	(1,806)	(20,748)	(25,124)	(1,895)	(27,019)
Total stockholders' (deficit) equity	75,141	(1,806)	73,335	69,128	(1,895)	67,233
Total liabilities, convertible preferred stock and stockholders' (deficit)	224,006	504	224,510	237,711	568	238,279

The effects of the adjustments on the consolidated statements of cash flow for the six months ended June 30, 2013 and 2014 and the nine months ended September 30, 2013 and 2014 are as follows (in thousands):

	Six Months Ended June 30, 2013			Nine Months Ended September 30, 2013		
	As Originally		As Revised	As Originally		As Revised
	Reported	Adjustments		Reported	Adjustments	
Net loss	\$ 848	\$ (117)	\$ 731	\$ 2,040	\$ (228)	\$ 1,812
Deferred income taxes	728	(72)	656	1,092	(117)	975
Accrued liabilities	870	189	1,059	980	345	1,325
Net cash provided by operating activities	6,655	—	6,655	10,110	—	10,110

	Six Months Ended June 30, 2014			Nine Months Ended September 30, 2014		
	As Originally		As Restated	As Originally		As Restated
	Reported	Adjustments		Reported	Adjustments	
Net loss	\$ (2,420)	\$ (1,194)	\$ (3,614)	\$ (8,602)	\$ (1,283)	\$ (9,885)
Deferred income taxes	(470)	(129)	(599)	464	(194)	270
Accrued liabilities	7,302	1,322	8,624	4,901	1,477	6,378
Net cash provided by operating activities	6,914	—	6,914	11,986	—	11,986

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# Independent Auditor's Report

To the Board of Directors and Stockholders of Jarvis Labs, Inc.:

We have audited the accompanying financial statements of Jarvis Labs, Inc., which comprise the balance sheets as of December 31, 2013 and December 31, 2012, and the related statements of operations and comprehensive loss, changes in convertible preferred stock and stockholders' deficit and cash flows for the year ended December 31, 2013 and the period from June 11, 2012 (inception) to December 31, 2012.

## Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

## Auditor's Responsibility

Our responsibility is to express an opinion on the financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Company's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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## Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Jarvis Labs, Inc. at December 31, 2013 and December 31, 2012, and the results of their operations and their cash flows for the year ended December 31, 2013 and for the period from June 11, 2012 (inception) to December 31, 2012 in accordance with accounting principles generally accepted in the United States of America.

/s/ PricewaterhouseCoopers LLP  
New York, New York  
November 3, 2014

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# Jarvis Labs, Inc.

## Balance Sheets

	<u>As of December 31, 2012</u>	<u>As of December 31, 2013</u>	<u>As of March 31, 2014</u>
	(unaudited)		
<b>Assets</b>			
Current assets			
Cash and cash equivalents	\$ 812,319	\$ 591,004	\$ 98,662
Accounts receivable	5,213	29,862	27,500
Inventory	13,800	139,672	150,810
Prepaid expenses	—	37,591	33,000
Total current assets	<u>831,332</u>	<u>798,129</u>	<u>309,972</u>
Property and equipment, net	<u>14,542</u>	<u>39,742</u>	<u>35,520</u>
Total assets	<u>\$ 845,874</u>	<u>\$ 837,871</u>	<u>\$ 345,492</u>
<b>Liabilities and Stockholders' Deficit</b>			
Current liabilities			
Accounts payable	\$ —	\$ 86,893	\$ 48,329
Accrued expenses and other payables	11,028	246,307	74,215
Deferred revenue	1,160	235	—
Warrant liability	—	56,844	70,137
Debt—current portion	—	135,908	188,848
Total current liabilities	<u>12,188</u>	<u>526,187</u>	<u>381,529</u>
Debt—net of current portion	—	334,829	298,625
Total liabilities	<u>12,188</u>	<u>861,016</u>	<u>680,154</u>
Commitments and contingencies			
Convertible preferred stock			
Series Seed—par value \$0.00001; 4,539,629 shares authorized as of December 31, 2012, and 4,728,155 shares authorized as of December 31, 2013 and March 31, 2014; 3,391,581 shares issued and outstanding as of December 31, 2012, and 4,419,683 shares issued and outstanding as of December 31, 2013 and March 31, 2014	972,577	1,272,577	1,272,577
Total convertible preferred stock	<u>972,577</u>	<u>1,272,577</u>	<u>1,272,577</u>
Stockholders' (deficit) equity			
Common stock, par value \$0.00001, 15,500,000 shares authorized as of December 31, 2012 and 15,688,486 shares authorized as of December 31, 2013 and March 31, 2014; 8,700,000 shares issued and outstanding as of December 31, 2012 and 2013, and March 31, 2014.	87	87	87
Additional paid-in capital	936	7,185	11,173
Accumulated deficit	(139,914)	(1,302,994)	(1,618,499)
Total stockholders' deficit	<u>(138,891)</u>	<u>(1,295,722)</u>	<u>(1,607,239)</u>
Total liabilities, convertible preferred stock and stockholders' deficit	<u>\$ 845,874</u>	<u>\$ 837,871</u>	<u>\$ 345,492</u>

The accompanying notes are an integral part of these financial statements

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# Jarvis Labs, Inc.

## Statements of Operations and Comprehensive Loss

	Period from June 11, 2012 (inception) to December 31, <u>2012</u>	Year Ended December 31, <u>2013</u>	Three Months Ended March 31,	
			2013  (unaudited)	2014
Revenue	\$ 15,795	\$ 968,249	\$ 104,373	\$ 274,353
Cost of revenue	12,573	818,930	83,080	230,606
Gross profit	3,222	149,319	21,293	43,747
Operating expenses:				
Sales and marketing	18,490	284,205	39,255	30,187
Product and technology	96,347	757,178	117,516	234,257
General and administrative	8,629	242,518	53,701	64,780
Total operating expenses	123,466	1,283,901	210,472	329,224
Loss from operations	(120,244)	(1,134,582)	(189,179)	(285,477)
Other (expense) income:				
Interest expense and other	(19,684)	(18,070)	—	(16,735)
Unrealized loss on warrant liability	—	(10,746)	—	(13,293)
Interest income	14	318	146	—
Total other expense	(19,670)	(28,498)	146	(30,028)
Net and comprehensive loss	<u>\$ (139,914)</u>	<u>\$ (1,163,080)</u>	<u>\$ (189,033)</u>	<u>\$ (315,505)</u>

The accompanying notes are an integral part of these financial statements

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# Jarvis Labs, Inc.

## Statements of Changes in Convertible Preferred Stock and Stockholders' Deficit

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount			\$
Balance at June 11, 2012 (inception)	—	\$ —	—	\$ —	\$ —	\$ —	\$ —
Issuance of common stock par value \$0.00001	—	—	8,700,000	87	(87)	—	—
Issuance of Series Seed preferred stock par value \$0.00001	3,391,581	972,577	—	—	—	—	—
Stock-based compensation	—	—	—	—	1,023	—	1,023
Net loss	—	—	—	—	—	(139,914)	(139,914)
Balance at December 31, 2012	3,391,581	972,577	8,700,000	87	936	(139,914)	(138,891)
Issuance of Series Seed preferred stock par value \$0.00001	1,028,102	300,000	—	—	—	—	—
Stock-based compensation	—	—	—	—	6,249	—	6,249
Net loss	—	—	—	—	—	(1,163,080)	(1,163,080)
Balance at December 31, 2013	4,419,683	1,272,577	8,700,000	87	7,185	(1,302,994)	(1,295,722)
Stock-based compensation	—	—	—	—	3,988	—	3,988
Net loss	—	—	—	—	—	(315,505)	(315,505)
Balance at March 31, 2014 (unaudited)	4,419,683	\$ 1,272,577	8,700,000	\$ 87	\$ 11,173	\$ (1,618,499)	\$ (1,607,239)

The accompanying notes are an integral part of these financial statements

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# Jarvis Labs, Inc.

## Statements of Cash Flows

	Period from June 11, 2012 (inception) to December 31, <u>2012</u>	Year Ended December 31, <u>2013</u>	Three Months Ended March 31,	
			2013  (unaudited)	2013 2014
Cash flows from operating activities				
Net loss	\$ (139,914)	\$ (1,163,080)	\$ (189,033)	\$ (315,505)
Net loss used in operating activities:				
cash used by operations				
Depreciation expense	813	12,375	6,585	8,138
Stock based compensation	1,023	6,250	772	3,988
Unrealized loss on Warrant Liability	—	10,744	—	13,293
Non-cash interest expense	—	17,958	—	16,735
Changes in operating assets and liabilities				
Increase in accounts receivable	(5,213)	(24,649)	(10,000)	2,361
Increase in inventory	(13,800)	(125,872)	(52,580)	(11,138)
(Increase) decrease in prepaid expenses and other receivables	—	(37,591)	—	4,591
Increase (decrease) in accounts payable	—	86,893	—	(38,564)
Increase (decrease) in accrued expenses and other payables	12,188	234,355	10,008	(172,090)
Net cash used in operating activities	(144,903)	(982,617)	(234,248)	(488,191)
Cash flows from investing activities				
Purchase of property and equipment	(15,355)	(37,575)	(5,350)	(4,151)
Net cash used in investing activities	(15,355)	(37,575)	(5,350)	(4,151)
Cash flows from financing activities				
Proceeds from issuance of preferred stock, net of issuance cost	972,577	300,000	300,000	—
Proceeds from Loan and warrant issuance	—	498,877	—	—
Net cash provided by financing activities	972,577	798,877	300,000	—
Net (decrease) increase in cash and cash equivalents	812,319	(221,315)	60,402	(492,342)
Cash and cash equivalents				
Beginning of year	—	812,319	812,319	591,004
End of year	\$ 812,319	\$ 591,004	\$ 872,721	\$ 98,662

The accompanying notes are an integral part of these financial statements

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# **Jarvis Labs, Inc.**

## **Notes to the Financial Statements**

### **1. Organization**

#### **Organization and Nature of Business**

Jarvis Labs, Inc. (the “Company”) was incorporated in the state of Delaware on June 11, 2012 (inception). The Company owns and operates Grandst.com, a website that provides a marketplace for creative new technology and merchandise. The Company generates revenue through direct retail sales. The Company is based in New York, NY and operates in the United States.

#### **Unaudited Interim Financial Information**

The accompanying balance sheet as of March 31, 2014, the related statements of operations, comprehensive loss and cash flows for the three months ended March 31, 2013 and 2014, and the statement of changes in convertible preferred stock and stockholders’ deficit for the three months ended March 31, 2014 are unaudited. The unaudited interim 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 as of March 31, 2014 and results of operations and cash flows for the three months ended March 31, 2013 and 2014. The financial data and the other information disclosed in these notes to the financial statements related to these three-month periods are unaudited.

#### **Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. The accounting estimates that require management’s most difficult and subjective judgments include the useful life and recoverability of fixed assets, the fair value of options issued for services and the fair value of warrants. The Company evaluates its estimates and judgments on an ongoing basis and revises when necessary. Actual results could differ from those estimates.

#### **Revenue Recognition**

The Company recognizes revenue from product sales when the following four criteria are met: persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the selling price is fixed or determinable and collectability is reasonably assured.

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# **Jarvis Labs, Inc.**

## **Notes to the Financial Statements**

The Company evaluates whether it is appropriate to record the gross amount of product sales and related costs or the net amount earned as commissions. Generally, the Company is the primary obligor in its sales to customers, has latitude in establishing prices and selecting suppliers and maintains inventory risk, and therefore revenue is recorded at the gross sales price.

Product sales represent revenue from the sale of products and related shipping fees. Product sales and shipping revenues, net of promotional discounts, rebates, and return allowances, are recorded when the products are shipped and title passes to customers.

### **Cost of Sales**

Cost of sales consists of the purchase price of products sold, inbound shipping and duty charges and credit card processing fees. Shipping charges to receive products from the Company's suppliers are included in the Company's inventory, and recognized as cost of sales upon sale of products to the Company's customers.

### **Cash and Cash Equivalents**

The Company considers all short-term highly liquid investments with an original maturity of three months or less to be cash equivalents.

### **Inventory**

The Company's inventory is comprised of finished goods and are valued at the lower of average cost or market, and are evaluated periodically for product obsolescence, excess balances and other indications of impairment in value.

### **Property and Equipment**

Property and equipment consisting of office furniture, office and computer equipment and leasehold improvements are recorded at cost. Property and equipment is depreciated using the straight-line method over the shorter of the estimated life of the asset or the lease term.

### **Fair Value Measurement**

The Company's financial instruments are measured and recorded at fair value based on inputs and assumptions that market participants would use in pricing an asset or a liability. ASC Topic 820, *Fair Value Measurements and Disclosures*, defines fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining fair value, management considers the principal or most advantageous market in which

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# Jarvis Labs, Inc.

## Notes to the Financial Statements

the Company would transact, and also considers assumptions that market participants would use when pricing the asset or liability, such as inherent risk, transfer restrictions, and risk of non-performance.

ASC Topic 820 further requires disclosures on the amount and reason for transfers in and out of Level 1 and 2 fair value measurements. The standards also require disclosure of activities, including purchases, sales, issuances, and settlements within the Level 3 fair value measurements. The standards also clarify existing disclosure requirements on levels of disaggregation and disclosures about inputs and valuation techniques. This pronouncement requires disclosure regarding the manner in which fair value is determined for assets and liabilities and establishes a three-tiered value hierarchy into which these assets and liabilities are grouped, based upon significant inputs as follows:

Level 1—Quoted prices in active markets for identical assets or liabilities.

Level 2—Observable inputs, other than Level 1 prices, such as quoted prices in active markets for similar assets and liabilities, quoted prices for identical or similar assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data.

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. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs. When a determination is made to classify a financial instrument within Level 3, the determination is based upon the lack of significance of the observable parameters to the overall fair value measurement. However, the fair value determination for Level 3 financial instruments may consider some observable market inputs.

The lowest level of significant input determines the placement of the entire fair value measurement in the hierarchy.

The following table reflects the activity for the Company's major classes of liabilities measured at fair value using Level 3 inputs:

	Total Fair Value at March 31, 2014	Level 1	Level 2	Level 3
Liabilities:				
Warrant liabilities	\$ 70,137	\$ —	\$ —	\$ 70,137
Total Liabilities	<u>\$ 70,137</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 70,137</u>

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# Jarvis Labs, Inc.

## Notes to the Financial Statements

	<b>Total Fair Value at December 31,</b>			
	<b>2013</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
<b>Liabilities:</b>				
Warrant liabilities	\$ 56,844	\$ —	\$ —	\$ 56,844
<b>Total Liabilities</b>	<b>\$ 56,844</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 56,844</b>

The following table reflects the activity for the Company's major classes of liabilities measured at fair value using Level 3 inputs:

<b>Liabilities:</b>	<b>Year Ended December 31, 2012</b>	<b>Year Ended December 31, 2013</b>	<b>Three Months Ended</b>	
			<b>March 31, 2014 (Unaudited)</b>	
Balance at beginning of period	\$ —	\$ —	\$ 56,844	—
Level 3 liabilities acquired	—	46,098	—	—
Level 3 liabilities settled	—	—	—	—
Unrealized loss on warrant liability	—	10,746	—	13,293
Included in earnings (unrealized)	—	—	—	—
<b>Balance at end of period</b>	<b>\$ —</b>	<b>\$ 56,844</b>	<b>\$ 70,137</b>	

### Impairment of Long-lived Assets

The Company continually evaluates whether events and circumstances have occurred that indicate the remaining estimated useful lives of long-lived assets may require revision, or that the remaining balance of long-lived assets may not be recoverable. When factors indicate that long-lived assets should be evaluated for possible impairment, the Company uses an estimate of the related undiscounted future cash flows over the remaining life of the long-lived asset group in measuring whether they are recoverable. If the carrying value of the asset group exceeds the estimated undiscounted future cash flows, a loss is recorded to the extent the asset group's carrying value exceeds its fair value. Fair value would typically be determined based upon the asset group's estimated discounted cash flows. No assets were determined to be impaired in the years ended December 31, 2012 and 2013.

### Sales and Marketing

Sales and marketing expenses consist primarily of online and offline advertising costs, marketing materials and market research. Advertising costs are expensed in the period in which they are incurred. The advertising and promotion costs for 2012 and 2013 and for the three months ended March 31, 2013 and 2014 are \$14,758, \$217,558, \$65,832 and \$11,618 respectively.

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# **Jarvis Labs, Inc.**

## **Notes to the Financial Statements**

### **Product and Technology**

Product and technology expenses include facilities costs, technology compensation, stock based compensation and employee benefits, website hosting fees, software licensing costs and certain other allocated costs.

### **General and Administrative**

General and administrative expenses include facilities costs, administrative charges, professional services fees and other general overhead costs.

### **Stock-based Compensation**

The stock-based compensation cost is measured at the grant date, based on the fair value of the award, and is amortized over the requisite service period for the award granted.

Calculating stock-based compensation requires the input of highly subjective assumptions, including the expected term of the stock-based awards and stock price volatility. The Company estimates the expected life of stock options granted based on the simplified method, which the Company believes is representative of future behavior. The Company estimates the volatility of the common stock on the date of grant based on the historic volatility of comparable companies in the industry. The Company selected the risk-free interest rate based on yields from United States Treasury zero-coupon issues for a term consistent with the expected life of the awards in effect at the time of grant. The Company estimates the expected forfeiture rate based on historical experience of the stock-based awards that are granted, exercised and canceled.

The Company may, from time to time, grant stock options to non-employees. For non-employee stock options, the Company calculates the fair value of the award on the date of grant in the same manner as employee awards, however the unvested portion of the awards are revalued at the end of each reporting period and the pro-rata compensation expense is adjusted accordingly until such time the non-employee award is fully vested. At the time, the total compensation recognized to date shall equal the fair value of the award as calculated on the measurement date, which is the date at which the award recipient's performance is complete.

### **Concentrations of Credit Risk**

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. At times, such amounts may exceed the limits insured by the Federal Deposit Insurance Corporation.

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# Jarvis Labs, Inc.

## Notes to the Financial Statements

The Company's financial instruments consist of cash and cash equivalents, loans receivable, accounts payable, and loans payable. At December 31, 2012 and 2013 and for the three months ended March 31, 2013 and 2014 the fair values of these instruments approximated their financial statement carrying amounts due to their relatively short-term nature.

### Income Taxes

The Company utilizes the asset and liability method of accounting for income taxes. Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes, as well as operating loss, capital loss and tax credit carryforwards. Deferred tax assets and liabilities are classified as current or noncurrent based on the classification of the related assets or liabilities for financial reporting, or according to the expected reversal dates of the specific temporary differences if not related to an asset or liability for financial reporting. Valuation allowances are established against deferred tax assets if it is more likely than not that they will not be realized.

As of December 31, 2012 and 2013, the Company recorded a full valuation allowance against its deferred tax assets. Consequently, the Company has not recognized deferred income tax assets or liabilities for the future tax consequences attributable to differences between the financial statement carrying amount of existing assets and liabilities and their respective tax bases.

The Company's policy is to recognize interest and penalties expense, if any, related to unrecognized tax benefits as a component of income tax expense. The Company's uncertain tax positions are related to tax years that remain subject to examination by the relevant tax authorities. As of December 31, 2013, the Company did not have any uncertain tax positions.

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# Jarvis Labs, Inc.

## Notes to the Financial Statements

### 2. Property and Equipment

Property and equipment at December 31, 2012, 2013 and for the three months ended March 31, 2014 consists of the following:

	Estimated Useful Lives	Year Ended December 31,		Three Months Ended
		2012	2013	March 31, 2014 (Unaudited)
Computer equipment	3 years	\$ 15,355	\$ 24,801	\$ 24,801
Furniture and Equipment	4 years	—	9,046	9,046
	Shorter of life			
Leasehold Improvements	of asset or lease term	—	19,083	19,083
Less: Accumulated depreciation		(813)	(13,188)	(17,410)
		<u>\$ 14,542</u>	<u>\$ 39,742</u>	<u>\$ 35,520</u>

Depreciation and amortization expense related to property and equipment was approximately \$813, \$12,375, and \$4,222 for the years ended December 31, 2012 and 2013 and for the three months ended March 31, 2014, respectively.

### 3. Accrued Expenses and Other Payables

Accrued expenses and other payables consist of the following:

	Year Ended December 31,		Three Months Ended
	2012	2013	March 31, 2014 (unaudited)
Accruals and Other Payables			
Accrued Expenses	\$ 6,476	\$ 192,076	\$ 55,139
Deferred Rent Liability	4,552	19,911	19,076
Accrued Salary	—	34,320	—
	<u>\$ 11,028</u>	<u>\$ 246,307</u>	<u>\$ 74,215</u>

### 4. Loan

In October 2013, the Company entered into a Loan & Security Agreement with Venture Lending & Leasing, which made \$500,000 available to the Company, all of which had been drawn down by the Company as of December 31, 2013. The facility is used for working capital purposes and bears interest at the rate of 11%. The agreement also contains restrictive covenants, including financial reporting requirements. The terms and conditions of the loan required repayments to start in April 2014 and shall be repaid in thirty (30) equal monthly payments of principal plus interest. Interest expense related to borrowings under the line of credit

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# Jarvis Labs, Inc.

## Notes to the Financial Statements

amounted to \$13,349 and \$12,125 during the year ended December 31, 2013 and the three months ended March 31, 2014, respectively.

In connection with the borrowing, the Company issued warrants to purchase 92,242 and 92,243 shares of Series Seed preferred stock at exercise prices of \$0.2918 per share. The warrants expire in October 2023.

At issuance at October 22, 2013, at December 31, 2013 and at March 31, 2014, the warrants were valued at \$46,098, \$56,844 and \$70,137, respectively, using an option pricing model. Key assumptions at October 22, 2013, December 31, 2013 and March 31, 2014 included a remaining term of 10 years, 9.8 years and 9.5 years, respectively, and a volatility of 83.74% based on a group of comparable companies and a risk-free interest rate of 2.54 - 2.98%.

The Company recorded the initial value of the warrants as debt discount of the loan and recorded \$4,610 as an expense in 2013 in connection with the debt discount amortization. In addition, \$1,123 was incurred as debt issuance costs. As the warrants are exercisable into Series Seed preferred stock, which include certain redemption rights that are considered outside of the control of the Company, in accordance with ASC Topic 480, *Distinguishing Liabilities from Equity*, the warrants are accounted for as a liability and are revalued at each balance sheet date. The warrants were fully vested at issuance.

The fair value of the loan was not materially different from its carrying value as interest rates have not changed materially since the loan was entered into.

Annual maturities of the loan are as follows:

Year Ending December 31,	
2014	\$ 135,908
2015	199,476
2016	164,616
	500,000
Less : Unamortized discount	(42,611)
Plus : Interest accrued & unpaid	13,348
	470,737
Less : Current maturities	(135,908)
Long term maturities	\$ 334,829

## 5. Capital Stock

As of December 31, 2012, the Company had been authorized to issue 20,039,629 shares of stock, at a par value of \$0.00001 per share, consisting of 15,500,000 shares of common stock and 4,539,629 shares of preferred stock. The Company has 3,391,581 shares of preferred stock and 8,700,000 shares of common stock issued and outstanding. As of December 31, 2013 and March 31, 2014, the Company had been

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# **Jarvis Labs, Inc.**

## **Notes to the Financial Statements**

authorized to issue 20,416,641 shares of stock, at a par value of \$0.00001 per share, consisting of 15,688,486 shares of common stock and 4,728,155 shares of preferred stock. As of December 31, 2013, the Company has 4,419,683 shares of preferred stock and 8,700,000 shares of common stock issued and outstanding.

### **Dividend**

The holders of shares of preferred stock shall be entitled to receive dividends, out of any assets legally available, prior and in preference to any declaration or payment of any dividend on the common stock of this corporation and at the applicable dividend rate, as declared by the board of directors. Such dividends shall not be cumulative. The holders of the outstanding preferred stock can waive any dividend preference that such holders shall be entitled to receive upon the affirmative vote or written consent of the holders of a majority of the shares of preferred stock then outstanding (voting together as a single class and not as a separate series, and on an as-converted basis). The dividend rate is \$0.0233 per annum for each share of the Series Seed preferred stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like). The Company has not declared or paid any dividends.

### **Liquidation**

Unless the holders of at least a majority of the then outstanding shares of the preferred stock, voting together as a single class and on an as-converted basis, elect otherwise in writing, each of the following transactions shall be deemed a "Liquidation Event":

- a. A merger or consolidation in which the Company is the constituent party or its subsidiary is the constituent party and the Company issues shares of its capital stock pursuant to such a merger or consolidation, with stipulations;
- b. The sale, lease, transfer, exclusive license or other disposition, in one transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company;

In the event of any Liquidation Event, the holders of each share of preferred stock then outstanding shall be entitled to be paid, out of the available funds and assets, and prior and in preference to any payment or distribution to the holders of common stock, an amount per share equal to the liquidation amount for each such series of preferred stock plus all declared but unpaid dividends thereon.

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# Jarvis Labs, Inc.

## Notes to the Financial Statements

### Conversion

The holders of the preferred stock have the right to convert at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of common stock as is determined by dividing the original issue price for the preferred stock by the conversion price at the time of the conversion.

The preferred stock will be automatically converted into common stock upon a qualified initial public offering, which will result in at least \$30 million of proceeds.

### 6. Stock-Based Compensation

The Company has a 2012 Stock and Option Grant Plan (the “Plan”) under which the Company may grant stock options for up to 1,466,488 shares of common stock. Stock options expire either four or ten years from the date of the grant. For initial grants, vesting occurs over either (i) two years, with vesting occurring immediately each month, or (ii) four years, with the first 25% of the awards vesting twelve months after the vesting commencement date and the remaining 75% of the awards vesting monthly over the next thirty-six months. The Company’s policy for attributing the value of stock-based compensation is on a straight-line basis over the requisite service period for the entire award.

During 2013 and 2012 no options were exercised. At December 31, 2013, there were 1,116,360 shares available for grant under the Plan.

The fair value for options and share awards granted under the Plan are estimated at the date of grant using the Black-Scholes option pricing model and the following range of assumptions were used for grants during the years ended December 31, 2013 and 2012 and the three months ended March 31, 2014:

	Year Ended December 31,		Three Months Ended
	2012	2013	March 31, 2014
Risk-free interest rates	0.74%	0.62% – 1.91%	0.80%
Expected dividend yield	0.0%	0.0%	0.0%
Expected term	6.25 years	3.03 – 5.75 years	3.25 years
Volatility	188.8%	144.0%	143%

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# Jarvis Labs, Inc.

## Notes to the Financial Statements

The impact on recording stock-based compensation expense for the years ended December 31, 2012 and 2013 and the three months ended March 31, 2013 and 2014 was as follows:

	Year Ended December 31,		Three Months Ended March 31,	
	2012	2013	2013 (Unaudited)	2014
Sales and marketing	\$ —	\$ —	\$ —	\$ —
Product and technology	1,023	6,249	772	3,988
General and administrative	—	—	—	—
Total stock-based compensation expense, net of tax	<u>\$ 1,023</u>	<u>\$ 6,249</u>	<u>\$ 772</u>	<u>\$ 3,988</u>

The following table summarizes the stock option activity:

	Total Options Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term
Outstanding at December 31, 2011			
Options granted	100,000	\$ 0.0001	
Options exercised	—	—	
Options forfeited	—	—	
Outstanding at December 31, 2012	<u>100,000</u>	<u>0.0001</u>	<u>8.68</u>
Options granted	250,128	0.10	
Options exercised	—	—	
Options forfeited	—	—	
Outstanding at December 31, 2013	<u>350,128</u>	<u>0.07</u>	<u>5.41</u>
Options granted	110,220	0.10	
Options exercised	—	—	
Options forfeited	—	—	
Outstanding at March 31, 2014	<u>460,348</u>	<u>0.08</u>	<u>4.83</u>
Exercisable at December 31, 2013	<u>33,333</u>	<u>\$ 0.0001</u>	<u>5.41</u>
Vested and expected to vest at December 31, 2013	<u>350,128</u>	<u>\$ 0.07</u>	<u>5.41</u>

The weighted-average grant-date fair value of options granted during the years ended December 31, 2013 and 2012 and the three months ended March 31, 2014 was \$25,013, \$10,231 and \$26,453, respectively.

The stock compensation expense for employee awards was \$5,923, \$1,023, \$3,541 and \$772 for the years ended December 31, 2013 and 2012 and three months ended March 31, 2014 and 2013, respectively. The stock compensation expense for non-employee awards was \$326, \$0, \$447 and \$0 for the years ended December 31, 2013 and 2012 and three months ended March 31, 2014 and 2013, respectively. As of

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# Jarvis Labs, Inc.

## Notes to the Financial Statements

December 31, 2013, there was \$28,143 of unrecognized stock compensation expense related to non-vested share-based compensation arrangements granted under the Plan. That cost is expected to be recognized over a weighted-average period of 8.68 years. The total fair value of shares vested during the years ended December 31, 2013 and 2012 was \$3,333 and \$0, respectively.

### 7. Commitments and Contingencies

In 2013, the Company entered into a new lease for office space in New York, NY expiring in 2016. Rent expense for the operating lease is recognized over the term of the lease on a straight line basis. Total rent for this lease for the years ended December 31, 2013 and 2012 and three months ended March 31, 2014 and 2013 is \$80,411, \$0, \$19,076 and \$6,353, respectively.

	<b>Operating</b>
2014	\$ 134,400
2015	138,559
2016	52,515
2017	—
2018	—
Total minimum payments required:	<u>\$ 325,474</u>

From time to time, the Company is involved in disputes or legal proceedings arising in the ordinary course of business. The Company believes that there is no dispute or litigation pending that could have, individually or in the aggregate, a material adverse effect on its financial position, results of operations or cash flows.

### 8. Income Taxes

The significant components of the Company's deferred tax assets are as follows:

	<b>2012</b>	<b>2013</b>
Net operating loss	\$ 59,514	\$ 479,178
Fixed Assets	139	2,151
Stock based compensation	439	4,098
Other	—	—
Deferred tax assets before valuation allowance	60,092	485,427
Less: Valuation allowance	<u>(60,092)</u>	<u>(485,427)</u>
<b>Total deferred tax assets</b>	<b>\$ —</b>	<b>\$ —</b>

As of December 31, 2012 and 2013, the Company had a net operating loss carry-forward of approximately \$140 thousand and \$1.1 million available to reduce future taxable income.

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# Jarvis Labs, Inc.

## Notes to the Financial Statements

The Company follows ASC 740, Accounting for Uncertainty in Income Taxes. As of December 31, 2012 and 2013, there were no uncertain tax positions. As of December 31, 2012 and 2013, the Company was subject to federal and state income tax in the United States. Since the Company is in a loss carry-forward position, the Company is generally subject to U.S. federal and state income tax examinations by tax authorities for all years for which a loss carry-forward is available. It is the Company's policy to record interest and penalties as a component of income tax expense. No amounts of interest or penalties were recognized in the financial statements upon adoption of this guidance as of and for the years ended December 31, 2013 and 2012.

### **9. Subsequent Events**

The Company has performed an evaluation of subsequent events through November 3, 2014, the date of issuance of these financial statements.

In April 2014, the Company was acquired by Etsy, Inc.

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# Independent Auditor's Report

To the Board of Directors and Stockholders of Incubart SAS:

We have audited the accompanying statements of Incubart SAS which comprise the balance sheets as of December 31, 2013 and 2012, and the related statements of income and cash flows for the years then ended, and the related notes to the financial statements.

## Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in France; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

## Auditor's Responsibility

Our responsibility is to express an opinion on the financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Company's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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### **Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Incubart SAS at December 31, 2013 and 2012 and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in France.

### **Emphasis of matter**

Accounting principles generally accepted in France vary in certain significant respects from accounting principles generally accepted in the United States of America. Information relating to the nature and effect of such differences is presented in Note 12 to the financial statements.

November 3, 2014

/s/ PricewaterhouseCoopers Audit  
Neuilly-sur-Seine, France

Pierre Marty

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# Incubart SAS

## Assets (all amounts in Euros)

As of December 31,

Assets	2013			2012		
	Gross	Depr.Prov.	Net	Gross	Depr.Prov.	Net
<b>LONG TERM ASSETS</b>						
<i>Intangible assets</i>						
Goodwill						
Other intangible assets	63,598	30,033	33,565	41,315	19,229	22,086
<i>Tangible assets</i>	31,016	11,180	19,836	18,468	4,544	13,924
<i>Deposits</i>	74,830		74,830	81,265		81,265
<b>TOTAL(I)</b>	<b>169,444</b>	<b>41,213</b>	<b>128,231</b>	<b>141,048</b>	<b>23,773</b>	<b>117,275</b>
<b>CURRENT ASSETS</b>						
<i>Stocks and work in progress</i>						
<i>Debtors</i>						
Trade debtors	194,943		194,943	8,269		8,269
Other debtors	173,792		173,792	272,792		272,792
<i>Short term investments</i>	670,000		670,000	1,050,000		1,050,000
<i>Cash at bank and in hand</i>	1,451,519		1,451,519	563,421		563,421
<i>Prepaid expenses</i>	353		353	19,279		19,279
<b>TOTAL(II)</b>	<b>2,490,607</b>	<b>0</b>	<b>2,490,607</b>	<b>1,913,761</b>	<b>0</b>	<b>1,913,761</b>
<i>Deferred charges(III)</i>						
<i>Redemption bond premium(IV)</i>						
<i>Unrealized exchange losses(V)</i>						
<b>TOTAL ASSETS(I to V)</b>	<b>2,660,051</b>	<b>41,213</b>	<b>2,618,838</b>	<b>2,054,809</b>	<b>23,773</b>	<b>2,031,036</b>

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# Incubart SAS

## Equity and Liabilities (all amounts in Euros)

As of December 31,

	2013 Net	2012 Net
<b>Equity and Liabilities</b>		
CAPITAL AND RESERVES		
Share capital	65,365	65,365
Share premium account	2,008,797	2,008,797
Revaluation reserve		
Reserves:		
- Legal reserve		
- Statutory reserves		
- Regulated reserves		
- Other reserves	115	115
Retained earnings	(763,491)	(343,309)
Loss for the period	(466,520)	(420,182)
Tax regulated provisions		
<b>TOTAL(I)</b>	<b>844,266</b>	<b>1,310,786</b>
PROVISIONS FOR CONTINGENCIES AND LIABILITIES		
<b>TOTAL(II)</b>		
CREDITORS		
Bank loans and overdrafts	360,000	
Other loans and financial liabilities	52,079	
Trade creditors	67,382	127,737
Tax and social creditors	231,880	104,741
Other creditors	1,063,231	487,772
<b>TOTAL(III)</b>	<b>1,774,572</b>	<b>720,250</b>
<b>TOTAL EQUITY and LIABILITIES (I to III)</b>	<b>2,618,838</b>	<b>2,031,036</b>

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# Incubart SAS

## Income Statement (all amounts in Euros)

For the years ended December 31,

		2013		2012	
		France	Export	Total	Total
<b>Income statement</b>					
Operating income					
Sales of goods					
Sales of processed goods					
Sales of services		1,349,602	72,207	1,421,809	719,757
Turnover		<u>1,349,602</u>	<u>72,207</u>	<u>1,421,809</u>	<u>719,757</u>
Change in stocks of finished goods					
Own work capitalised					
Operating grants					
Reversal of provisions and cost recharge				5,688	4,266
Other operating income				36,671	44,161
<b>TOTAL(I)</b>				<u>1,464,168</u>	<u>768,184</u>
Operating expenses					
Purchase of goods					
Change in stocks of goods					
Purchase of raw materials and consumables					
Change in stocks of raw materials and consumables					
Other external expenses				789,165	565,557
Taxes				22,514	10,372
Wages and salaries				988,657	611,204
Social contributions				221,727	97,649
Amortization and depreciation on fixed assets				17,440	9,723
Other operating expenses				20,836	109,282
<b>TOTAL(II)</b>				<u>2,060,339</u>	<u>1,403,787</u>
OPERATING LOSS(I – II)				<u>(596,171)</u>	<u>(635,603)</u>
<b>Financial income</b>					
<b>TOTAL(III)</b>				<u>29,383</u>	<u>30,163</u>
<b>Financial expenses</b>					
<b>TOTAL(IV)</b>				<u>29,383</u>	<u>30,163</u>
<b>FINANCIAL INCOME(III – IV)</b>				<u>102</u>	<u>21</u>
LOSS BEFORE TAX AND EXTRAORDINARY ITEMS(I – II + III – IV)				<u>102</u>	<u>21</u>
				<u>29,281</u>	<u>30,142</u>
				<u>(566,890)</u>	<u>(605,461)</u>

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# Incubart SAS

## Income Statement (all amounts in Euros)

For the years ended December 31,

<b>Income statement</b>	<b>2013</b>	<b>2012</b>
Extraordinary income		
On operating activities		98
On investing activities		98
Reversal of provisions and cost recharge		
<b>TOTAL(V)</b>	<b>98</b>	
Extraordinary expenses		
On operating activities	3,094	
On investing activities	6,435	15
Depreciation and provision expenses		
<b>TOTAL(VI)</b>	<b>9,529</b>	<b>15</b>
EXTRAORDINARY (EXPENSE) INCOME(V – VI)	(9,529)	83
Corporation tax(VII)	(109,899)	(185,196)
<b>TOTAL INCOME(I + III + V)</b>	<b>1,493,551</b>	<b>798,445</b>
<b>TOTAL EXPENSES(II + IV + VI + VII)</b>	<b>1,960,071</b>	<b>1,218,627</b>
<b>NET LOSS</b>	<b>(466,520)</b>	<b>(420,182)</b>

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# Incubart SAS

## Statements of Cash Flows (all amounts in Euros)

For the years ended December 31,

	<b>2013</b>	<b>2012</b>
Cash flows from operating activities		
Net loss	(466,520)	(420,182)
<i>Adjustments for:</i>		
Depreciation	17,440	9,723
Investment income	(29,383)	(30,143)
<i>Working capital changes:</i>		
Increase in trade debtors	(186,674)	(7,166)
Decrease/increase in other debtors	99,000	(228,305)
Decrease/increase in prepaid expenses	18,926	(19,279)
Decrease/increase in trade creditors	(60,355)	84,513
Increase in tax and social creditors	127,139	58,321
Increase in other creditors	575,459	361,092
<i>Net cash from operating activities</i>	<u>95,032</u>	<u>(191,426)</u>
Cash flows from investing activities		
Purchase of property, plant and equipment	(28,396)	(97,197)
Sale of short-term investments	380,000	450,000
Investment income	29,383	30,143
<i>Net cash used in investing activities</i>	<u>380,987</u>	<u>382,946</u>
Cash flows from financing activities		
Proceeds from long-term borrowings	412,079	—
<i>Net cash used in financing activities</i>	<u>412,079</u>	<u>—</u>
Net increase in cash and cash equivalents	888,098	191,520
Cash and cash equivalents at beginning of period	563,421	371,901
Cash and cash equivalents at end of period	1,451,519	563,421

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# **Incubart SAS**

## **Notes to the Financial Statements**

### **Note 1—Basis of Presentation and Summary of Significant Accounting Policies**

#### **1. Description of business**

Incubart SAS (the “Company”) was incorporated in Paris in March 2009. Incubart owns and operates among other websites, alittlemarket.com and alittlemercerie.com, websites that provide a marketplace for the purchase and sale of handmade goods and commercial supplies. The Company generates revenue primarily from commissions on sales and seller advertising fees.

The Financial Statements are prepared in accordance with:

- PCG 1999, approved by ministerial order on June 22, 1999
- Law number 83 353 of April 30, 1983
- Decree 83 1020 of November 29, 1983
- Accounting standards arising from the Authority de Normes Comptables (ANC)

The financial statements have been prepared on a going-concern basis. The notes and tables below form an integral part of the annual accounts.

#### **2. Significant events**

In 2012, the Company launched two new platforms: A Little Maman, dedicated to nursery items and A Little Market in Italy.

In 2013, the Company launched one new platform, A Little Epicerie, dedicated to Food.

With regards to product features, the Company has launched two major features: the multishop basket and the installment payment service.

#### **3. Revenue recognition**

Revenue is mainly generated from commissions on sales made by listed sellers and from the sale of advertising on the Company’s website.

The main line of revenue is transaction fees, which include commissions on orders placed by purchasers on the Company’s websites and payment processing fees charged when the buyer pays with a credit card through the Company’s secured system.

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# **Incubart SAS**

## **Notes to the Financial Statements**

In accordance with its terms of business, the Company has no responsibility in the fulfillment of orders placed by buyers and earns a fixed commission per transaction. Based on the aforementioned factors, revenue is recorded net of amounts collected from buyers and remitted to sellers. Seller refunds are recorded as a reduction to gross revenue.

*Transaction fees* —The Company earns a commission on sales made between the seller and their buyer. Revenue from commissions on sales is recognized when the transaction is successfully completed, which occurs when a buyer purchases the item on the website with their credit card or their e-wallet.

*Advertising fees* —The Company offers search advertising where sellers can advertise their items based on featured search results. The advertising fees are recognized as revenue when purchased by the sellers.

### **4. Intangible assets**

Intangible assets, consisting principally of website and purchased software, are carried at cost and amortized over their estimated useful lives, generally on a straight-line basis over three years. The Company reviews its identifiable amortizable intangible assets to be held and used for impairment whenever events or changes in circumstances indicate that the carrying value of the assets may not be recoverable. Measurement of any impairment loss is based on the excess of the carrying value of the asset over its fair value.

### **5. Research and development**

From the commencement of financial year 2012, development of software for internal use has been expensed as incurred. Prior to 2012, certain development costs, primarily relating to third party developers, had been capitalized.

### **6. Property and equipment**

Property and equipment, consisting principally of computer equipment and different fittings, are recorded at cost. Depreciation and amortization are recognized using the straight-line method over the estimated useful lives of the assets. Repairs and maintenance are charged to operations as incurred.

The depreciation rate of the main assets are the following:

- Website Development Costs: 5 years
- Computer Hardware: 3 to 5 years

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# **Incubart SAS**

## **Notes to the Financial Statements**

### **7. Accounts receivable**

The Company's trade accounts receivable are recorded at amounts billed to customers and presented on the balance sheet net of the allowance for doubtful accounts. The allowance is determined by a number of factors, including age of the receivable, current economic conditions, historical losses and management's assessment of the financial condition of customers. Receivables are written off once they are deemed uncollectible, which may arise when customers file for bankruptcy or are otherwise deemed unable to repay the amounts owed to the Company.

### **8. Provisions**

Provisions for liabilities are made in accordance with rule CRC 2000-06.

Provisions for risks and expenses are recorded to take account of probable future sacrifices or outflows of economic benefits arising from present obligations and which result from past transactions.

These provisions are estimated based on consideration of the best available information known to management at the year-end closing date.

### **9. Purchased gift vouchers**

The Company recognizes a liability for gift cards purchased on its websites. Under French generally accepted accounting principles ("French GAAP"), the Company records cash received against a liability, which is released to the income statement when the voucher expires or is redeemed. When a customer uses the purchased gift vouchers, the related commission is recognized as revenue. If a purchased gift card expires unused, a gain is recognized in the income statement.

As at December 31, 2013, the liability was estimated at EUR 13,947, compared with EUR 11,306 as at December 31, 2012.

### **10. Free gift vouchers**

The Company may decide to grant free gift vouchers to buyers on a discretionary basis as sales incentives. These vouchers are not offered in connection with a current transaction, but rather as an incentive for future purchases. The Company records these as a discount on a future sale at the time of redemption.

### **11. Cash and cash equivalents**

The Company considers all investments with a maturity of three months or less at the time of purchase to be cash equivalents.

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# **Incubart SAS**

## **Notes to the Financial Statements**

Short term investments amount to EUR 670,000 as at December 31, 2013 and EUR 1,050,000 as at December 31, 2012.

### **12. Restricted cash**

When a purchaser pays through the Incubart secured system, the funds are put in an escrow account until remitted to the merchant, after deduction of commission and processing fees. The restricted cash balance of the dedicated bank account is presented within Cash at bank and in hand and amounts to EUR 1,042,491 as at December 31, 2013 (2012 : EUR 476,448).

The corresponding liability towards the listed sellers is recorded under “Other creditors” in the balance sheet.

### **13. Accounting policies and changes in accounting estimates**

There were no changes in the methods of evaluation during the course of the financial year.

There were no changes in the presentation of the financial statements during the course of the financial year.

### **14. Pensions**

The Company’s defined benefit obligation is only the French statutory lump sum payment. The projected benefit obligation is not material for the financial years 2013 and 2012 (EUR 14,043 and EUR 6,447, respectively).

### **15. Taxes**

Deferred taxes are not recognized on the face of the balance sheet in the statutory financial statements.

### **16. Competitiveness and employment tax credit (CICE)**

This tax credit was enacted from January 1, 2013 and amounts to EUR 15,527 at December 31, 2013. This will be collected by the Company in cash independently of its future taxable result.

### **17. Foreign currency translations**

The Company’s revenue and expenses are essentially transacted in Euros, and its assets and liabilities are all denominated in Euros, which is the functional currency of the Company.

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# **Incubart SAS**

## **Notes to the Financial Statements**

### **18. Stock-based compensation**

No stock options, warrants or other equity instruments have been issued to any employees, directors, related parties or other third parties.

### **19. Credit agreements**

On October 8, 2012, the Company entered into an interest-free credit agreement with OSEO of EUR 450,000, of which EUR 360,000 had been drawn down as at December 31, 2013 (2012: Nil).

The loan is repayable quarterly, at an average of EUR 28,000 per quarter, beginning December 31, 2016, with a minimum of EUR 160,000 to be repaid. There is a clause in the agreement which allows for a penalty-free early repayment, at any time, of the loan in full.

On July 30, 2012, the Company entered into an interest-free agreement with COFACE. The agreement is intended to finance marketing development initiatives undertaken in foreign markets. As at December 31, 2013, the amount drawn down totaled EUR 52,079. The Company is obliged to pay back either 14% of the turnover generated from foreign sales, or a maximum of the amount of the loan drawn down, whichever is lower, dating 12 months after the export-related project is considered concluded by management and COFACE is informed.

### **20. Related party transactions**

There are no related party transactions for 2012 and 2013.

### **21. Segment reporting information**

The Company operates solely in France and in Italy for 2012 and 2013.

### **22. Subsequent events**

The Company was acquired in full by Etsy, Inc., a U.S.-based company, on June 18, 2014.

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# Incubart SAS

## Notes to the Financial Statements

### Note 2—Fixed Assets

**Financial Year 2012**  
(all amounts in Euros)

	<b>Gross amount</b>			<b>Gross amount</b>
	<u>opening balance</u>	<u>Acquisitions</u>	<u>Disposals</u>	<u>closing balance</u>
<i>Intangible assets</i>				
Other intangible assets	32,315	9,000		41,315
TOTAL	<u>32,315</u>	<u>9,000</u>		<u>41,315</u>
<i>Tangible assets</i>				
Plant, machinery and equipment				
Other fixtures and fittings		3,880		3,880
Vehicles				
Office equipment, computer hardware, furniture	5,101	9,487		14,588
TOTAL	<u>5,101</u>	<u>13,367</u>		<u>18,468</u>
<i>Financial assets</i>				
Deposits	6,435	74,830		81,265
TOTAL	<u>6,435</u>	<u>74,830</u>		<u>81,265</u>
GRAND TOTAL	<u>43,851</u>	<u>97,197</u>		<u>141,048</u>

**Financial Year 2013**  
(all amounts in Euros)

	<b>Gross amount</b>			<b>Gross amount</b>
	<u>opening balance</u>	<u>Acquisitions</u>	<u>Disposals</u>	<u>closing balance</u>
<i>Intangible assets</i>				
Other intangible assets	41,315	22,283		63,598
TOTAL	<u>41,315</u>	<u>22,283</u>		<u>63,598</u>
<i>Tangible assets</i>				
Plant, machinery and equipment				
Other fixtures and fittings	3,880			3,880
Vehicles				
Office equipment, computer hardware, furniture	14,588	12,548		27,136
TOTAL	<u>18,468</u>	<u>12,548</u>		<u>31,016</u>
<i>Financial assets</i>				
Deposits	81,265			74,830
TOTAL	<u>81,265</u>			<u>74,830</u>
GRAND TOTAL	<u>141,048</u>	<u>34,831</u>		<u>6,435</u>

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# Incubart SAS

## Notes to the Financial Statements

### Note 3—Depreciation

**Financial Year 2012**  
(all amounts in Euros)

	<u>Opening balance</u>	<u>Additional allowances</u>	<u>Reductions dispo./Rever.</u>	<u>Closing balance</u>
<i>Intangible assets</i>				
Other intangible assets	12,179	7,050		19,229
<b>TOTAL</b>	<b>12,179</b>	<b>7,050</b>		<b>19,229</b>
<i>Tangible assets</i>				
Other fixtures and fittings		208		208
Office equipment, computer hardware, furniture	1,871	2,465		4,336
<b>TOTAL</b>	<b>1,871</b>	<b>2,673</b>		<b>4,544</b>
<b>GRAND TOTAL</b>	<b>14,050</b>	<b>9,723</b>		<b>23,773</b>

**Financial Year 2013**  
(all amounts in Euros)

	<u>Opening balance</u>	<u>Additional allowances</u>	<u>Reductions dispo./Rever.</u>	<u>Closing balance</u>
<i>Intangible assets</i>				
Other intangible assets	19,229	10,804		30,033
<b>TOTAL</b>	<b>19,229</b>	<b>10,804</b>		<b>30,033</b>
<i>Tangible assets</i>				
Other fixtures and fittings	208	776		984
Office equipment, computer hardware, furniture	4,336	5,860		10,196
<b>TOTAL</b>	<b>4,544</b>	<b>6,636</b>		<b>11,180</b>
<b>GRAND TOTAL</b>	<b>23,773</b>	<b>17,440</b>		<b>41,213</b>

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# Incubart SAS

## Notes to the Financial Statements

### Note 4—Receivables

**Financial Year 2012  
(all amounts in Euros)**

<b>Receivables</b>	<b>Gross amount</b>	<b>Liquidity of the asset</b>	
		<b>Within 1 year</b>	<b>After 1 year</b>
<i>Non Current Assets</i>			
Amount receivable from subsidiaries			
Loans			
Deposits	81,265		81,265
<i>Current Assets</i>			
Doubtful and in dispute trade debtors			
Other trade debtors	8,269	8,269	
Receivables representing borrowed securities			
Employees			
Social contributions	9,478	9,478	
Corporation tax	192,890	192,890	
Value-added tax	33,999	33,999	
Other taxes			
Sundries			
Intercompany and current accounts			
Other debtors	36,425	36,425	
Prepaid expenses	19,279	19,279	
<b>TOTAL</b>	<b>381,605</b>	<b>300,340</b>	<b>81,265</b>

**Financial Year 2013  
(all amounts in Euros)**

<b>Receivables</b>	<b>Gross amount</b>	<b>Liquidity of the asset</b>	
		<b>Within 1 year</b>	<b>After 1 year</b>
<i>Non Current Assets</i>			
Amount receivable from subsidiaries			
Loans			
Deposits	74,830		74,830
<i>Current Assets</i>			
Doubtful and in dispute trade debtors			
Other trade debtors	229,892	229,892	
Receivables representing borrowed securities			
Employees			
Social contributions			
Corporation tax	94,503	94,503	
Value-added tax	22,331	22,331	
Other taxes			
Sundries			
Intercompany and current accounts			
Other debtors	22,009	22,009	
Prepaid expenses	353	353	
<b>TOTAL</b>	<b>443,918</b>	<b>369,088</b>	<b>74,830</b>

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# Incubart SAS

## Notes to the Financial Statements

### Note 5—Trade Creditors and Payables

#### Financial Year 2012 (all amounts in Euros)

<b>Payables</b>	<b>Gross amount</b>	<b>Within 1 year</b>	<b>1 to 5 years</b>	<b>After 5 years</b>
Convertible debenture loans / Other debenture loans				
Bank loans and overdraft				
- Payable over 1 year				
- Payable over more than 1 year				
Other loans and financial liabilities				
Trade creditors	127,737	127,737		
Personnel	27,791	27,791		
Social contributions	45,847	45,847		
Corporation tax				
Value-added tax	29,963	29,963		
Guaranteed bonds				
Other taxes	1,140	1,140		
Long term creditors				
Intercompany and current accounts				
Other creditors(1)	487,772	487,772		
Liabilities representing borrowed securities				
Deferred income				
<b>TOTAL</b>	<b>720,250</b>	<b>720,250</b>		

(1) Other creditors include the liabilities for the sellers for an amount of EUR 476,448 and the balance of the purchased gift vouchers for an amount of EUR 11,306.

#### Financial Year 2013 (all amounts in Euros)

<b>Payables</b>	<b>Gross amount</b>	<b>Within 1 year</b>	<b>1 to 5 years</b>	<b>After 5 years</b>
Convertible debenture loans / Other debenture loans				
Bank loans and overdraft				
- Payable over 1 year				
- Payable over more than 1 year	360,000		249,000	111,000
Other loans and financial liabilities	52,079		52,079	
Trade creditors	67,382	67,382		
Personnel	53,814	53,814		
Social contributions	126,873	126,873		
Corporation tax				
Value-added tax	47,020	47,020		
Guaranteed bonds				
Other taxes	4,173	4,173		
Long term creditors				
Intercompany and current accounts				
Other creditors(1)	1,063,231	1,063,231		
Liabilities representing borrowed securities				
Deferred income				
<b>TOTAL</b>	<b>1,774,572</b>	<b>1,362,493</b>	<b>301,079</b>	<b>111,000</b>

(1) Other creditors include the liabilities for the sellers for an amount of EUR 1,042,491 and the balance of the purchased gift vouchers for an amount of EUR 13,947.

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# Incubart SAS

## Notes to the Financial Statements

### Note 6—Accrued Payables

(all amounts in Euros)

	December 31,	December 31,
	<u>2013</u>	<u>2012</u>
<b>Accrued payables included in Balance Sheet</b>		
Convertible debenture loans		
Other debenture loans		
Bank loans and overdrafts		
Other loans and financial liabilities		
Trade creditors	28,337	30,378
Social contributions	81,050	45,304
Fixed assets creditors		
Other creditors		
<b>TOTAL</b>	<b>109,387</b>	<b>75,682</b>

### Note 7—Prepayments and Deferred Income

(all amounts in Euros)

	December 31,	December 31,
	<u>2013</u>	<u>2012</u>
<b>Deferred Income</b>		
Operating incomes		
Financial incomes		
Extraordinary incomes		
<b>TOTAL</b>		
	December 31,	December 31,
<b>Prepaid Expenses</b>		
Operating expenses	353	19,279
Financial expenses		
Extraordinary expenses		
<b>TOTAL</b>	<b>353</b>	<b>19,279</b>

### Note 8—Share Capital

#### Financial Year 2012

Category of shares	Par value		Number of shares		
	As at the beginning of the period	As at the end of the period	As at the beginning of the period	Issued during the period	Redeemed during the period
Ordinary Shares	1.00	1.00	65,365		

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# Incubart SAS

## Notes to the Financial Statements

### Financial Year 2013

Category of shares	Par value		Number of shares		
	As at the beginning of the period	As at the end of the period	As at the beginning of the period	Issued during the period	Redeemed during the period
Ordinary Shares	1.00	1.00	65,365		65,365

### Note 9—Statement of Changes in Shareholders' Equity (all amounts in Euros)

### Financial Year 2012

INCUBART						
Statement of changes in equity for the year ended December 31, 2012						
	Share Capital	Share Premium	Retained Earnings	Other reserves	Revaluation Surplus	Total Equity
Balance at December 31, 2011	65,365	2,008,797	(343,309)	115	0	1,730,968
Changes in equity for the year 2012						
Issue of share capital						
Loss for the year			(420,182)			(420,182)
Revaluation gain						
Dividends						
Balance at December 31, 2012	65,365	2,008,797	(763,491)	115	0	1,310,786

### Financial Year 2013

INCUBART						
Statement of changes in equity for the year ended December 31, 2013						
	Share Capital	Share Premium	Retained Earnings	Other reserves	Revaluation Surplus	Total Equity
Balance at December 31, 2012	65,365	2,008,797	(763,491)	115	0	1,310,786
Changes in equity for the year 2013						
Issue of share capital						
Loss for the year			(466,520)			(466,520)
Revaluation gain						
Dividends						
Balance at December 31, 2013	65,365	2,008,797	(1,230,011)	115	0	844,266

### Note 10—Leases

On September 12, 2012, the Company entered into a 9 year lease for office space at 18/20 rue de Faubourg du Temple, with 2 break options at 30 August 2015 and 30 August 2018.

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# Incubart SAS

## Notes to the Financial Statements

Total rent expense for the years ended December 31, 2012 and December 31, 2013 was EUR 32,516 and EUR 60,796, respectively.

### Fiscal Year 2012 (all amounts in Euros)

Future Minimum Lease Payments			
2013	49,830	Within 1 year from financial statement date:	49,830
2014	49,830	Greater than 1 year from financial statement date:	382,030
2015	49,830		431,860
2016	49,830		

### Fiscal Year 2013 (all amounts in Euros)

Future Minimum Lease Payments			
2014	49,830	Within 1 year from financial statement date:	49,830
2015	49,830	Greater than 1 year from financial statement date:	332,200
2016	49,830		382,030
2017	49,830		

### Note 11—Taxes

Due to losses incurred since the inception of the Company, no corporate income tax has been due by the Company. However, tax credits have been recorded by the Company as follows:

- R&D tax credit 2013: EUR 109,899 and 2012: EUR 185,196
- CICE 2013 (Competitiveness and employment tax credit): EUR 15,527

The amounts of accumulated losses carried forward are EUR 973,780 as at December 31, 2012 and EUR 1,547,358 as at December 31, 2013, respectively.

### Note 12—Reconciliation to United States Generally Accepted Accounting Principles

The Company's financial statements have been prepared in accordance with French accounting standards, which differ in certain material respects from accounting principles generally accepted in the United States ("US GAAP"). Such differences involve methods for measuring the amounts in the financial statements. The

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# Incubart SAS

## Notes to the Financial Statements

principal differences between French accounting standards and US GAAP applicable to the Company are quantified and described below:

### Reconciliation of net income (French GAAP—US GAAP) (all amounts in Euros)

	<u>Note</u>	Year Ended December 31,	
		<u>2012</u>	<u>2013</u>
		(in thousands)	
Loss reported under French GAAP		(420.2)	(466.5)
Software and website development costs	A	97.2	104.0
Revenue recognition (advertising fees)	B	(14.9)	(22.0)
Debt issuance costs	C		11.4
Interest free loan	D		6.4
Deferred payment terms	E		(8.0)
Deferred tax effect of US GAAP adjustments	F		
Loss reported under US GAAP		(337.9)	(374.7)

### Reconciliation of equity (French GAAP—US GAAP) (all amounts in Euros)

	<u>Note</u>	Year Ended December 31,	
		<u>2012</u>	<u>2013</u>
		(in thousands)	
Equity reported under French GAAP		1,310.8	844.3
Software and website development costs	A	298.7	402.8
Revenue recognition (advertising fees)	B	(41.7)	(63.7)
Debt issuance costs	C		11.4
Interest-free loan	D		6.4
Deferred payment terms	E		(8.0)
Deferred tax effect of US GAAP adjustments	F		
Equity reported under US GAAP		1,567.8	1,193.2

#### A. Software and website development costs

Software and website development is performed by external service providers as well as the Company's employees. Under French GAAP, the company capitalized only website development fees charged by third-party service providers up until December 31, 2011. Starting in 2012, all software development costs were expensed. US GAAP requires capitalization of certain internal and external costs incurred in the development of websites and software for internal use.

Costs of the preliminary design phase and costs incurred in the operation and maintenance of the software must be expensed as incurred. Costs incurred during the development phase must be capitalized. These

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# **Incubart SAS**

## **Notes to the Financial Statements**

same rules apply to upgrades and enhancements made to the platform, to the extent it is probable that they will result in additional functionalities to the platform.

### **B. Revenue recognition**

The Company recognizes fees charged to listed sellers for more prominently displaying their products. Under French GAAP, the fees are recognized upfront in the income statement.

Under US GAAP, this search advertisement revenue is recognized as “impressions” (i.e., the number of times that an advertisement appears in pages viewed by users of the Company’s website) are delivered.

### **C. Debt issuance costs**

A transaction fee was charged in connection with a financing received in fiscal year 2013. Under French GAAP, the fee is recorded in operating expenses.

Under US GAAP, the fee should be capitalized as debt issuance costs and amortized to the income statement using an effective interest rate method.

### **D. Government grants in the form of an interest-free loan**

In fiscal year 2013, the Company drew down an interest-free loan from a government body. Under French GAAP, the liability is equal to the amount of proceeds received and is not discounted to its net present value.

US GAAP requires the Company to impute interest when the stated interest rate of a note payable or receivable is below market rate in accordance with the substance of the transaction. The substance of this transaction is a government subsidy for an amount equivalent to the difference between proceeds received and fair value of the note (NPV of cash flows using a market interest rate).

### **E. Deferred payment terms**

During fiscal year 2013, the Company began to allow buyers to elect to pay in 3 monthly installments, in which case the Company bears credit risk and charges the buyer an additional fee. Under French GAAP, the fee was recognized upfront in the income statement.

Under US GAAP, the fee is considered, in substance, as interest income and is recognized using an effective interest method over the term of the receivable.

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# Incubart SAS

## Notes to the Financial Statements

### F. Income taxes

Under French GAAP, deferred taxes are not recognized in the statutory financial statements.

Under US GAAP, deferred tax is computed on all temporary differences between the tax bases and book values of assets and liabilities which will result in taxable or tax deductible amounts arising in future years. Deferred taxes are measured at enacted rates. The Company records deferred tax assets, primarily in connection with their net operating losses, up to an amount that is offset by the deferred tax liabilities, primarily associated with the differences between their book and tax basis for capitalized software and website development costs. As a result of the Company's history of losses, a full valuation allowance is applied against any remaining net deferred tax assets, as the realization of the future benefit is not more likely than not.

Net deferred tax assets prior to the valuation allowance under U.S. GAAP were EUR 85,655 for 2012 and EUR 116,290 for 2013.

#### *Reconciliation of operating expenses*

The following table presents the disclosure of costs and expenses based on the caption requirements of Rule 5-03 of Regulation S-X of the United States Securities and Exchange Commission. Such costs and expenses have been allocated from the French GAAP presentation, and adjusted for US GAAP reconciliation items accordingly.

	2013 (in Euros)	2012 (in Euros)
Cost of revenue	477,609	269,818
Marketing	530,838	456,961
Product development	543,102	212,645
General and administrative	350,986	318,726
Operating expenses	<u>1,902,535</u>	<u>1,258,150</u>

Reconciliation of operating expenses from French GAAP to US GAAP

	2013 (in Euros)	2012 (in Euros)
Operating expenses - French GAAP	2,060,339	1,403,787
US GAAP adjustments:		
Other operating expense (1)	(42,359)	(48,427)
Software and website development costs	(104,022)	(97,210)
Debt issuance costs	(11,423)	—
Operating expenses—US GAAP	<u>1,902,535</u>	<u>1,258,150</u>

(1) These represent other operating income and reversal of provisions and cost recharges that should be reflected within operating expense under U.S. GAAP, but are included in operating income under French GAAP.

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# Unaudited Combined Pro Forma Financial Information

On April 29, 2014, Etsy, Inc. (the “Company”) completed the acquisition of Jarvis Labs, Inc., owners of the “Grand St.” online technology marketplace. Total consideration for the acquisition was approximately \$3.2 million, consisting of \$1.0 million in cash and 425,104 shares of the Company’s common stock with a fair value of \$2.2 million on the acquisition date. Additionally, the Company issued 657,160 shares of common stock with a fair value of \$3.4 million on the acquisition date, which are tied to continued employment with the Company and are being accounted for as post-acquisition stock-based compensation expense over the three-year vesting period.

On June 18, 2014, the Company completed the acquisition of Incubart SAS, a societe par actions simplifiee organized under the laws of France, which operates the online marketplace A Little Market (“ALM”). Total consideration for the acquisition was \$30.8 million, consisting of \$5.3 million in cash, of which \$4.2 million was paid at closing, \$0.3 million will be paid in March 2015 and \$0.8 million in February 2016, and 4,879,693 shares of the Company’s common stock with a fair value of \$25.5 million on the acquisition date. The terms of the purchase agreement provide for the sale of put options to certain of the former shareholders of ALM. The put options enable the holders of the options to sell up to all of their shares back to the Company, subject to certain vesting and restrictions, at fair value, but not to exceed \$4.13 per share and not less than \$2.00 per share. The put right terminates with respect to a share on the earlier of one year from when such share is vested or the liquidation date, as defined in the agreement containing the put option. The holders of the options paid an aggregate of \$0.1 million cash to the Company at the date of acquisition and the Company recorded a \$0.1 million liability for the fair value of the put option at the time. Additionally, the Company issued 1,198,995 shares of common stock with a fair value of \$6.3 million on the acquisition date, which are tied to continued employment with the Company and are being accounted for as post-acquisition stock-based compensation expense over the three-year vesting period. Since the put options relate in part to these shares, these shares will be recorded as liability-classified stock awards as earned.

The historical financial information for Etsy is derived from the Company’s audited consolidated statement of operations for the year ended December 2014 contained in this prospectus. The historical financial information of Grand St. and ALM has been derived from the historical audited financial statements and the unaudited financial statements of Grand St. and ALM for the period from January 1, 2014 through April 29, 2014 and the period from January 1, 2014 through June 18, 2014, respectively. The financial statements for Grand St. were prepared in accordance with the accounting principles generally accepted in the United States (U.S. GAAP). The financial statements for ALM were prepared in accordance with generally accepted accounting principles in France (French GAAP) which is a comprehensive basis of accounting different from U.S. GAAP. The historical ALM French GAAP financial statements have been reconciled to U.S. GAAP and, as a result, the historical financial information of ALM included in the pro forma combined statement of operations is presented in U.S. GAAP.

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The ALM historical EUR denominated financial statement amounts have been translated to U.S. Dollars (USD) using the following exchange rates:

Interim period ended June 18, 2014	EUR / \$
	Average spot rate 1.3716

The unaudited pro forma combined statements of operations for the year ended December 31, 2014 give effect to the acquisitions as if they had occurred on January 1, 2014.

The unaudited pro forma adjustments have been made for informational purposes. The actual results reported by the combined company in periods following the acquisitions may differ significantly from those reflected in these unaudited pro forma combined statements. As a result, the pro forma combined information is not intended to represent and does not purport to be indicative of what the combined company's financial condition or results of operations would have been had the acquisitions been completed on the applicable dates of this pro forma combined financial information. In addition, the pro forma combined financial information does not purport to project the future financial condition and results of operations of the combined company.

The unaudited pro forma combined financial statements are based on various assumptions, including consideration paid and the allocation thereof to the assets acquired and liabilities assumed from Grand St. and ALM are based on preliminary estimates of fair value. The pro forma assumptions and adjustments are described in the accompanying notes presented on the following pages. Pro forma adjustments are those that are directly attributable to the transactions, are factually supportable and, with respect to the unaudited pro forma combined statements of operations, are expected to have a continuing impact on the consolidated results. The final purchase price and the allocation thereof may differ from that reflected in the pro forma combined financial statements after the final valuation procedures are performed and amounts are finalized.

The unaudited pro forma combined financial information does not reflect any cost savings from operating efficiencies, synergies or other restructuring that could result from the acquisition.

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### Unaudited Pro Forma Combined Statement of Operations for the Year Ended December 31, 2014

(In thousands except share and per share data)

	<u>Etsy, Inc.</u> <u>December 31, 2014</u>	<u>Jarvis Labs, Inc.</u> <u>April 29, 2014</u>	<u>Incubart SAS</u> <u>June 18, 2014</u>	<u>Pro Forma Adjustments</u>	<u>Notes</u>	<u>Pro Forma Combined</u> <u>December 31, 2014</u>
<b>REVENUE:</b>						
Revenue	\$ 195,591	\$ 357	\$ 1,447	\$ —		\$ 197,395
Cost of revenue	73,633	302	381	606	1	74,922
Gross Profit	121,958	55	1,066	(606)		122,473
<b>OPERATING EXPENSES:</b>						
Marketing	39,655	63	378	328	1	40,424
Product development	36,634	301	496	—		37,431
General and administrative	51,920	169	359	(2,059) 1,333	2 5	51,722
Total operating expenses	128,209	533	1,233	(398)		129,577
Income (loss) from operations	(6,251)	(478)	(167)	(208)		(7,104)
<b>OTHER (EXPENSE) INCOME:</b>						
Interest expense and amortization of deferred financing costs	(590)	(86)	—	86	3	(590)
Interest and dividend income	41	—	16	—		57
Net unrealized loss on warrant and other liabilities	(411)	(13)	—	505	6	81
Foreign exchange loss	(3,049)	—	—	—		(3,049)
Total other (expense) income	(4,009)	(99)	16	591		(3,501)
Income (loss) before income taxes	(10,260)	(577)	(151)	383		(10,605)
(Provision) benefit for income taxes	(4,983)	—	185	—		(4,798)
Net (loss) income	<u>\$ (15,243)</u>	<u>\$ (577)</u>	<u>\$ 34</u>	<u>\$ 383</u>		<u>\$ (15,403)</u>
Basic net loss per share applicable to common stockholders	\$ (0.19)					\$ (0.08)
Diluted net loss per share applicable to common stockholders	\$ (0.19)					\$ (0.08)
Weighted average common stock outstanding (basic)	80,493,407			109,307,822	4	189,801,229
Weighted average common stock outstanding (diluted)	80,493,407			109,307,822	4	189,801,229

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# Notes to Unaudited Pro Forma Combined Financial information

### Note 1—Basis of Presentation

The unaudited pro forma combined financial information was prepared using the acquisition method of accounting and was derived from the audited financial statements of Etsy, Inc. for the year ended December 31, 2014, the unaudited financial statements of Grand St. for the period from January 1, 2014 through April 29, 2014 and the unaudited financial statements of ALM for the period from January 1, 2014 through June 18, 2014.

The unaudited pro forma combined statement of operations for the year ended December 31, 2014 gives effect to the acquisitions as if they each occurred on January 1, 2014.

The Company prepared the unaudited pro forma combined financial information using the acquisition method of accounting under existing U.S. GAAP standards.

The authoritative guidance for fair value defines the term “fair value,” sets forth the valuation requirements for any asset or liability measured at fair value, expands related disclosure requirements and specifies a hierarchy of valuation techniques based on the nature of inputs used to develop the fair value measures. Fair value is defined in the guidance as “the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.” This is an exit price concept for the valuation of the asset or liability. In addition, market participants are assumed to be buyers and sellers in the principal (or the most advantageous) market for the asset or liability. Fair value measurements for an asset assume the highest and best use by these market participants. Many of these fair value measurements can be highly subjective and it is possible that other professionals, applying reasonable judgment to the same facts and circumstances, could develop and support a range of alternative estimated amounts.

The pro forma adjustments described below have been developed based on assumptions and estimates, including assumptions relating to the consideration paid and the allocation thereof to the assets acquired and liabilities assumed from Grand St. and ALM based on preliminary estimates of fair value. The final purchase price and the allocation thereof may differ from that reflected in the pro forma combined financial statements after final valuation procedures are performed and amounts are finalized. The unaudited pro forma combined financial statements are provided for illustrative purposes only and do not purport to represent what the actual consolidated results of operations would have been had the acquisition occurred on the dates assumed, nor are they necessarily indicative of future consolidated results of operations.

The unaudited pro forma combined financial statements do not reflect any cost savings from operating efficiencies, synergies or other restructurings that could result from the acquisition, as such costs are not currently factually supportable.

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Management performed a review of Grand St.'s and ALM's accounting policies, based primarily on available historical financial information, to determine whether any adjustments were necessary to ensure comparability in the pro forma combined financial statements. At this time, the Company is not aware of any differences, other than those stated in either in the unaudited pro forma adjustments or identified in the Grand St. or ALM stand-alone financial statements provided elsewhere in this prospectus, which would have a material impact on the pro forma combined financial statements.

### Note 2—Purchase Price Allocation

This business combinations resulted in the total purchase price being allocated to the assets acquired and liabilities assumed according to their estimated fair values at the date of acquisitions with the remaining unallocated purchase price recorded as goodwill as follows:

<b>Grand St. (in thousands)</b>	
Cash paid	\$ 1,040
Common shares	2,202
<b>Total purchase consideration</b>	<b>\$ 3,242</b>
Working capital	\$ 85
Developed technology	2,000
Customer relationships	600
Trademarks	200
Goodwill	991
Deferred tax liability	(634)
<b>Net assets acquired</b>	<b>\$ 3,242</b>

Included in working capital is approximately \$0.1 million of cash acquired.

The amounts allocated to developed technology, customer relationships and trademark (the acquired intangible assets) total \$2.8 million. The fair value assigned to developed technology was determined primarily using the cost approach, which estimates the cost to reproduce the asset, adjusted for loss due to functional and economic obsolescence. The fair value of Grand St.'s customer relationships was determined primarily using the income approach, which discounts expected future cash flows to present value using estimates and assumptions determined by management. The fair value assigned to trademark was determined using the relief from royalty method, where the owner of the asset realizes a benefit from owning the intangible asset rather than paying a rental or royalty rate for use of the asset. The acquired identifiable intangible assets are being amortized on a straight-line basis over three years, which approximates the pattern in which the assets are utilized. None of the goodwill recorded in the acquisition is deductible for tax purposes.

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ALM (in thousands)	
Cash paid	\$ 5,290
Common shares	25,521
<b>Total purchase consideration</b>	<b>\$ 30,811</b>
Working capital	\$ 625
Property and equipment and other assets	95
Developed technology	1,636
Customer relationships	1,693
Trademarks	775
Goodwill	27,309
Deferred tax liability	(757)
Other long-term liabilities	(565)
<b>Net assets acquired</b>	<b>\$ 30,811</b>

Included in working capital is approximately \$0.5 million of cash and cash equivalents acquired.

The amount allocated to developed technology, customer relationships and trademarks (the acquired intangible assets) total \$4.1 million. The fair value assigned to developed technology was determined primarily by using the cost approach, which estimates the cost to reproduce the asset, adjusted for loss due to functional and economic obsolescence. The fair value of ALM's customer relationships was determined primarily by using the income approach, which discounts expected future cash flows to present value using estimates and assumptions determined by management. The fair value assigned to trademark was determined using the relief from royalty method, where the owner of the asset realizes a benefit from owning the intangible asset rather than paying a rental or royalty rate for use of the asset. The acquired identifiable intangible assets are being amortized on a straight-line basis over three years, which approximates the pattern in which the assets are utilized. Goodwill of \$27.3 million, none of which is deductible for tax purposes, was recorded in connection with this acquisition, which is primarily attributed to synergies arising from the acquisition and the value of the acquired workforce.

### Note 3—Unaudited Pro Forma Adjustments

(1) Pro forma adjustment to record additional amortization expense related to Grand St. and ALM acquired identifiable intangible assets, net of historical amortization amounts of \$11,000, as if the acquisition occurred on January 1, 2014 and amortization of the acquired assets is recorded on a straight-line basis over three years.

Intangible assets acquired are as follows (in thousands):

	<b>Grand St.</b>	<b>ALM</b>
Developed technology	\$ 2,000	\$ 1,636
Trademarks	200	775
Customer relationships	600	1,693
	<b>\$ 2,800</b>	<b>\$ 4,104</b>

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Amortization of developed technology and trademark is recorded within cost of revenue. Customer relationship amortization is recorded within marketing expense.

(2) Pro forma adjustment to eliminate acquisition costs relating to the purchase of Grand St. and ALM in 2014.

(3) Pro forma adjustment to eliminate interest expense on debt that was not acquired by Etsy.

(4) For purposes of this unaudited combined pro forma financial information, the 425,104 and 4,879,693 shares of non-compensatory common stock issued to Grand St. and ALM shareholders, respectively, was given effect in the computation of basic and diluted net income per share for the years ended December 31, 2013 and 2014 as if the acquisitions had occurred on January 1, 2013.

In addition, the conversion of all outstanding shares of convertible preferred stock into 106,896,493 shares of common stock is assumed to have occurred on January 1, 2013.

(5) Pro forma adjustment to record stock compensation expense in connection with the issuance of 1,198,995 shares of common stock valued at \$6.3 million to certain former shareholders of ALM and 657,160 shares of common stock valued at \$3.4 million to certain former shareholders of Grand St. that are tied to continuing employment.

(6) Pro forma adjustment to reflect the effect of the assumed conversions of outstanding warrants exercisable for preferred securities of the Company and Grand St. into warrants exercisable for common stock and the corresponding elimination of the expense included in operating results from the change in the fair value of the warrants.

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### OUR VALUES



We are a mindful, transparent  
and humane business.



We plan and build for  
the long term.



We value craftsmanship  
in all we make.



We believe fun should be  
part of everything we do.



We keep it real, always.

**LOVE, ETSY**

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Etsy

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# Part II

## Information Not Required in Prospectus

### Item 13. Other Expenses of Issuance and Distribution

The following table presents the costs and expenses, other than underwriting discounts and commissions, payable in connection with this offering. All amounts are estimates except the SEC registration fee, the FINRA filing fee and Nasdaq listing fee. Except as otherwise noted, all the expenses below will be paid by us.

SEC registration fee	\$	*
FINRA filing fee	*	*
Nasdaq listing fee	*	*
Printing and engraving expenses	*	*
Legal fees and expenses	*	*
Accounting fees and expenses	*	*
Transfer agent and registrar fees	*	*
Miscellaneous fees and expenses	*	*
Total	\$	*

\* To be completed by amendment.

### Item 14. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended, or the Securities Act.

As permitted by the Delaware General Corporation Law, upon completion of this offering, our amended and restated certificate of incorporation and amended and restated bylaws will contain provisions relating to the limitation of liability and indemnification of directors and officers. The amended and restated certificate of incorporation will provide that our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability:

- for any breach of the director's duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- in respect of unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- for any transaction from which the director derives any improper personal benefit.

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Our amended and restated certificate of incorporation will provide that if Delaware law is amended after the approval by our stockholders of the certificate of incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law.

Our amended and restated bylaws will provide that we will indemnify our directors and officers to the fullest extent permitted by Delaware law, as it now exists or may in the future be amended, against all expenses and liabilities reasonably incurred in connection with their service for or on our behalf. Our amended and restated bylaws will provide that we shall advance the expenses incurred by a director or officer in advance of the final disposition of an action or proceeding, and permit us to secure insurance on behalf of any director, officer, employee or other enterprise agent for any liability arising out of his or her action in that capacity, whether or not Delaware law would otherwise permit indemnification.

We intend to enter into indemnification agreements with each of our directors and officers, a form of which is attached as Exhibit 10.1. The form of agreement provides that we will indemnify each of our directors and officers against any and all expenses incurred by that director or officer because of his or her status as one of our directors or officers, to the fullest extent permitted by Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws. In addition, the form agreement provides that, to the fullest extent permitted by Delaware law, we will advance all expenses incurred by our directors and officers in connection with a legal proceeding.

Reference is made to the underwriting agreement contained in Exhibit 1.1 to this registration statement, indemnifying our directors and officers against limited liabilities. In addition, Section 2(f) of our amended and restated investors' rights agreement contained in Exhibit 4.2 to this registration statement provides for indemnification of certain of our stockholders against liabilities described in that agreement.

We currently carry and intend to continue to carry liability insurance for our directors and officers.

## Item 15. Recent Sales of Unregistered Securities

The following sets forth information regarding all unregistered securities sold from January 1, 2012 to January 31, 2015, giving effect to a 10-for-1 forward split of our common stock, which occurred on May 5, 2011.

On May 1, 2012, we issued and sold an aggregate of 11,594,203 shares of our Series F preferred stock to 12 accredited investors at \$3.45 per share for an aggregate consideration of approximately \$40,000,000.

On June 26, 2012, we issued and sold 5,056 shares of our Series C preferred stock to one accredited investor upon exercise of a warrant issued to such investor on November 15, 2007. Pursuant to the terms of the warrant, the exercise price of \$2.67 per share was paid through the cancellation of 425 shares of Series C preferred stock otherwise issuable under the warrant.

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We have granted options to purchase 22,320,456 shares of our common stock to service providers under our 2006 Stock Plan, with per share exercise prices ranging from \$1.18 to \$8.50.

We have issued and sold an aggregate of 17,216,090 shares of our common stock upon exercise of options issued under our 2006 Stock Plan for aggregate consideration of approximately \$14,810,000, with per share exercise prices ranging from \$0.01 to \$4.13.

On April 1, 2014, we issued and sold an aggregate of 6,603,774 shares of our common stock to two accredited investors at \$5.30 per share for an aggregate consideration of approximately \$35,000,000.

On January 30, 2015, we issued 376,471 shares of our common stock to Etsy.org for no consideration.

We issued an aggregate of 7,160,952 shares of our common stock in connection with our acquisitions of certain companies or their assets and as consideration to individuals and entities who were former service providers and/or stockholders of such companies.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering. We believe that the offers, sales and issuances of the above securities were exempt from registration under the Securities Act by virtue of Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder as transactions by an issuer not involving any public offering, or in reliance on Rule 701 promulgated under Section 3(b) of the Securities Act because the transactions were pursuant to compensatory benefit plans or contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions. We believe all recipients had adequate information about us or had adequate access, through their relationships with us, to information about us.

## **Item 16. Exhibits and Financial Statement Schedules**

(a) *Exhibits*. We have filed the exhibits listed on the accompanying Index to Exhibits, which is incorporated herein by reference.

(b) *Financial Statement Schedules*. All schedules have been omitted because the information required to be presented in them is not applicable or is shown in the consolidated financial statements or related notes.

## **Item 17. Undertakings**

The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

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Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

- (1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
- (2) For the purpose of determining any liability under the Securities Act, as amended, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) In a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
  - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
  - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
  - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
  - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

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# Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Brooklyn, State of New York, on this 4th day of March, 2015.

ETSY, INC.

/s/ Kristina Salen  
Kristina Salen  
Chief Financial Officer

## Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Chad Dickerson, Jordan Breslow and Kristina Salen, and each of them, as his or her true and lawful attorney-in-fact and agent with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments) and any registration statement related thereto filed pursuant to Rule 462(b) increasing the number of securities for which registration is sought, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ Chad Dickerson Chad Dickerson	President, Chief Executive Officer and Chairman ( <i>Principal Executive Officer</i> )	March 4, 2015
/s/ Kristina Salen Kristina Salen	Chief Financial Officer ( <i>Principal Financial and Accounting Officer</i> )	March 4, 2015
/s/ James W. Breyer James W. Breyer	Director	March 4, 2015
/s/ M. Michele Burns M. Michele Burns	Director	March 4, 2015
/s/ Jonathan D. Klein Jonathan D. Klein	Director	March 4, 2015
/s/ Fred Wilson Fred Wilson	Director	March 4, 2015

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# Index to Exhibits

Exhibit No.	Description
1.1*	Form of Underwriting Agreement.
3.1	Eighth Restated Certificate of Incorporation of Registrant, as amended, as currently in effect.
3.2*	Form of Amended and Restated Certificate of Incorporation of Registrant, to be effective upon completion of this offering.
3.3	Bylaws of Registrant, as currently in effect.
3.4*	Form of Amended and Restated Bylaws of Registrant, to be effective upon completion of this offering.
4.1*	Form of Registrant's common stock certificate.
4.2*	Sixth Amended and Restated Investors' Rights Agreement, dated May 1, 2012, by and among the Registrant and the other parties thereto, as amended on March 19, 2013, January 13, 2014 and May 2, 2014.
4.3	Warrant to Purchase Stock, dated November 15, 2007, by and among the Registrant and Silicon Valley Bank.
4.4	Plain English Warrant Agreement, dated May 15, 2008, by and among the Registrant and TriplePoint Capital LLC.
4.5	Plain English Warrant Agreement, dated August 9, 2010, by and among the Registrant and TriplePoint Capital LLC.
5.1*	Opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP.
10.1*	Form of Indemnification Agreement between the Registrant and each of its directors and executive officers.
10.2.1	2006 Stock Plan, as amended, and forms of agreements thereunder.
10.2.2	Form of Stock Option Agreement under 2006 Stock Plan with Chad Dickerson.
10.3*	2015 Equity Incentive Plan and form of agreement thereunder.
10.4*	2015 Employee Stock Purchase Plan.
10.5	Agreement of Lease, dated April 14, 2009, between Registrant and 55 Washington Street LLC, as amended.
10.6	Agreement of Lease, dated May 12, 2014, among Registrant, 117 Adams Owner LLC and 55 Prospect Owner LLC.
10.7	Revolving Credit and Guaranty Agreement, dated May 16, 2014, between Registrant and the other parties thereto, as amended (conformed copy).
10.8*	Employment offer letter between Registrant and Chad Dickerson, dated August 31, 2011.
10.9.1*	Employment offer letter between Registrant and Kristina Salen, dated January 12, 2013, as amended.
10.9.2*	Relocation letter agreement between Registrant and Kristina Salen, dated June 18, 2013.
10.10*	Employment offer letter between Registrant and Jordan Breslow, dated October 20, 2013.
10.11	2014 Executive Bonus Plan.
10.12	Severance Plan and form of Participation Notice thereunder.
10.13	Change in Control Severance Plan and form of Participation Notice thereunder.
10.14	Management Cash Incentive Plan.
10.15	Compensation Program for Non-Employee Directors.
21.1*	List of Subsidiaries of Registrant.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm (Etsy, Inc.).
23.2	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm (Jarvis Labs, Inc.).
23.3	Consent of PricewaterhouseCoopers Audit, Independent Accountants (Incubart SAS).
23.4*	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (contained in Exhibit 5.1).
24.1	Power of Attorney (contained in the signature page to this registration statement).

\* To be filed by amendment.

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "ETSY, INC.", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF APRIL, A.D. 2012, AT 8:28 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



Jeffrey W. Bullock, Secretary of State

AUTHENTICATION: 9536807

DATE: 04-30-12

4110184 8100

120486574



You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*State of Delaware*  
*Secretary of State*  
*Division of Corporations*  
Delivered 08:33 AM 04/30/2012  
FILED 08:28 AM 04/30/2012  
SRV 120486574 - 4110184 FILE

**EIGHTH AMENDED AND RESTATED**

**CERTIFICATE OF INCORPORATION OF**  
**ETSY, INC.**

**E TSY , I NC .**, a corporation organized and existing under the laws of the State of Delaware (the “*Company*”), certifies that:

1. The name of the Company is **E TSY , I NC .** The Company was originally incorporated under the name “Indieco, Inc.” The Company’s original Certificate of Incorporation was filed with the Delaware Secretary of State on February 14, 2006.

2. This Eighth Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the Delaware General Corporation Law, and restates, integrates and further amends the provisions of the Company’s Seventh Amended and Restated Certificate of Incorporation, as amended.

3. The text of the Seventh Amended and Restated Certificate of Incorporation, as amended, is amended and restated to read as set forth in **E XHIBIT A** attached hereto.

**I N W ITNESS W HEREOF** , the Company has caused this Eighth Amended and Restated Certificate of Incorporation to be signed by the undersigned duly authorized officer of the Company.

Dated: April 30, 2012

/s/ Chad Dickerson

Chad Dickerson  
President and Chief Executive Officer

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## E XHIBIT A

### ARTICLE I

The name of this corporation is Etsy, Inc.

### ARTICLE II

The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (“*DGCL*”).

### ARTICLE III

The address of the Company’s registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of the registered agent at such address is The Corporation Trust Company.

### ARTICLE IV

4.1 The total number of shares of stock that the Company shall have authority to issue is 226,165,473, consisting of 205,000,000 shares of Common Stock, \$0.001 par value per share, (the “*Common Stock*”) and 21,165,473 shares of Preferred Stock, \$0.001 par value per share (the “*Preferred Stock*”). Of the authorized shares of Preferred Stock, 792,913 shares shall be designated “*Series A Preferred Stock*”, 1,570,873 shares shall be designated “*Series A-1 Preferred Stock*”, 1,128,431 shares shall be designated “*Series B Preferred Stock*”, 1,234,084 shares shall be designated “*Series C Preferred Stock*”, 3,431,522 shares shall be designated “*Series D Preferred Stock*”, 808,598 shares shall be designated “*Series D-1 Preferred Stock*”, 203,399 shares shall be designated “*Series I Preferred Stock*”, 401,450 shares shall be designated “*Series E Preferred Stock*” and 11,594,203 shares shall be designated “*Series F Preferred Stock*.”

## ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

5.1 **Definitions**. For purposes of this Article V, the following definitions shall apply (provided that the definition of “*Affiliate*” stated below shall apply throughout this Eighth Amended and Restated Certificate of Incorporation):

(a) “*Affiliate*” shall mean, with respect to any individual or entity, an individual or entity that, directly or indirectly, controls, is controlled by or is under common control with such individual or entity, including, without limitation, any general partner, managing member, manager, member, officer or director of such entity or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, shares the same management or advisory company with, or is otherwise affiliated with such individual or entity.

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(b) “**Conversion Price**” shall mean \$0.02429 per share for the Series A Preferred Stock, \$0.03915 per share for the Series A-1 Preferred Stock, \$0.080 per share for the Series B Preferred Stock, \$0.267 per share for the Series C Preferred Stock, \$0.663 per share for the Series D Preferred Stock, \$0.663 per share for the Series D-1 Preferred Stock, \$0.645 for the Series 1 Preferred Stock, \$1.588 per share for the Series E Preferred Stock and \$3.45 per share for the Series F Preferred Stock (in each case, subject to adjustment from time to time as set forth herein).

(c) “**Convertible Securities**” shall mean any evidences of indebtedness, shares or other securities convertible, directly or indirectly, into or exchangeable for Common Stock.

(d) “**Company**” shall mean this corporation, Etsy, Inc.

(e) “**Corporate Transaction**” shall mean any of the following: (i) a sale of all or substantially all of the assets of the Company; (ii) a merger or consolidation in which the Company is not the surviving corporation (other than a merger or consolidation in which stockholders of the Company immediately before the merger or consolidation have, immediately after the merger or consolidation, a majority of the voting power of the surviving entity); (iii) a merger in which the Company is the surviving corporation but the shares of the Company’s Common Stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise (other than a merger in which stockholders of the Company immediately before the merger have, immediately after the merger, a majority of the voting power of the surviving entity); or (iv) any transaction or series of related transactions in which more than 50% of the Company’s voting power is transferred, other than the sale of stock by the Company in transactions the primary purpose of which is to raise capital for the Company’s operations and activities.

(f) “**Distribution**” shall mean the transfer of cash or other property without consideration by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Company for cash or property other than: (i) repurchases of Common Stock held by employees, officers, directors or consultants of the Company or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of such repurchase and (ii) repurchases of Common Stock pursuant to contractual rights of first refusal, repurchase or redemption approved by the Company’s Board of Directors.

(g) “**Dividend Rate**” shall mean an annual rate of 8% of the Original Issue Price per share of Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series 1 Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, respectively.

(h) “**Liquidation Preference**” shall mean \$0.2429 per share for the Series A Preferred Stock, \$0.3915 per share for the Series A-1 Preferred Stock, \$0.80 per share for the Series B Preferred Stock, \$2.67 per share for the Series C Preferred Stock, \$6.63 per share for the Series D Preferred Stock, \$6.63 per share for the Series D-1 Preferred Stock, \$6.45 per share for the Series 1 Preferred Stock, \$15.88 per share for the Series E Preferred Stock and \$3.45 per share for the Series F Preferred Stock (in the case of each such series of Preferred Stock, subject to adjustment from time to time for Recapitalizations affecting the number of outstanding shares of such series of Preferred Stock).

(i) “**Options**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

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(j) “***Original Issue Price***” shall mean \$0.2429 per share for the Series A Preferred Stock, \$0.3915 per share for the Series A-1 Preferred Stock, \$0.80 per share for the Series B Preferred Stock, \$2.67 per share for the Series C Preferred Stock, \$6.63 per share for the Series D Preferred Stock, \$6.63 per share for the Series D-1 Preferred Stock, \$6.45 per share for the Series 1 Preferred Stock, \$15.88 per share for the Series E Preferred Stock and \$3.45 per share for the Series F Preferred Stock (in the case of each such series of Preferred Stock, subject to adjustment from time to time for Recapitalizations affecting the number of outstanding shares of such series of Preferred Stock).

(k) “***Preferred Stock***” shall mean the Series A Preferred Stock, the Series A-1 Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series D-1 Preferred Stock, the Series 1 Preferred Stock, the Series E Preferred Stock and the Series F Preferred Stock; ***provided , however***, that the Series 1 Preferred Stock shall not be deemed Preferred Stock for purposes of Section 5.4(d).

(l) “***Recapitalization***” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

(m) “***Senior Preferred Stock***” shall mean the Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D-1 Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock.

## 5.2 **Dividends**.

(a) **Preferred Stock**. In any calendar year, the holders of outstanding shares of Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of Preferred Stock payable in preference to any declaration or payment of any Distribution on Common Stock in such calendar year. Payment of any dividends to the holders of the Preferred Stock shall be on a pro rata, *pari passu* basis in proportion to the Dividend Rates for each series of Preferred Stock. No Distributions shall be made with respect to the Common Stock unless approved by the holders of a majority of the outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis. The right to receive dividends on shares of Preferred Stock shall not be cumulative, and no right to such dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid in any calendar year.

(b) **Additional Dividends**. After the payment or setting aside for payment of the dividends described in Section 5.2(a), any additional dividends (other than dividends on Common Stock payable solely in Common Stock) declared or paid in any fiscal year shall be declared or paid among the holders of the Preferred Stock and Common Stock then outstanding in proportion to the number of shares of Common Stock which would be held by each such holder if all shares of Preferred Stock were converted at the then-effective Conversion Rate (as defined in Section 5.4).

(c) **Non-Cash Distributions**. Whenever a Distribution provided for in this Section 5.2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

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5.3    **Liquidation Rights .**

(a)    **Liquidation Preference .**

(i) In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary (a “***Liquidation Event***”), the holders of the Senior Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Company to the holders of the Series 1 Preferred Stock and the Common Stock by reason of their ownership of such stock, an amount per share for each share of Senior Preferred Stock held by them equal to the sum of (x) the Liquidation Preference applicable to such series of Senior Preferred Stock and (y) all declared but unpaid dividends (if any) on such share of such series of Senior Preferred Stock. If upon the Liquidation Event, the assets of the Company legally available for distribution to the holders of the Senior Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 5.3(a)(i), then the entire assets of the Company legally available for distribution shall be distributed pro rata among the holders of the Senior Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 5.3(a)(i).

(ii) After the payment in full of the amounts specified in subsection (a)(i) of this Section 5.3 to the holders of Senior Preferred Stock, if assets remain available for distribution to the Company’s stockholders, the holders of Series 1 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Company to the holders of the Common Stock by reason of their ownership of stock, an amount per share for each share of Series 1 Preferred Stock held by them equal to the sum of (x) the Liquidation Preference applicable to the Series 1 Preferred Stock and (y) all declared but unpaid dividends (if any) on such share of Series 1 Preferred Stock. If upon any Liquidation Event, the assets of the Company are insufficient to permit the payment to such holders of the full preferential amounts set forth in this Section 5.3(a)(ii), then the entire assets of the Company legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series 1 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 5.3(a)(ii).

(b)    **Remaining Assets .** After the payment or setting aside for payment to the holders of Preferred Stock of the full amounts specified in subsections (a)(i) and (ii) of this Section 5.3, the entire remaining assets of the Company legally available for distribution shall be distributed pro rata to holders of the Common Stock of the Company in proportion to the number of shares of Common Stock held by them. Notwithstanding the foregoing Section 5.3(a) and the first sentence of this Section 5(b), if, in connection with any Liquidation Event, the amount which the holders of shares of a series of Preferred Stock would, if such holders converted such shares of Preferred Stock into Common Stock immediately prior to such transaction, be entitled to receive pursuant to this Section 5(b) is greater than the amount which such holders would, if such holders did not so convert such shares into Common Stock, be entitled to receive pursuant to Section 5.3(a) above, then such holders shall receive such greater amount pursuant to such transaction in full satisfaction of all amounts to which such holders are entitled pursuant to Section 5.3(a) without first having so converted such shares into Common Stock.

(c)    **Corporate Transaction .** A Corporate Transaction shall be deemed to be a Liquidation Event under this Section 5.3, unless otherwise determined by the vote or written consent of the holders of a majority of the outstanding shares of the Senior Preferred Stock, voting together as a single class on an as-converted basis, within 30 calendar days prior to the closing of such transaction.

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(d) **Valuation of Non-Cash Consideration**. If any assets of the Company distributed to stockholders in connection with any Liquidation Event are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board of Directors; *provided* that any publicly-traded securities to be distributed to stockholders in a Liquidation Event shall be valued as follows:

(i) Unless otherwise provided in the definitive agreement related to such Liquidation Event, if the securities are traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 10 trading day period ending five trading days prior to the distribution of the securities.

(ii) Unless otherwise provided in the definitive agreement related to such Liquidation Event, if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the 10 trading day period ending five trading days prior to the distribution of the securities.

(iii) If there is no active public market, then the value of the securities shall be their fair market value as determined in good faith by the Board of Directors.

(iv) If the securities are subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an Affiliate or former Affiliate), an appropriate discount will be made from the market value determined as above in Section 5.3(d)(i), 5.3(d)(ii) or 5.3(d)(iii) to reflect the approximate fair market value thereof, as determined by the Board of Directors.

(v) If the securities are distributed pursuant to the terms of a Corporate Transaction, the securities shall be deemed to have been distributed on the date such transaction closes.

For the purposes of this Section 5.3(d), "***trading day***" shall mean any day which the exchange or system on which the securities to be distributed are traded is open and "***closing prices***" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or Nasdaq, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

**5.4 Conversion.** The holders of the Preferred Stock shall have conversion rights as follows (the "***Conversion Rights***"):

(a) **Right to Convert**. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Company or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series of Preferred Stock by the Conversion Price for such series of Preferred Stock. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is referred to as the "***Conversion Rate***" for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 5.4, the Conversion Rate for such series shall be appropriately increased or decreased.

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(b) **Automatic Conversion**. Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (A) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed on an internationally recognized securities exchange or trading system under the Securities Act of 1933, as amended (the “**Securities Act**”), covering the offer and sale of the Company’s Common Stock and yielding not less than \$30,000,000 of gross proceeds to the Company, or (B) upon the receipt by the Company of a written request for such conversion from the holders of not less than a majority of the Preferred Stock, voting together as a single class on an as-converted basis, or, if later, the effective date for conversion specified in such request (each of (A) and (B) above, an “**Automatic Conversion Event**”). Notwithstanding the foregoing, no shares of Series F Preferred Stock shall be converted into shares of Common Stock pursuant to the foregoing clause (A) of this Section 5.4(b) unless either (i) such conversion is in connection with a public offering where the price per share is equal to or greater than \$5.18 (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) or (ii) the holders of a majority of the Series F Preferred Stock, voting as a separate class, otherwise consent in writing to such conversion.

(c) **Mechanics of Conversion**. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares, the Company shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, and to receive certificates therefor, such holder shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or of any transfer agent for the Preferred Stock or (B) notify the Company or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates, and shall give written notice to the Company at such office that such holder elects to convert the same; *provided, however,* that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered; *provided further,* that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are surrendered as provided above, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Company, that notice from the Company shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Company shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and a check payable to the holder for any cash amounts payable in lieu of fractional shares, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such

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date; *provided, however*, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Company or other event, the conversion may, at the option of any holder tendering Preferred Stock, for conversion, be conditioned upon the closing of such transaction, in which case the conversion of the Preferred Stock shall not be deemed to have occurred until immediately prior to the closing of such transaction or the occurrence of such event.

(d) Adjustments to Conversion Price for Dilutive Issuances.

(i) Additional Shares. For purposes of this Section 5.4, “**Additional Shares of Common**” shall mean all shares of Common Stock issued (or, pursuant to Section 5.4(d)(iii), deemed to be issued) by the Company after the filing of this Eighth Amended and Restated Certificate of Incorporation, other than:

(1) shares of Common Stock issued or issuable to officers, directors and employees of, or consultants or advisors to, the Company pursuant to the terms of any option plan, restricted stock purchase agreement or similar arrangements that are approved by the Board of Directors (net of repurchases, cancellations and expirations of Common Stock issued or issuable with respect thereto, and subject to adjustment from time to time for Recapitalization affecting the number of outstanding shares of Common Stock);

(2) shares of Common Stock issued upon the exercise or conversion of Options or Convertible Securities outstanding as of the date of the filing of this Eighth Amended and Restated Certificate of Incorporation;

(3) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to Section 5.4(e), 5.4(f) or 5.4(g) hereof;

(4) shares of Common Stock issued in a registered public offering under the Securities Act;

(5) shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Company by merger, purchase of substantially all of the assets or other reorganization or joint venture agreement approved by the Board of Directors;

(6) shares of Common Stock issued or issuable to banks, real property lessors, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by the Board of Directors;

(7) shares of Common Stock issued or issuable in connection with any settlement of any action, suit, proceeding or litigation approved by the Board of Directors;

(8) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors; and

(9) shares of Common Stock issued or issuable to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors,

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*provided, however , that the aggregate number of shares of Common Stock issued or issuable with respect to the foregoing subsections (5), (6), (7), (8) and (9) combined shall not exceed 2,500,000 shares (net of repurchases, cancellations and expirations of Common Stock issued or issuable with respect to such subsections, and subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) at any given time without the approval of the Board of Directors including a majority of the Preferred Directors.*

(ii) No Adjustment of Conversion Price . No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to Section 5.4(d)(iv)) for an Additional Share of Common issued or deemed to be issued by the Company is less than the Conversion Price immediately prior to such issue, for such series of Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common . If the Company at any time or from time to time after the date of the filing of this Eighth Amended and Restated Certificate of Incorporation shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then:

(1) the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Company or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 5.4(d) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Sections 5.4(e), 5.4(f) and 5.4(g) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(4) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price in effect immediately prior to such adjustment;

(5) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(A) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Company for the issue of such exercised Options plus the consideration actually received by the Company upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange;

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(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Company for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Company for the issue of such exercised Options, plus the consideration deemed to have been received by the Company (determined pursuant to Section 5.4(d)(iv)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(6) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 5.4(d)(iii) as of the actual date of their issuance.

(7) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event the Company shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 5.4(d)(iii) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect on the date of and immediately prior to such issue), then the Conversion Price of such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction:

(A) the numerator of which shall be the number of shares of Common Stock deemed to be outstanding (as defined below) immediately prior to such issue plus the number of shares which the aggregate consideration received by the Company for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and

(B) the denominator of which shall be the number of shares of Common Stock deemed to be outstanding (as defined below) immediately prior to such issue plus the number of such Additional Shares of Common so issued.

Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate. For the purposes of adjusting the Conversion Price of a series of Preferred Stock, the grant, issue or sale of Additional Shares of Common consisting of the same class of security and warrants to purchase such security issued or issuable at the same price at two or more closings held within a six-month period shall be aggregated and shall be treated as one sale of Additional Shares of Common occurring on the earliest date on which such securities were granted, issued or sold. For the purposes of this Section 5.4(d)(iii)(7), the number of shares of Common Stock deemed to be outstanding as of a given date (the "**Outstanding Shares**") shall be the sum of (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock issuable upon conversion of all outstanding

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shares of Preferred Stock, and (C) the number of shares of Common Stock which could be obtained through the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options.

(iv) Determination of Consideration. For purposes of this Section 5.4(d), the consideration received by the Company for the issue (or deemed issue) of any Additional Shares of Common (the “**Aggregate Consideration**”) shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(A) if it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company;

(B) if it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(C) if Additional Shares of Common are issued together with other shares or securities or other assets of the Company for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses 5.4(d)(iv)(l)(A) and 5.4(d)(iv)(l)(B) above, as reasonably determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Company for Additional Shares of Common deemed to have been issued pursuant to Section 5.4(d)(iii) shall be determined by dividing:

(A) the total amount of the consideration, if any, received or receivable by the Company for the issuance of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Company upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying Convertible Securities; *provided* that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

If the minimum amount of consideration payable to the Company upon the exercise or conversion of such Options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, or is increased over time, the minimum amount of consideration deemed to have been received by the Company pursuant to clause 5.4(d)(iv)(2)(A) above shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto).

(e) Adjustments for Subdivisions or Combinations of Common Stock. If the outstanding shares of Common Stock are subdivided (by stock split, by payment of a stock dividend or

otherwise) into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. If the outstanding shares of Common Stock are combined (by reclassification or otherwise) into fewer shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) Adjustments for Subdivisions or Combinations of Preferred Stock. If the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise) into a greater number of shares of Preferred Stock, the Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. If the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into fewer shares of Preferred Stock, the Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustments for Reclassification, Exchange and Substitution. Subject to Section 5.3 above, if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment of the Conversion Price pursuant to this Section 5.4, the Company, at its expense, shall promptly compute such adjustment and furnish to each holder of Preferred Stock a certificate setting forth such adjustment and showing in detail the facts upon which such adjustment is based. The Company shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(i) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of the Senior Preferred Stock, voting together as a single class on an as-converted basis.

(j) Notices of Record Date. If the Company shall propose at any time:

- (i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;
- (ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or
- (iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a liquidation, dissolution or winding up of the Company pursuant to Section 5.3(c);

then, in connection with each such event, the Company shall send to the holders of the Preferred Stock at least 10 days' prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in Section 5.4(j)(ii) and 5.4(j)(iii) above. Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Company and shall be deemed given on the date such notice is mailed. The notice provisions set forth in this Section 5.4(j) may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of a majority of the outstanding shares of the Preferred Stock, voting together as a single class on an as-converted basis.

(k) Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

## 5.5 Voting.

(a) Restricted Class Voting. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes or series.

(b) Preferred Stock. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded. Holders of Preferred Stock may act by written consent in the same manner as holders of Common Stock.

### (c) Election of Directors.

(i) So long as at least 500,000 shares (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) of Series A-1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock remain outstanding, the holders of Series A-1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a single class, shall be entitled to elect one member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors (the "**Junior Preferred Director**") and to remove from office such director and to fill any vacancy caused by the resignation, death or removal, with or without cause, of the Junior Preferred Director.

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(ii) So long as at least 500,000 shares (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) of Series D Preferred Stock and Series D-1 Preferred Stock remain outstanding, the holders of Series D Preferred Stock and Series D-1 Preferred Stock, voting together as a single class, shall be entitled to elect one member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors (the "***Series D Director***") and to remove from office such director and to fill any vacancy caused by the resignation, death or removal, with or without cause, of the Series D Director.

(iii) So long as at least 47,000 shares (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) of Series E Preferred Stock remain outstanding, the holders of Series E Preferred Stock shall be entitled to elect one member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors (the "***Series E Director***" and, collectively with the Junior Preferred Director and the Series D Director, the "***Preferred Directors***") and to remove from office such director and to fill any vacancy caused by the resignation, death or removal, with or without cause, of the Series E Director.

(iv) The holders of Common Stock, voting as a separate class, shall be entitled to elect one member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors and to remove from office such director and to fill any vacancy caused by the resignation, death or removal, with or without cause, of such director. The holders of Common Stock and Preferred Stock, voting together as a single class on an as-if-converted basis, shall be entitled to elect any additional members of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal, with or without cause, of such directors.

(d) **Adjustment in Authorized Common Stock**. Notwithstanding the provisions of Section 242(b)(2) of the DGCL, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the outstanding shares of the Common Stock and Preferred Stock, voting together as a single class on an as-if converted basis.

(e) **Common Stock**. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

## 5.6 **Protective Provisions**.

(a) In addition to any other vote or consent required herein or by law, the Company shall not, by amendment, reclassification, merger, consolidation, recapitalization or otherwise, after the filing of this Eighth Amended and Restated Certificate of Incorporation, without first obtaining the approval (by vote or written consent as provided by law) of the holders of a majority of the outstanding shares of the Series A-1 Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, voting together as a single class on an as-converted basis:

(i) create, incur, assume or permit to exist any indebtedness for borrowed money (other than trade debt, operating expenses, lease obligations and indemnification obligations in the ordinary course of business) or guarantee any such indebtedness, unless approved by the Board of Directors;

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(ii) repurchase or redeem any shares of the Common Stock of the Company for cash or property, other than repurchases of Common Stock from employees, officers, directors or consultants of the Company at cost pursuant to agreements approved by the Board of Directors;

(iii) increase or decrease the size of the Board of Directors;

(iv) make any loan or advance or extend any credit (other than extensions of credit to suppliers and customers in the ordinary course of business) to any corporation, partnership, limited liability company, trust, governmental body or other entity, other than a wholly-owned subsidiary of the Company, unless approved by the Board of Directors;

(v) enter into any transaction with any officer or director of the Company or any other person that beneficially owns, together with such person's Affiliates, securities representing 5% or more of the Outstanding Shares of the Company (assuming the exercise and/or conversion in full of all such securities), other than employment, proprietary information, indemnification and like agreements with, and loans to cover the travel, relocation or business expenses of, any officer or director of the Company on reasonable and customary terms in the ordinary course of business, unless approved by the Board of Directors;

(vi) create any additional class or series of shares of stock, unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Company or with respect to the payment of dividends or redemption rights, or increase the authorized number of shares of any class or series of shares of stock, unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Company and with respect to the payment of dividends and redemption rights, or create or authorize any obligation or security convertible into shares of any class or series of stock, unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Company and with respect to the payment of dividends and redemption rights;

(vii) consummate a Corporate Transaction; or

(viii) amend this Section 5.6(a).

(b) In addition to any other vote or consent required herein or by law, the Company shall not, by amendment, reclassification, merger, consolidation, recapitalization or otherwise, after the filing of this Eighth Amended and Restated Certificate of Incorporation, (i) increase or decrease the aggregate number of authorized shares of a series of Preferred Stock or (ii) amend this Eighth Amended and Restated Certificate of Incorporation so as to alter or change the powers, preferences, or special rights of the shares of a series of Preferred Stock so as to affect them adversely (but without so affecting the entire class of Preferred Stock), without first obtaining the approval (by vote or written consent as provided by law) of the holders of a majority of the outstanding shares of such affected series of Preferred Stock, voting as a separate series.

**5.7 Notices.** Except as otherwise expressly provided herein, any notice required by the provisions of this Article V shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt, provided that for international parties, other than pursuant to (i) and (ii) of this Section 5.7, when sent with a internationally recognized courier, three (3) business days after deposit. All notices shall be addressed to each holder of record at such holder's address appearing on the books of the Company.

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## **ARTICLE VI**

The Company is to have perpetual existence.

## **ARTICLE VII**

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Company shall so provide.

## **ARTICLE VIII**

Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Company shall be designated as set forth in the Bylaws of the Company.

## **ARTICLE IX**

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Company is expressly authorized to make, alter, amend or repeal the Bylaws of the Company, but the stockholders may adopt additional Bylaws and may amend or repeal any Bylaw, whether adopted by them or otherwise.

## **ARTICLE X**

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Company.

## **ARTICLE XI**

To the fullest extent permitted by law, a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL or any other law of the State of Delaware is amended after approval of this Article 11 to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the DGCL or other law as so amended.

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Any repeal or modification of the foregoing provisions of this Article 11 by the stockholders of the Company shall not adversely affect any right or protection of a director of the Company existing at the time of, or increase the liability of any director of the Company with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

## ARTICLE XII

To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the DGCL permits the Company to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL.

Any amendment, repeal or modification of the foregoing provisions of this Article 12 shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of, or increase the liability of any director of the Company with respect to any acts or omissions of such director, officer or other agent occurring prior to, such amendment, repeal or modification.

## ARTICLE XIII

The Company renounces any interest of expectancy of the Company in, or in being offered, an opportunity to participate in, any Excluded Opportunity. An “***Excluded Opportunity***” is any matter, transaction or interest that is presented to, or acquired by, created or developed by, or which otherwise comes into possession of, (i) any director of the Company who is not an employee of the Company or any of its subsidiaries, or (ii) any holder of Preferred Stock or any Affiliate of any such holder, other than someone who is an employee of the Company or any of its subsidiaries (collectively, “***Covered Person***”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Company.

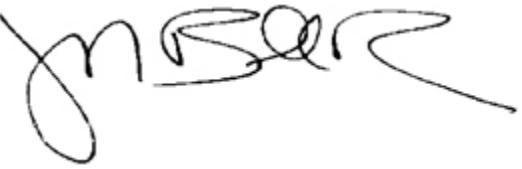
# *Delaware*

PAGE 1

*The First State*

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO  
HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE  
OF AMENDMENT OF "ETSY, INC.", FILED IN THIS OFFICE ON THE TENTH DAY OF  
JANUARY, A.D. 2014, AT 12:31 O'CLOCK P.M.*

*A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE  
COUNTY RECORDER OF DEEDS.*



Jeffrey W. Bullock, Secretary of State

**AUTHENTICATION: 1049172**

**DATE: 01-10-14**

4110184 8100



140033085

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*State of Delaware*  
*Secretary of State*  
*Division of Corporations*  
*Delivered 12:33 PM 01/10/2014*  
*FILED 12:31 PM 01/10/2014*  
*SRV 140033085 – 4110184 FILE*

**FIRST CERTIFICATE OF AMENDMENT  
TO THE  
EIGHTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
ETSY, INC.**

**(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)**

Etsy, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “General Corporation Law”).

DOES HEREBY CERTIFY:

**FIRST:** That the name of this corporation is Etsy, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on February 14, 2006 under the name Indieco, Inc. (hereinafter, the “Corporation”).

**SECOND:** That the Board of Directors of the Corporation adopted resolutions setting forth proposed amendments to the Eighth Amended and Restated Certificate of Incorporation of the Corporation (the “Restated Certificate”), declaring said amendments to be advisable and in the best interests of the Corporation and its stockholders and authorizing the appropriate officers of the Corporation to solicit the consent of the stockholders therefor, which resolutions setting forth the proposed amendments are substantially as follows:

**RESOLVED**, that Section 4.1 of Article IV of the Restated Certificate be deleted and replaced in full with the following:

“4.1 The total number of shares of stock that the Company shall have authority to issue is 236,165,473, consisting of 215,000,000 shares of Common Stock, \$0.001 par value per share, (the “**Common Stock**”) and 21,165,473 shares of Preferred Stock, \$0.001 par value per share (the “**Preferred Stock**”). Of the authorized shares of Preferred Stock, 792,913 shares shall be designated “**Series A Preferred Stock**”, 1,570,873 shares shall be designated “**Series A-1 Preferred Stock**”, 1,128,431 shares shall be designated “**Series B Preferred Stock**”, 1,234,084 shares shall be designated “**Series C Preferred Stock**”, 3,431,522 shares shall be designated “**Series D Preferred Stock**”, 808,598 shares shall be designated “**Series D-1 Preferred Stock**”, 203,399 shares shall be designated “**Series 1 Preferred Stock**”, 401,450 shares shall be designated “**Series E Preferred Stock**” and 11,594,203 shares shall be designated “**Series F Preferred Stock**. ”

**THIRD:** That thereafter said amendments were duly adopted in accordance with the provisions of Section 242 of the General Corporation Law by written consent of the stockholders holding the requisite number of shares required by statute given in accordance with and pursuant to Section 228 of the General Corporation Law.

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IN WITNESS WHEREOF, Etsy, Inc. has caused this First Certificate of Amendment to the Eighth Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 10<sup>th</sup> day of January, 2014.

Etsy, Inc.

By /s/ Chad Dickerson

Chad Dickerson

President and Chief Executive Officer

# *Delaware*

PAGE 1

*The First State*

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "ETSY, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF APRIL, A.D. 2014, AT 11:28 O'CLOCK A.M.*

*A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.*

4110184 8100

140411503



*You may verify this certificate online  
at corp.delaware.gov/authver.shtml*

A handwritten signature in black ink, appearing to read "JWB" or "Jeffrey W. Bullock".

Jeffrey W. Bullock, Secretary of State

AUTHENTICATION: 1256538

DATE: 04-01-14

*State of Delaware*  
*Secretary of State*  
*Division of Corporations*  
*Delivered 11:56 AM 04/01/2014*  
*FILED 11:28 AM 04/01/2014*  
*SRV 140411503 – 4110184 FILE*

**SECOND CERTIFICATE OF AMENDMENT  
TO THE  
EIGHTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
ETSY, INC.**

**(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)**

Etsy, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “General Corporation Law”),

DOES HEREBY CERTIFY:

FIRST: That the name of this corporation is Etsy, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on February 14, 2006 under the name Indieco, Inc. (hereinafter, the “Corporation”).

SECOND: That the Board of Directors of the Corporation adopted resolutions setting forth proposed amendments to the Eighth Amended and Restated Certificate of Incorporation of the Corporation, as amended (the “Restated Certificate”), declaring said amendments to be advisable and in the best interests of the Corporation and its stockholders and authorizing the appropriate officers of the Corporation to solicit the consent of the stockholders therefor, which resolutions setting forth the proposed amendments are substantially as follows:

**RESOLVED**, that Section 4.1 of Article IV of the Restated Certificate be deleted and replaced in full with the following:

“4.1 The total number of shares of stock that the Company shall have authority to issue is 261,165,473, consisting of 240,000,000 shares of Common Stock, \$0.001 par value per share, (the “**Common Stock**”) and 21,165,473 shares of Preferred Stock, \$0.001 par value per share (the “**Preferred Stock**”). Of the authorized shares of Preferred Stock, 792,913 shares shall be designated “**Series A Preferred Stock**”, 1,570,873 shares shall be designated “**Series A-1 Preferred Stock**”, 1,128,431 shares shall be designated “**Series B Preferred Stock**”, 1,234,084 shares shall be designated “**Series C Preferred Stock**”, 3,431,522 shares shall be designated “**Series D Preferred Stock**”, 808,598 shares shall be designated “**Series D-1 Preferred Stock**”, 203,399 shares shall be designated “**Series 1 Preferred Stock**”, 401,450 shares shall be designated “**Series E Preferred Stock**” and 11,594,203 shares shall be designated “**Series F Preferred Stock**. ”

THIRD: That thereafter said amendments were duly adopted in accordance with the provisions of Section 242 of the General Corporation Law by written consent of the stockholders holding the requisite number of shares required by statute given in accordance with and pursuant to Section 228 of the General Corporation Law.

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IN WITNESS WHEREOF, Etsy, Inc. has caused this Second Certificate of Amendment to the Eighth Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 31<sup>st</sup> day of March, 2014.

Etsy, Inc.

By /s/ Chad Dickerson

Chad Dickerson

President and Chief Executive Officer

**AMENDED AND RESTATED  
BYLAWS  
OF  
ETSY, INC.**

**ARTICLE I  
OFFICES**

**Section 1. Registered Office .** The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

**Section 2. Other Offices .** The corporation shall also maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may determine.

**ARTICLE II  
CORPORATE SEAL**

**Section 3. Corporate Seal .** The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Such seal may be used by causing it or a facsimile thereof to be impressed or reproduced.

**ARTICLE III  
STOCKHOLDERS' MEETINGS**

**Section 4. Place of Meetings .** Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("DGCL").

**Section 5. Annual Meetings of Stockholders .**

**(a)** The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated by the Board of Directors. Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) by or at the direction of the Board of

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Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5.

**(b)** At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under the DGCL, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in this Section 5(b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 5. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided that if the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "**1934 Act**") and Rule 14a-4 (d) thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of the corporation which are owned beneficially and of record by such

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stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "**Solicitation Notice**").

(c) Notwithstanding anything in the second sentence of Section 5(b) of these Bylaws to the contrary, if the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section 5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 5. Except as otherwise provided by law, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

## **Section 6. Special Meetings of Stockholders .**

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption), and shall be held at such place, on such date, and at such time as the Board of Directors shall fix.

(b) If a special meeting is properly called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by facsimile or other electronic transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders

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entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. Nothing contained in this paragraph (b) shall be construed as limiting the time when a meeting of stockholders called by action of the Board of Directors may be held.

**Section 7. Notice of Meetings .** Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

**Section 8. Quorum .** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of a majority of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

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**Section 9.      Adjournment and Notice of Adjourned Meetings .** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 10.      Voting Rights .** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote. Every person entitled to vote or execute consents shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

**Section 11.      Joint Owners of Stock .** If shares having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

**Section 12.      List of Stockholders .** The Secretary shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the corporation. If the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

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## **Section 13. Action Without Meeting .**

**(a)** Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, or by electronic transmission setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

**(b)** Every written consent or electronic transmission shall bear the date of signature of each stockholder who signs the consent, and no written consent or electronic transmission shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the corporation in the manner herein required, written consents or electronic transmissions signed by a sufficient number of stockholders to take action are delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

**(c)** Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take action were delivered to the corporation as provided in Section 228(c) of the DGCL. If the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

**(d)** An electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such electronic transmission sets forth or is delivered with information from which the corporation can determine (1) that the electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in the state of Delaware, its principal place of

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business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

#### **Section 14.     Organization .**

**(a)**     At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

**(b)**     The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary or appropriate. Subject to any such rules and regulations, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary or appropriate. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

### **ARTICLE IV**

#### **DIRECTORS**

#### **Section 15.     Number of Directors .**

The authorized number of directors of the corporation shall be fixed by the Board of Directors from time to time. Directors need not be stockholders. If for any reason, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient.

**Section 16.     Powers .** The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

**Section 17.     Term of Directors .** Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders for a term of one year. Each director shall serve

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until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**Section 18. Board Vacancies .** Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

**Section 19. Resignation of Directors .** Any director may resign at any time by delivering a notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancies, the vote thereon to take effect when such resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

**Section 20. Removal of Directors .** Unless otherwise provided in the Certificate of Incorporation and subject to the provisions of the Sixth Amended and Restated Voting Agreement dated as of May 1, 2012 by and among the corporation and its stockholders, as may be further amended from time to time, and further subject to any limitations imposed by applicable law, the Board of Directors or any director may be removed from office at any time (i) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors or (ii) without cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors. In addition, any director may be removed from office at any time with cause by the affirmative vote of a majority of directors then in office.

**Section 21. Board Meetings .**

**(a) Regular Meetings .** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, including a voice-messaging system or other system designated to record and communicate messages, facsimile or by electronic mail or other electronic means.

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**(b) Special Meetings .** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any director.

**(c) Meetings by Electronic Communications Equipment .** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of any communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

**(d) Notice of Special Meetings .** Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, postage prepaid at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully convened.

**(e) Waiver of Notice .** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

## **Section 22. Quorum and Voting .**

**(a)** Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however,* at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

**(b)** At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

## **Section 23. Action Without Meeting .** Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of

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Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee consent thereto in writing or by electronic transmission, and such writing or transmission is filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 24. Fees and Compensation .** Directors shall be entitled to such compensation and reimbursement of expenses for their services as may be approved by the Board of Directors. Nothing herein contained shall preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

**Section 25. Committees .**

**(a) Executive Committee .** The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors, shall have all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, but shall not have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the corporation.

**(b) Other Committees .** The Board of Directors may appoint such other committees as may be permitted by law. Such committees shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolutions creating such committees, but shall not have any powers denied to the Executive Committee in these Bylaws.

**(c) Term .** The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Bylaw may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

**(d) Meetings .** Unless the Board of Directors shall otherwise provide, regular meetings of any committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice

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thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any committee may be held at any place determined by such committee, and may be called by any member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

**Section 26. Organization .** At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or if the President is absent, the most senior Vice President, (if a director) or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

## **ARTICLE V**

### **OFFICERS**

**Section 27. Officers Designated .** The officers of the corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer and the Controller, all of whom shall be elected at the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

**Section 28. Tenure and Duties of Officers .**

**(a) General .** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

**(b) Chairman of the Board of Directors .** The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of

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Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 28.

**(c) President**. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. Unless another officer has been elected Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate.

**(d) Vice Presidents**. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate.

**(e) Secretary**. Except as otherwise directed by the Board of Directors, the Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice of all meetings of the stockholders and of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate.

**(f) Chief Financial Officer**. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate. The President may direct the Treasurer or any Assistant Treasurer, or the Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and the Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate.

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**Section 29. Delegation of Authority .** The Board of Directors may delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**Section 30. Resignations and Removal .**

(a) Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

(b) Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## **ARTICLE VI**

### **EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION**

**Section 31. Execution of Corporate Instruments .** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation. All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do. Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 32. Voting of Securities Owned by the Corporation .** All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

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## ARTICLE VII

### SHARES OF STOCK

**Section 33. Form and Execution of Certificates .** Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights, and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by law, set forth on the face or back a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or otherwise required by law or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

**Section 34. Lost Certificates .** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**Section 35. Transfers .**

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

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## **Section 36. Fixing Record Dates .**

**(a)** In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided that the Board of Directors may fix a new record date for the adjourned meeting.

**(b)** In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

**(c)** In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such

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action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**Section 37. Registered Stockholders .** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## ARTICLE VIII

### OTHER SECURITIES OF THE CORPORATION

**Section 38. Execution of Other Securities .** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 33), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; provided that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## ARTICLE IX

### DIVIDENDS

**Section 39. Declaration of Dividends .** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, may be declared by the Board of Directors at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

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## **ARTICLE X**

### **FISCAL YEAR**

**Section 40. Fiscal Year .** The fiscal year of the corporation shall be determined by the Board of Directors.

## **ARTICLE XI**

### **INDEMNIFICATION**

**Section 41. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents .**

**(a) Directors and Officers .** The corporation shall indemnify its directors and officers to the fullest extent not prohibited by the DGCL or applicable law; provided that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, *provided, further,* that the corporation shall not be required to indemnify any director officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law or other applicable law or (iv) such indemnification is required to be made under subsection (d).

**(b) Expenses .** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer, of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding, provided that, if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 41 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Bylaw, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation, in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal,

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administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of a quorum consisting of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

**(c) Enforcement .** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this Bylaw to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

**(d) Non-Exclusivity of Rights .** The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or any other applicable law.

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**(e) Survival of Rights .** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**(f) Insurance .** To the fullest extent permitted by the DGCL, or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

**(g) Amendments .** Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

**(h) Saving Clause .** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law. If this Section 41 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and officer to the full extent under applicable law.

**(i) Certain Definitions .** For the purposes of this Bylaw, the following definitions shall apply:

**(1)** The term “*proceeding*” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

**(2)** The term “*expenses*” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

**(3)** The term the “*corporation*” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

**(4)** References to a “*director*,” “*executive officer*,” “*officer*,” “*employee*,” or “*agent*” of the corporation shall include, without limitation, situations where

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such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

## **ARTICLE XII**

### **NOTICES**

#### **Section 42. Notices .**

**(a) Notice to Stockholders .** Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by United States mail or nationally recognized overnight courier, or by facsimile, electronic mail or other electronic means.

**(b) Notice to Directors .** Any notice required to be given to any director may be given by the method stated in subsection (a), or as provided for in Section 21 of these Bylaws. If such notice is not delivered personally, it shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

**(c) Affidavit of Mailing .** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be *prima facie* evidence of the facts therein contained.

**(d) Notice to Person with Whom Communication Is Unlawful .** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. If the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

**(e) Notice to Stockholders Sharing an Address .** Except as otherwise prohibited under the DGCL, any notice given under the provisions of the DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such

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stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

## ARTICLE XIII

### AMENDMENTS

**Section 43. Amendments .** The Board of Directors is expressly empowered to adopt, amend or repeal Bylaws of the corporation. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the corporation; provided that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the corporation by vote of the stockholders.

## ARTICLE XIV

### STOCK TRANSFERS

**Section 44. Stock Transfer Agreements .** The corporation shall have the power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

**Section 45. Restrictions on Transfer .**

**(a) Restrictions on Transfer .** No stockholder of the corporation (a “*Stockholder*”) may sell, assign, transfer, pledge, encumber or in any manner dispose of (“*Transfer*”) any share of stock of the corporation (a “*Share*”), whether voluntarily or by operation of law, or by gift or otherwise, other than by means of a Permitted Transfer (as defined below). If any provision(s) of any agreement(s) currently in effect by and between the corporation and any Stockholder (the “*Stockholder Agreement(s)*”) conflicts with this Section 45 of the Bylaws, this Section 45 shall govern, and the remaining provision(s) of the Stockholder Agreement(s) that do not conflict with this Section 45 shall continue in full force and effect.

**(b) Permitted Transfers .** For purposes of this Section 45, a “Permitted Transfer” shall mean any of the following:

**(1)** any Transfer by a Stockholder of any or all of such Stockholder’s Shares to the corporation;

**(2)** any Transfer by a Stockholder of any or all of such Stockholder’s Shares to such Stockholder’s Immediate Family (as defined below) or a trust for the benefit of such Stockholder or such Stockholder’s Immediate Family;

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(3) any Transfer by a Stockholder of any or all of such Stockholder's Shares effected pursuant to such Stockholder's will or the laws of intestate succession;

(4) if a Stockholder is a partnership, limited liability company, or corporation, any Transfer by such Stockholder of any or all of such Stockholder's Shares to the partners, members, retired partners, retired members, stockholders, and/or Affiliates (as defined below) of such Stockholder; *provided* that no Stockholder may Transfer any of such Stockholder's Shares to a Special Purpose Entity (as defined below) pursuant to this subsection (iv);

(5) any Transfer by a Stockholder and its Affiliates of at least five million (5,000,000) shares of Preferred Stock or that number of shares of Preferred Stock that represents at least five million (5,000,000) shares of Common Stock on an as-if converted basis (appropriately adjusted for any stock split, dividend, combination or other recapitalization of the corporation's preferred stock effected after May 11, 2012), together with any number of shares of Common Stock held by such Stockholder and its Affiliates, in one transaction or a series of related transactions to a single transferee and its Affiliates which (A) is made pursuant to a form of stock transfer agreement approved by the Board of Directors, (B) is not made on a Private Market Exchange (as defined below), (C) is not made to a Named Competitor (as defined below) and (D) is not made to a Special Purpose Entity; and/or

(6) any Transfer of Shares approved by the Board of Directors.

Notwithstanding the foregoing, if the transfer is a Permitted Transfer pursuant to this Section 45(b) and the Shares of the transferring party are subject to co-sale rights pursuant to a Stockholder Agreement (the "*Co-Sale Rights*"), the persons and/or entities entitled to the Co- Sale Rights shall be permitted to exercise their respective Co-Sale Rights in conjunction with that specific Permitted Transfer without any additional approval of the Board of Directors.

(c) **Certain Definitions**. For purposes of this Section 45:

(1) "*Affiliate*" shall mean any person or entity who or which, directly or indirectly, controls, is controlled by, or is under common control with the relevant Stockholder, including, without limitation, any general partner, managing partner, manager, member, officer or director of such Stockholder or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, shares the same management or advisory company with, or is otherwise affiliated with, such Stockholder.

(2) "*Immediate Family*" shall mean any child, stepchild, grandchild or other lineal descendant, any parent, stepparent, grandparent or other ancestor, any spouse, former spouse, sibling, niece, nephew, uncle, aunt, mother-in-law, father-in-law, son-in-law, daughter- in-law, brother-in-law or sister-in-law, including adoptive relationships, or any Spousal Equivalent.

(3) "*Named Competitor*" shall mean any person or entity engaged or planning to engage in activities competitive, either directly or indirectly, with the then current and proposed products and services of the corporation, or any affiliate of such person or entity, as set forth on a list approved in good faith by the Board of Directors. The Board of Directors

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shall update the list of Named Competitors from time to time but at a minimum within thirty (30) days after June 30 and December 31 of each year; *provided* that if such list has not been prepared in such period, the most recent list so prepared will remain in effect.

(4) “*Private Market Exchange*” shall mean any private marketplace or securities exchange, including, without limitation, SecondMarket or SharesPost, the activities of which have not been ruled, and which has not been endorsed, as compliant with applicable securities law by a court of competent jurisdiction or appropriate regulatory authority to the corporation’s reasonable satisfaction.

(5) “*Special Purpose Entity*” shall mean an entity that holds or would hold primarily Shares or has or would have a class or series of security holders with beneficial interests primarily in Shares (including for such purpose an entity that holds cash and/or cash equivalents intended to purchase Shares); *provided* that no entity holding Shares as of May 11, 2012 shall be deemed a Special Purpose Entity.

(6) “*Spousal Equivalent*” shall mean an individual who: (A) is in an exclusive, continuous, committed relationship with the relevant Stockholder, has been in that relationship for the twelve (12) months prior to the relevant date and intends to be in that relationship indefinitely; (B) has no such relationship with any other person and is not married to any other person; (C) shares a principal residence with the relevant Stockholder; (D) is at least 18 years of age and legally and mentally competent to consent to contract; (E) is not related by blood to the relevant stockholder to a degree of kinship that would prevent marriage from being recognized under the law of the state in which the individual and the relevant Stockholder reside; and (F) is jointly responsible with the relevant Stockholder for each other’s common welfare and financial obligations; *provided* that any Stockholder who wishes to Transfer stock to a Spousal Equivalent under Section 45(b)(2) above must provide proof of (i) a joint mortgage, (ii) a joint lease or (iii) a joint bank account, in each case held by both the Stockholder and their Spousal Equivalent.

(d) **Void Transfers**. Any Transfer of Shares shall be null and void unless the terms, conditions and provisions of this Section 45 are strictly observed and followed.

(e) **Termination of Restriction on Transfer**. The foregoing restriction on transfer shall lapse upon the earlier of (i) immediately prior to the consummation of a Liquidation Event (as such term is defined in the certificate of incorporation, as it may be amended and/or restated from time to time), or (ii) immediately prior to the corporation’s first firm commitment underwritten public offering of its securities pursuant to a registration statement under the Securities Act of 1933, as amended.

(f) **Legends**. The certificates representing shares of stock of the corporation shall bear on their face the following legend so long as the foregoing restriction on transfer remains in effect:

“THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD,  
ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR IN ANY MANNER  
DISPOSED OF, EXCEPT IN

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COMPLIANCE WITH THE BYLAWS OF THE CORPORATION. COPIES OF THE BYLAWS OF THE CORPORATION MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE CORPORATION.”

## ARTICLE XV

### LOANS TO OFFICERS

**Section 46. Loans to Officers.** Except as otherwise prohibited under applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

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**SECRETARY'S CERTIFICATE  
OF THE AMENDED AND RESTATED BYLAWS  
OF  
ETSY, INC.**

I hereby certify that:

I am the duly elected Secretary of Etsy, Inc., a Delaware corporation (the “*Company*”).

The attached Amended and Restated Bylaws constitute the Bylaws of the Company as duly adopted by the Board of Directors of the Company on May 11, 2012.

IN WITNESS WHEREOF, I have hereunder subscribed my name this 11<sup>th</sup> day of May, 2012.



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Chad Dickerson

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

### WARRANT TO PURCHASE STOCK

Company: ETSY, Inc., a Delaware corporation

Number of Shares: As set forth below

Class of Stock: Series C Convertible Preferred Stock, \$0.001 par value per share

Warrant Price: \$2.67, subject to adjustment

Issue Date: November 15, 2007

Expiration Date: November 14, 2017

Credit Facility: This Warrant is issued in connection with that certain Loan and Security Agreement of even date herewith between Silicon Valley Bank and the Company (the "Loan Agreement").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, SILICON VALLEY BANK (Silicon Valley Bank, together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, is referred to hereinafter as "Holder") is entitled to purchase the number of fully paid and nonassessable shares (the "Shares") of the class of securities (the "Class") of the above-named company (the "Company") at the above-stated Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

A. Number of Shares. This Warrant shall be exercisable for the Initial Shares, plus the Additional Shares (if any).

(1) Initial Shares. As used herein, "Initial Shares" means 16,854 shares of the Class;

(2) Additional Shares. This Warrant shall automatically become exercisable for the Additional Shares, if at all, on and as of such date (if any) that Bank (as defined in the Loan Agreement) makes an Equipment Advance (as defined in the Loan Agreement) in excess of \$500,000 of Equipment Advances in the aggregate. As used herein, "Additional Shares" means such number of additional shares of the Class as shall equal (a) \$25,000, divided by (b) the Warrant Price in effect on and as of the date of such Equipment Advance.

(3) As used herein, "Shares" shall mean the Initial Shares together with the Additional Shares (if any) for which this Warrant becomes exercisable in accordance with paragraph A(2) above.

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## ARTICLE 1. EXERCISE .

1.1 Method of Exercise . Holder may exercise this Warrant by delivering the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right . In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this Warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Article 1.3.

1.3 Fair Market Value . If the Company's common stock is traded in a public market and the Shares are common stock, the fair market value of a Share shall be the closing price of a share of common stock reported for the business day immediately before Holder delivers this Warrant together with its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company's initial public offering ("IPO"), the "price to public" per share price specified in the final prospectus relating to such offering). If the Company's common stock is traded in a public market and the Shares are preferred stock, the fair market value of a Share shall be the closing price of a share of the Company's common stock reported for the business day immediately before Holder delivers this Warrant together with its Notice of Exercise to the Company (or, in the instance where the Warrant is exercised immediately prior to the effectiveness of the IPO, the initial "price to public" per share price specified in the final prospectus relating to such offering), in both cases, multiplied by the number of shares of the Company's common stock into which a Share is convertible. If the Company's common stock is not traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant . Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant representing the Shares not so acquired.

1.5 Replacement of Warrants . On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

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## 1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 “Acquisition”. For the purpose of this Warrant, “Acquisition” means any sale, license, or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, merger or sale of outstanding capital stock of the Company where the holders of the Company’s securities before the transaction beneficially own less than a majority of the outstanding voting securities of the surviving entity after the transaction.

### 1.6.2 Treatment of Warrant at Acquisition.

A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition in which the sole consideration is cash, either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

B) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is an “arms length” sale of all or substantially all of the Company’s assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a “True Asset Sale”), either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will continue until the Expiration Date if the Company continues as a going concern following the closing of any such True Asset Sale. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

C) Upon the closing of any Acquisition other than those particularly described in subsections (A) and (B) above, the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price and/or number of Shares shall be adjusted accordingly.

As used herein “Affiliate” shall mean any person or entity that owns or controls directly or indirectly ten percent (10%) or more of the stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person’s or entity’s officers, directors, joint venturers or partners, as applicable.

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## ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of the Class payable in common stock or other securities, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares or takes any other action which increase the amount of common stock into which the one share of the Class is convertible, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include, without limitation, any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Articles or Certificate (as applicable) of Incorporation. The Company or its successor shall promptly issue to Holder an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Diluting Issuances. The number of shares of common stock issuable upon conversion of the Shares shall be subject to adjustment, from time to time in the manner set forth in the Company's Articles or Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment. The provisions set forth for the Class in the Company's Articles or Certificate (as applicable) of Incorporation relating to the above in effect as of the Issue Date may not be amended, modified or waived, without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification or waiver affects the rights associated with all other shares of the Class.

2.4 No Impairment. The Company shall not, by amendment of its Articles or Certificate (as applicable) of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at

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all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Article against impairment.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of the Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price, Class and number of Shares in effect upon the date thereof and the series of adjustments leading to such Warrant Price, Class and number of Shares.

### ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than the price per share at which shares of the same class and series as the Shares were last issued in an arms-length transaction in which at least \$500,000 of such shares were sold.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(c) The Company's capitalization table attached hereto as Schedule 1 is true and complete as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon the outstanding shares of the same class and series as the Shares, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for subscription or sale pro rata to the holders of the outstanding shares of the same class and series as the Shares any additional shares of any class or series of the Company's stock; (c) to effect any reclassification, reorganization or recapitalization of any of its stock; (d) to effect an Acquisition or to liquidate, dissolve or wind up; or (e) offer holders of registration rights the opportunity to participate in an underwritten public offering of the Company's securities for cash, then, in connection with each such event, the Company shall give Holder: (1) at least 10 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on

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which the holders of shares of the same class and series as the Shares will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (c) and (d) above; (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of shares of the same class and series as the Shares will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event); and (3) in the case of the matter referred to in (e) above, the same notice as is given to the holders of such registration rights.

3.3 Registration Under Securities Act of 1933, as amended. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall have certain incidental, or "Piggyback," and S-3 registration rights pursuant to and as set forth in the Company's Investor Rights Agreement or similar agreement. The provisions set forth in the Company's Investor Rights Agreement or similar agreement relating to piggyback and S-3 registration rights in effect as of the Issue Date may not be amended, modified or waived without the prior written consent of Holder unless such amendment, modification or waiver affects such piggyback and S-3 registration rights associated with the Shares in the same manner as such amendment, modification, or waiver affects the piggyback and S-3 registration rights associated with all other shares of the same series and class as the Shares granted to the Holder.

3.4 No Shareholder Rights. Except as provided in this Warrant, Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

3.5 Certain Information. The Company agrees to provide Holder at any time and from time to time with such information as Holder may reasonably request for purposes of Holder's compliance with regulatory, accounting and reporting requirements applicable to Holder.

**ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER.** The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has

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experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

## ARTICLE 5. MISCELLANEOUS.

5.1 Term: This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE ACT, OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 OF THAT CERTAIN WARRANT TO PURCHASE STOCK ISSUED BY THE COMPANY TO SILICON VALLEY BANK DATED AS OF NOVEMBER 15, 2007, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the

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Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to SVB Financial Group (Silicon Valley Bank's parent company) or any other affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act.

**5.4 Transfer Procedure.** After receipt by Silicon Valley Bank ("Bank") of the executed Warrant, Bank will transfer all of this Warrant to SVB Financial Group, Holder's parent company. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, SVB Financial Group and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, SVB Financial Group or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). The Company may refuse to transfer this Warrant or the Shares to any person who directly competes with the Company, unless, in either case, the stock of the Company is publicly traded.

**5.5 Notices.** All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or Holder, as the case may (or on the first business day after transmission by facsimile) be, in writing by the Company or such holder from time to time. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

SVB Financial Group  
Attn: Treasury Department  
3003 Tasman Drive, HA 200  
Santa Clara, CA 95054  
Telephone: 408-654-7400  
Facsimile: 408-496-2405

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

ETSY, Inc.  
Attn: Robert Kalin  
325 Gold Street, 6<sup>th</sup> Floor  
Brooklyn, NY 11201  
Telephone: 718-855-7955  
Facsimile: 718-855-7956

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5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

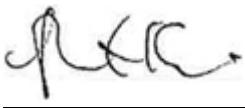
5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

"COMPANY"

ETSY, INC.

By: 

Name: Robert Kalin  
(Print)

Title: President and Chief Executive Officer

"HOLDER"

SILICON VALLEY BANK

By: 

Name: Melissa Stepanis  
(Print)  
Title: Vice President

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## APPENDIX 1

### NOTICE OF EXERCISE

1. Holder elects to purchase \_\_\_\_\_ shares of the Common/Series \_\_\_\_\_ Preferred [strike one] Stock of \_\_\_\_\_ pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for \_\_\_\_\_ of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the Shares in the name specified below:

\_\_\_\_\_  
Holders Name

\_\_\_\_\_  
(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as of the date hereof.

HOLDER:

\_\_\_\_\_  
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Date): \_\_\_\_\_

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SCHEDULE 1

Company Capitalization Table

See attached

Etsy, Inc.  
Capitalization Table

	Outstanding Common Stock	Warrants for Common Stock	Outstanding Series A Preferred Stock	Outstanding Series A-1 Preferred Stock
Totals:	5,750,000	-	1,400,000	1,570,873

Options Outstanding and Available for Grant

Total Fully Diluted

Outstanding Series B Preferred Stock	Outstanding Series C Preferred Stock	Total	Percentage Fully Diluted
1,250,000	1,217,230	11,188,103	89.74%
		1,279,127	10.26%
		12,467,230	100.00%



THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED (the "1933 ACT"), OR ANY STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO YOU THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE 1933 ACT, OR ANY APPLICABLE STATE SECURITIES LAWS.

## PLAIN ENGLISH WARRANT AGREEMENT

This is a **PLAIN ENGLISH WARRANT AGREEMENT** dated May 15, 2008 by and between ETSY, INC., a Delaware corporation, and TRIPLEPOINT CAPITAL LLC, a Delaware limited liability company.

The words "We", "Us", or "Our" refer to the warrant holder, which is TRIPLEPOINT CAPITAL LLC. The words "You" or "Your" refers to the issuer, which is ETSY, INC., and not to any individual. The words "The Parties" refers to both TRIPLEPOINT CAPITAL LLC and ETSY, INC. This Plain English Warrant Agreement may be referred to as the "Warrant Agreement".

The Parties have entered into a Plain English Master Lease Agreement dated as of May 15, 2008, and related Hardware and Software Facility Schedules and Summary Schedules which are collectively referred to in this Warrant Agreement as the "Lease Agreement". Capitalized terms used herein and not defined shall have the meanings set forth in the Lease Agreement.

In consideration of such Lease Agreement, the Parties agree to the following mutual agreements and conditions set forth below:

WARRANT INFORMATION			
<u>Effective Date</u>	<u>Warrant Number</u>	<u>Lease Facility Schedules</u>	
May 15, 2008	0552-W-01	0552-LE-01H/-01S	
<u>Warrant Coverage</u>	<u>Number of Shares</u>	<u>Price Per Share</u>	<u>Type of Stock</u>
\$162,500 (3.25% of \$5,000,000)	24,510	\$6.63	Series D Preferred Stock

OUR CONTACT INFORMATION		
<u>Name</u>	<u>Address For Notices</u>	<u>Contact Person</u>
TriplePoint Capital LLC	2755 Sand Hill Road, Ste. 150 Menlo Park, CA 94025 Tel: (650) 854-2090 Fax: (650) 854-1850	Sajal Srivastava, COO Tel: (650) 233-2102 Fax: (650) 854-1850 email: legal@triplepointcapital.com
YOUR CONTACT INFORMATION		
<u>Customer Name</u>	<u>Address For Notices</u>	<u>Contact Person</u>
Etsy, Inc.	325 Gold Street, 6 <sup>th</sup> Floor Brooklyn, NY 11201	Beth Ferreira, VP Operations Tel: (718) 855-7955 Fax: (718) 855-7956 email: beth@etsy.com

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## **1. WHAT YOU AGREE TO GRANT US**

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You grant to Us and We are entitled, upon the terms and subject to the conditions set forth in this Warrant Agreement, to purchase from You 24,510 fully paid and non-assessable shares of Your Warrant Stock at a purchase price equal to per share equal to the Exercise Price.

The number of shares of Warrant Stock and the Exercise Price of such Warrant Stock are subject to adjustment as provided in Section 4 hereof.

For purposes of this Warrant Agreement, the following capitalized terms have the meanings given below:

“Exercise Price” means \$6.63.

“Warrant Stock” means Your Series D Preferred Stock.

The Parties agree that this Warrant Agreement to purchase the Warrant Stock has a fair market value equal to \$100 and that \$100 of the issue price is included as part of the leased value and will be allocable to the Warrant Agreement and the original issue discount on the Lease Agreement shall be considered to be zero.

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## **2. WHEN ARE WE ENTITLED TO PURCHASE YOUR WARRANT STOCK.**

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The term of this Warrant Agreement and our right to purchase Warrant Stock will begin the Effective Date, and shall be available for (i) the greater of (A) 7 years from the Effective Date or (B) 5 years from the effective date of Your initial public offering or (ii) until terminated by virtue of its automatic exercise pursuant to the next paragraph.

Our right to purchase the Warrant Stock shall automatically be deemed to be exercised in full via the net issuance method in the manner set forth in Section 3, without any further action on behalf of Us upon the occurrence of a Merger Event, with a Person who is not one of Your affiliates in which Your common stock is exchanged for cash and/or stock that is traded on a recognized public exchange or on the NASDAQ National Market, provided that, upon consummation of the Merger Event, the consideration payable to Us pursuant to such exercise and on account of the Warrant Stock consists of (i) cash or (ii) stock that is traded on a recognized public exchange or on the NASDAQ National Market and the total per share consideration is equal to or greater than one and one tenths (1.1) times the aggregate Exercise Price (as adjusted). Not less than ten (10) business days prior to any Merger Event, You shall provide Us with written notice of the proposed Merger Event together with a copy of the executed merger agreement, or other definitive documentation (and all schedules and exhibits thereto). Upon consummation of the Merger Event, You shall promptly provide Us with (a) a copy of any modifications or amendments to the executed merger agreement, (b) any other documents in connection therewith, and, (c) upon request, by Us any other information reasonably necessary to an informed evaluation of Our rights under this Warrant Agreement.

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## **3. HOW WE MAY PURCHASE YOUR WARRANT STOCK.**

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We may exercise Our purchase rights, in whole or in part, at any time, or from time to time, prior to the expiration of the term of this Warrant Agreement, by giving You a completed and executed **Notice of Exercise** in the form attached as **Exhibit I**. Promptly upon receipt of the Notice of Exercise and in any event no later than twenty-one (21) days after you have received Our Notice of Exercise and payment of the aggregate Exercise Price for the shares purchased, You will issue to Us a certificate for the number of shares of Warrant Stock that We have purchased and You will execute the **Acknowledgment of Exercise** in the form attached hereto as **Exhibit II** indicating the number of shares which will be available to Us for future purchases, if any.

We may pay for the Warrant Stock by either (i) cash or check, or (ii) by the **net issuance method** as determined below. If We elect the Net Issuance method, You will issue Warrant Stock using the following formula:

$$X = \frac{Y(A-B)}{A}$$

**Where :** X = the number of shares of Warrant Stock to be issued to Us.

Y = the number of shares of Warrant Stock We request to be exercised under this Warrant Agreement.

A = the fair market value of one share of Warrant Stock.

B = the Exercise Price.

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For purposes of the above calculation, current fair market value of Warrant Stock shall mean with respect to each share of Warrant Stock:

**If the exercise is in connection with and effective at or before the closing of the initial public offering of Your Common Stock**, and if Your registration statement relating to such public offering has been declared effective by the Securities and Exchange Commission (the “SEC”), then the fair market value per share shall be the product of (x) the initial “Price to Public” specified in the final prospectus of the offering and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible at the time of such exercise;

**If this Warrant Agreement is exercised after, and not in connection with the Your initial public offering, and :**

- ⇒ if traded on a securities exchange, the fair market value shall be the product of (x) the average of the closing prices over a five (5) day period ending three (3) days before the day the current fair market value of the securities is being determined and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible at the time of such exercise; or
- ⇒ if actively traded over-the-counter, the fair market value shall be the product of (x) the average of the closing bid and asked prices quoted on the NASDAQ system (or similar system) over the five (5) day period ending three (3) days before the day the current fair market value of the securities is being determined and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible at the time of such exercise.

**If this Warrant Agreement is exercised prior to or after Your initial public offering, and:**

- ⇒ Your Common Stock is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the current fair market value of Warrant Stock shall be the product of (x) the fair market value of a share of Your Common Stock (the highest price per share which You could obtain from a willing buyer (not a current employee or director) for shares of Common Stock sold, from authorized but unissued shares), as determined in good faith by Your Board of Directors and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible at the time of such exercise, unless You shall become subject to a merger, acquisition or other consolidation pursuant to which You are not the surviving party, in which case the fair market value of Warrant Stock shall be deemed to be the value received by the holders of the Your Warrant Stock on a common equivalent basis pursuant to such merger or acquisition or other consolidation.

During the term of this Warrant Agreement, You will at all times from and after the Effective Date have authorized and reserved a sufficient number of shares of (a) Warrant Stock to provide for the exercise of our rights to purchase Warrant Stock, and (b) Common Stock to provide for the conversion of the Warrant Stock.

If We elect to exercise part of the Warrant Agreement, You will promptly issue to Us an amended Warrant Agreement stating the remaining number of shares that are available. All other terms and conditions of that amended Warrant Agreement shall be identical to those contained in this Warrant Agreement.

If at the end of the term of this Warrant Agreement, the fair market value of one share of Warrant Stock (or other security issuable upon the exercise hereof) as determined in accordance herewith is greater than the Exercise Price in effect on such date, then this Warrant Agreement shall automatically be deemed on and as of such date to be converted pursuant hereto as to all shares of Warrant Stock (or such other securities) for which it shall not previously have been exercised or converted, and You shall promptly deliver a certificate representing the shares of Warrant Stock (or such other securities) issued upon such conversion to Us.

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#### **4. WHEN WILL THE NUMBER OF SHARES AND EXERCISE PRICE CHANGE.**

- ⇒ **If You are Acquired.** If at any time: (i) there is a reorganization of Your stock (other than a reclassification, exchange or subdivision of Your stock otherwise provided for in this Warrant Agreement); (ii) You merge or consolidate with or into another entity, whether or not You are the surviving entity; (iii) You sell or convey, or grant an exclusive license with respect to, all or substantially all of Your assets to any other person; or (iv) there occurs any

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transaction or series of related transactions that result in the transfer of fifty percent (50%) or more of the outstanding voting power of the capital stock of You (each of the foregoing events are referred to as a “Merger Event”), then, as a part of such Merger Event, lawful provision shall be made so that We shall thereafter be entitled to receive, upon exercise of Our rights under this Warrant Agreement, the number of shares of preferred stock or other securities of the successor or surviving person resulting from such Merger Event, equal in value to that which would have been issuable if We had exercised Our rights under this Warrant Agreement immediately prior to the Merger Event. In any such case, appropriate adjustment (as determined in good faith by the Your Board of Directors) shall be made in the application of the provisions of this Warrant Agreement with respect to Our rights and interest after the Merger Event so that the provisions of this Warrant Agreement (including adjustments of the Exercise Price and number of shares of Warrant Stock purchasable) shall be applicable to the greatest extent possible.

- ⇒ **If You Reclassify Your Stock.** If at any time You combine, reclassify, exchange or subdivide Your securities or otherwise, change any of the securities as to which purchase rights under this Warrant Agreement exist into the same or a different number of securities of any other class or classes, this Warrant Agreement will thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities which were subject to the purchase rights under this Warrant Agreement immediately prior to such combination, reclassification, exchange, subdivision or other change.
- ⇒ **If You Subdivide or Combine Your Shares.** If at any time You combine or subdivide Your Series D Preferred Stock, the Exercise Price will be proportionately decreased in the case of a subdivision, or proportionately increased in the case of a combination.
- ⇒ **If You Pay Stock Dividends.** If at any time You pay a dividend payable in, or make any other distribution (except any distribution specifically provided for in the above paragraphs) of Your Series D Preferred Stock, then the Exercise Price shall be adjusted, from and after the record date of such dividend or distribution, to that price determined by multiplying the Exercise Price in effect immediately prior to such record date by a fraction (i) the numerator of which shall be the total number of all shares of Your Series D Preferred Stock outstanding immediately prior to such dividend or distribution, and (ii) the denominator of which shall be the total number of all shares of Your Series D Preferred Stock outstanding immediately after such dividend or distribution. We will thereafter be entitled to purchase, at the Exercise Price resulting from such adjustment, the number of shares of Warrant Stock (calculated to the nearest whole share) obtained by multiplying the Exercise Price in effect immediately prior to such adjustment by the number of shares of Warrant Stock issuable upon the exercise hereof immediately prior to such adjustment and dividing the product thereof by the Exercise Price resulting from such adjustment.
- ⇒ **If You Change the Antidilution Rights of the Warrant Stock or Issue New Preferred or Convertible Stock.** All antidilution rights applicable to the Warrant Stock purchasable under this Warrant Agreement are as set forth in Your Certificate of Incorporation, as amended through the Effective Date. You will promptly provide Us with any restatement, amendment, modification of or waiver of any right under Your Certificate of Incorporation. You will provide Us with prior written notice of any issuance of Your stock or other equity security to occur after the Effective Date (other than issuances of stock or equity securities pursuant to customary employee stock plans), which notice shall include (a) the price at which such stock or security is to be sold, (b) the number of shares to be issued, and (c) such other information as necessary for Us to determine if a dilutive event has occurred or will occur as a result of such issuance.
- ⇒ **If You Lease More Than the Commitment Amounts Under the Lease Agreement.** If the total cost of equipment leased pursuant to Part 1 of the Lease Agreement exceeds \$5,000,000, We will have the right to purchase from You, at the Exercise Price (adjusted as set forth herein), an additional number of shares of Warrant Stock, which number shall be determined by (i) multiplying the amount by which the equipment cost financed under the Lease Agreement exceeds \$5,000,000 by 3.25%, and (ii) dividing the product by the Exercise Price per share referenced in Section 1 above.

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## 5. WE CAN TRANSFER THIS PLAIN ENGLISH WARRANT AGREEMENT.

Subject to the terms and conditions contained in Section 7, We (or any successor transferee) may transfer in whole or in part this Warrant Agreement and all its rights. You will record the transfer on Your books when You receive Our Notice of Transfer in the form attached hereto as Exhibit III, and Our payment of all transfer taxes and other governmental charges involved in such transfer.

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## 6. REPRESENTATIONS, WARRANTIES, AND COVENANTS FROM YOU.

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- ⇒ **Reservation of Warrant Stock.** The Warrant Stock issuable upon exercise of Our rights under this Warrant Agreement will be duly and validly reserved and when issued in accordance with the provisions of this Warrant Agreement will be validly issued, fully paid and non-assessable, and will be free of any taxes, liens, charges or encumbrances of any nature whatsoever; provided, however, that the Warrant Stock issuable pursuant to this Warrant Agreement may be subject to restrictions on transfer under state and/or Federal securities laws. Upon Our exercise, You will issue to Us certificates for shares of Warrant Stock without charging Us any tax, or other cost incurred by You in connection with such exercise and the related issuance of shares of Warrant Stock. You will not be required to pay any tax, which may be payable in respect of any transfer involving the Warrant Stock and the issuance and delivery of any certificate in a name other than TriplePoint Capital LLC.
- ⇒ **Due Authority.** Your execution and delivery of this Warrant Agreement and the performance of Your obligations hereunder, including the issuance to Us of the right to acquire the shares of Warrant Stock, have been duly authorized by all necessary corporate action on Your part and this Warrant Agreement is not inconsistent with the Your Certificate of Incorporation or Bylaws, does not contravene any law or governmental rule, regulation or order applicable to it, does not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which You are a party or by which You are bound, and this Warrant Agreement constitutes a legal, valid and binding agreement, enforceable in accordance with its respective terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and the rules of law or principles at equity governing specific performance, injunctive relief and other equitable remedies.
- ⇒ **Consents and Approvals.** No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of any state, Federal or other governmental authority or agency is required with respect to execution, delivery and Your performance of Your obligations under this Warrant Agreement, except for the filing of any required notices pursuant to Federal and state securities laws, which filings will be effective by the times required thereby.
- ⇒ **Issued Securities.** All of Your issued and outstanding shares of Common Stock, Warrant Stock or any other securities have been duly authorized and validly issued and are fully paid and nonassessable. All outstanding shares of Common Stock and Warrant Stock were issued in full compliance with all Federal and state securities laws. In addition as of the Effective Date:

Your authorized capital consists of (A) 17,800,000 shares of Common Stock, of which 4,862,250 shares of Common Stock are issued and outstanding, and (B) 9,704,364 shares of preferred stock, of which 8,925,057 shares are issued and outstanding.

You have reserved 2,373,188 shares of Common Stock for issuance under Your Stock Incentive Plan, under which 992,775 options are outstanding. Except as otherwise provided in this Warrant Agreement and as noted above, there are no other options, warrants, conversion privileges or other rights presently outstanding to purchase or otherwise acquire any authorized but unissued shares of the Your capital stock or other of Your securities.

Except as set forth in Your Investor's Rights Agreement, a true, correct and complete copy of which has been delivered to Us prior to the issuance of this Warrant, Your stockholders do not have preemptive rights to purchase new issuances of Your capital stock.

- ⇒ **Other Commitments to Register Securities.** Except as set forth in this Warrant Agreement and the Investors' Rights' Agreement, You are not, pursuant to the terms of any other agreement currently in existence, under any obligation to register under the 1933 Act any of Your presently outstanding securities or any of Your securities which may hereafter be issued.
- ⇒ **Exempt Transaction.** Subject to the accuracy of Our representations in Section 7 hereof, the issuance of the Warrant Stock upon exercise of this Warrant Agreement will constitute a transaction exempt from (i) the registration requirements of Section 5 of the 1933 Act, in reliance upon Section 4(2) thereof, and (ii) the qualification requirements of the applicable state securities laws.

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- ⇒ **Compliance with Rule 144.** We may sell the Warrant Stock issuable hereunder in compliance with Rule 144 promulgated by the SEC. Within ten (10) days of Our request, You agree to furnish Us, a written statement confirming Your compliance with the filing requirements of the SEC as set forth in such Rule 144, as may be amended.
  - ⇒ **No Impairment.** You agree not to, by amendment of Your Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by You, but shall at all times in good faith assist in carrying out of all the provisions of this Warrant and in taking all such action as may be necessary or appropriate to protect Our rights under this Warrant against impairment. However, You shall not be deemed to have impaired Our rights if You amend Your Certificate of Incorporation, or the holders of Your preferred stock waive their rights thereunder, in a manner that does not (individually or when considered in the context of any other actions being taken in connection with such amendments or waivers) affect Us in a manner different from the effect that such amendments or waivers have on the rights of other holders of the same series and class as the Warrant Stock.

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## 7. OUR REPRESENTATIONS AND COVENANTS TO YOU.

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- ⇒ **Investment Purpose.** The right to acquire Warrant Stock or the Warrant Stock issuable upon exercise of Our rights contained herein and the Common Stock issuable upon conversion will be acquired for investment purposes and not with a view to the sale or distribution of any part thereof, and We have no present intention of selling or engaging in any public distribution of the same in violation of the 1933 Act.
- ⇒ **Private Issue.** We understand (i) that this Warrant Agreement, the Warrant Stock issuable upon exercise of this Warrant Agreement and the Common Stock issuable upon conversion of the Warrant Stock are not registered under the 1933 Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant Agreement will be exempt from the registration and qualifications requirements thereof, and (ii) that Your reliance on such exemption is predicated on the representations set forth in this Section 7.
- ⇒ **Disposition of Our Rights.** In no event will We make a disposition of any of Our rights to acquire Warrant Stock or Warrant Stock issuable upon exercise of such rights or the Common Stock issuable upon conversion of the Warrant Stock unless and until (i) We shall have notified You in writing of the proposed disposition, and (ii) the transferee agrees to be bound in writing to the applicable terms and conditions of this Warrant Agreement, and (iii) if You request, We shall have furnished You with an opinion of counsel satisfactory to You and Your counsel to the effect that (A) appropriate action necessary for compliance with the 1933 Act has been taken, or (B) an exemption from the registration requirements of the 1933 Act is available. Notwithstanding the foregoing, the restrictions imposed upon the transferability of any of Our rights to acquire Warrant Stock or Warrant Stock issuable on the exercise of such rights or the Common Stock issuable upon conversion of the Warrant Stock do not apply to transfers from the beneficial owner of any of the aforementioned securities to its nominee or from such nominee to its beneficial owner, and shall terminate as to any particular share of Warrant Stock when (1) such security shall have been effectively registered under the 1933 Act and sold by the holder thereof in accordance with such registration or (2) such security shall have been sold without registration in compliance with Rule 144 under the 1933 Act, or (3) a letter shall have been issued to You at Our request by the staff of the SEC or a ruling shall have been issued to You at Our request by the SEC stating that no action shall be recommended by such staff or taken by the SEC, as the case may be, if such security is transferred without registration under the 1933 Act in accordance with the conditions set forth in such letter or ruling and such letter or ruling specifies that no subsequent restrictions on transfer are required. Whenever the restrictions imposed hereunder shall terminate, as hereinabove provided, the holder of a share of Warrant Stock then outstanding as to which such restrictions have terminated shall be entitled to receive from You, without expense to such holder, one or more new certificates for the Warrant or for such shares of Warrant Stock not bearing any restrictive legend referring to 1933 Act registration or exemption.
- ⇒ **Financial Risk.** We have such knowledge and experience in financial and business matters and knowledge of Your business affairs and financial condition as to be capable of evaluating the merits and risks of Our investment, and have the ability to bear the economic risks of Our investment.
- ⇒ **Risk of No Registration.** We understand that if You do not register with the SEC pursuant to Section 12 of the Securities Exchange Act of 1934 Act, as amended (the “1934 Act”), or file reports pursuant to Section 15(d), of the

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1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when We desire to sell (i) the rights to purchase Warrant Stock pursuant to this Warrant Agreement, or (ii) the Warrant Stock issuable upon exercise of the right to purchase, or (iii) the Common Stock issuable upon conversion of the Warrant Stock, We may be required to hold such securities for an indefinite period. We also understand that any sale of Our right to purchase Warrant Stock or Warrant Stock or Common Stock issuable upon conversion of the Warrant Stock, which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

- ⇒ **Accredited Investor.** We are an “accredited investor” within the meaning of the Securities and Exchange Rule 501 of Regulation D of the 1933 Act, as presently in effect.

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## 8. NOTICES YOU AGREE TO PROVIDE US.

You agree to give Us at least twenty (20) days prior written notice of the following events:

- ⇒ If You Pay a Dividend or distribution declaration upon your stock.
- ⇒ If You offer for subscription pro-rata to the existing shareholders additional stock or other rights.
- ⇒ If You consummate or sign definitive documents providing for a Merger Event.
- ⇒ If You consummate an IPO.
- ⇒ If You dissolve or liquidate.

All notices in this Section must describe the event in reasonable detail, including how the event adjusts either Our number of shares or Our Exercise Price and the method used for such adjustment.

**Timely Notice.** Your failure to timely provide such notice required above shall entitle Us to retain the benefit of the applicable notice period notwithstanding anything to the contrary contained in any insufficient notice received by Us.

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## 9. DOCUMENTS YOU WILL PROVIDE US.

- ⇒ Certified Resolutions
- ⇒ Certificate of Incorporation
- ⇒ Investor’s Rights Agreement
- ⇒ Bylaws
- ⇒ Other documents as We may from time to time reasonably request.

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## 10. REGISTRATION RIGHTS UNDER THE 1933 ACT.

The shares of Your common stock into which the Warrant Stock is convertible shall have certain incidental or “piggyback” registration rights as set forth in the Third Amended and Restated Investor Rights Agreement, dated as of January 25, 2008 (as amended, the “Investor Rights Agreement”). The provisions set forth in Your Investor Rights Agreement relating to such piggyback registration rights in effect as of the date of this Warrant Agreement may not be amended, modified or waived without Our prior written consent of unless such amendment, modification or waiver affects the piggyback registration rights associated with the shares of common stock into which the Warrant Stock is convertible in the same manner as such amendment, modification, or waiver affects the piggyback registration rights associated with all other shares of the same series and class of stock as the Warrant Stock.

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## **11. OTHER LEGAL PROVISIONS THE PARTIES WILL ABIDE BY.**

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**Effective Date.** This Warrant Agreement shall be construed and shall be given effect in all respects as if it had been executed and delivered by the Parties on the date hereof. This Warrant Agreement shall be binding upon any of the successors or assigns of the Parties.

**Attorney's Fees.** In any litigation, arbitration or court proceeding between the Parties relating to this Warrant Agreement, the prevailing party shall be entitled to attorneys' fees and expenses and all costs of proceedings incurred in enforcing this Warrant Agreement.

**Governing Law.** This Warrant Agreement shall be governed by and construed for all purposes under and in accordance with the laws of the State of California without giving effect to that body of law pertaining to conflicts of laws.

**Consent to Jurisdiction and Venue.** All judicial proceedings arising in or under or related to this Warrant Agreement may be brought in any state or federal court of competent jurisdiction located in the State of California. By execution and delivery of this Warrant Agreement, each party hereto generally and unconditionally: (a) consents to personal jurisdiction in San Mateo County, State of California; (b) waives any objection as to jurisdiction or venue in San Mateo County, State of California; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Warrant Agreement. Service of process on any party hereto in any action arising out of or relating to this agreement shall be effective if given in accordance with the requirements for notice set forth in this Section, and shall be deemed effective and received as set forth therein. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of either party to bring proceedings in the courts of any other jurisdiction.

**Mutual Waiver of Jury Trial; Judicial Reference.** Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and The Parties wish applicable state and federal laws to apply (rather than arbitration rules), The Parties desire that their disputes be resolved by a judge applying such applicable laws. EACH OF THE PARTIES SPECIFICALLY WAIVES ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY YOU AGAINST US OR OUR ASSIGNEE OR BY US OR OUR ASSIGNEE AGAINST YOU. IN THE EVENT THAT THE FOREGOING JURY TRIAL WAIVER IS NOT ENFORCEABLE, ALL CLAIMS, INCLUDING ANY AND ALL QUESTIONS OF LAW OR FACT RELATING THERETO, SHALL, AT THE WRITTEN REQUEST OF ANY PARTY, BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE ("REFERENCE"). THE PARTIES SHALL SELECT A SINGLE NEUTRAL REFEREE, WHO SHALL BE A RETIRED STATE OR FEDERAL JUDGE. IN THE EVENT THAT THE PARTIES CANNOT AGREE UPON A REFEREE, THE REFEREE SHALL BE APPOINTED BY THE COURT. THE REFEREE SHALL REPORT A STATEMENT OF DECISION TO THE COURT. NOTHING IN THIS SECTION SHALL LIMIT THE RIGHT OF ANY PARTY AT ANY TIME TO EXERCISE LAWFUL SELF-HELP REMEDIES, FORECLOSE AGAINST COLLATERAL OR OBTAIN PROVISIONAL REMEDIES. THE PARTIES SHALL BEAR THE FEES AND EXPENSES OF THE REFEREE EQUALLY UNLESS THE REFEREE ORDERS OTHERWISE. THE REFEREE SHALL ALSO DETERMINE ALL ISSUES RELATING TO THE APPLICABILITY, INTERPRETATION, AND ENFORCEABILITY OF THIS SECTION. THE PARTIES ACKNOWLEDGE THAT THE CLAIMS WILL NOT BE ADJUDICATED BY A JURY. This waiver extends to all such Claims, including Claims that involve Persons other than You and Us; Claims that arise out of or are in any way connected to the relationship between You and Us; and any Claims for damages, breach of contract, specific performance, or any equitable or legal relief of any kind, arising out of this Warrant Agreement.

**Counterparts.** This Warrant Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Notices.** Any notice required or permitted under this Warrant Agreement shall be given in writing and shall be deemed effectively given upon the earlier of (1) actual receipt or 3 days after mailing if mailed postage prepaid by regular or airmail to Us or You or (2) one day after it is sent by overnight mail via nationally recognized courier or (3) on the same day as sent via confirmed facsimile transmission, provided that the original is sent by personal delivery or mail by the sending party.

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**Remedies.** In the event of any default hereunder, the non-defaulting party may proceed to protect and enforce its rights either by suit in equity and/or by action at law, including but not limited to an action for damages as a result of any such default, and/or an action for specific performance for any default where such party will not have an adequate remedy at law and where damages will not be readily ascertainable. Each party expressly acknowledges and agrees that there is no adequate remedy at law for any breach of this Warrant Agreement and that in the event of any breach of this Warrant Agreement, the injured party shall be entitled to specific performance of any or all provisions hereof or an injunction prohibiting the other party from continuing to commit any such breach of this Warrant Agreement.

**Survival.** The representations, warranties, covenants, and conditions of the Parties contained herein or made pursuant to this Warrant Agreement shall survive the execution and delivery of this Warrant Agreement.

**Severability.** In the event any one or more of the provisions of this Warrant Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Warrant Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision, which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

**Entire Agreement.** This Warrant Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and undertakings of the Parties, whether oral or written, with respect to such subject matter.

**Amendments.** Any provision of this Warrant Agreement may only be amended by a written instrument signed by the Parties.

**Lost Warrants or Stock Certificates.** You covenant to Us that, upon receipt of evidence reasonably satisfactory to Us of the loss, theft, destruction or mutilation of this Warrant Agreement or any stock certificate and, in the case of any such loss, theft or destruction, upon receipt of an indemnity reasonably satisfactory to You, or in the case of any such mutilation upon surrender and cancellation of such Warrant Agreement or stock certificate, You will make and deliver a new Warrant Agreement or stock certificate, of like tenor, in lieu of the lost, stolen, destroyed or mutilated Warrant Agreement or stock certificate.

**Rights as Stockholders.** We shall not, as a party to this Warrant Agreement, be entitled to vote or receive dividends or be deemed the holder of Series D Preferred Stock or any of Your other securities which may at any time be issuable upon the exercise hereof for any purpose, nor shall anything contained herein be construed to confer upon Us any of the rights of one of Your stockholders or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to receive dividends or subscription rights or otherwise until this Warrant Agreement is exercised and the shares purchasable upon the exercise hereof shall have become deliverable, as provided herein.

**Facsimile Signatures.** This Warrant Agreement may be executed and delivered by facsimile and upon such delivery the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

**(Signature Page to Follow)**

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**IN WITNESS WHEREOF**, each of the Parties have caused this Warrant Agreement to be executed by its officers who are duly authorized as of the Effective Date.

**You:**

**ETSY, INC.**

Signature:



Print Name:

Robert Kalin

Title:

CEO

**Us:**

**TRIPLEPOINT CAPITAL LLC**

Signature:



Print Name:

Sajal Srivastava

Title:

Chief Operating Officer

**[SIGNATURE PAGE TO WARRANT AGREEMENT 0552-W-01]**

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## **EXHIBIT I**

### **NOTICE OF EXERCISE**

**To:** [ \_\_\_\_\_ ]

1. We hereby elect to purchase [ \_\_\_\_ ] shares of the Series D Preferred Stock of Etsy, Inc., pursuant to the terms of the Plain English Warrant Agreement dated the [ \_\_\_\_ ] day of April, 2008 (the “Plain English Warrant Agreement”) between You and Us, We hereby tender here payment of the purchase price for such shares in full, together with all applicable transfer taxes, if any.
2. Method of Exercise (Please initial the applicable blank)
  - a. \_\_\_\_\_ The undersigned elects to exercise the Plain English Warrant Agreement by means of a cash payment, and gives You full payment for the purchase price of the shares being purchased, together with all applicable transfer taxes, if any.
  - b. \_\_\_\_\_ The undersigned elects to exercise the Plain English Warrant Agreement by means of the Net Issuance Exercise method of Section 3 of the Plain English Warrant Agreement.
3. In exercising Our rights to purchase the Series D Preferred Stock of Etsy, Inc., We hereby confirm and acknowledge the investment representations, warranties and covenants made in Section 7 of the Plain English Warrant Agreement.

Please issue a certificate or certificates representing these purchased shares of Series D Preferred Stock in Our name or in such other name as is specified below.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

**US: TRIPLEPOINT CAPITAL LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## **EXHIBIT II**

### **ACKNOWLEDGMENT OF EXERCISE**

Etsy, Inc., hereby acknowledges receipt of the “Notice of Exercise” from TRIPLEPOINT CAPITAL LLC, to purchase [ \_\_\_\_ ] shares of the Series D Preferred Stock of Etsy, Inc., pursuant to the terms of the Plain English Warrant Agreement, and further acknowledges that [ \_\_\_\_ ] shares remain subject to purchase under the terms of the Plain English Warrant Agreement.

**YOU:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## **EXHIBIT III**

### **TRANSFER NOTICE**

**FOR VALUE RECEIVED** , the foregoing Plain English Warrant Agreement and all rights evidenced thereby are hereby transferred and assigned to

(Please Print)

**Whose address is** \_\_\_\_\_

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**Dated:** \_\_\_\_\_

**Holder's Signature:** \_\_\_\_\_

**Holder's Address:** \_\_\_\_\_

**Transferee's Signature:** \_\_\_\_\_

**Transferee's Address:** \_\_\_\_\_

**Signature Guaranteed:** \_\_\_\_\_

**NOTE:** The signature to this Transfer Notice must correspond with the name as it appears on the face of the Plain English Warrant Agreement, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Plain English Warrant Agreement.



THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED (the "1933 ACT"), OR ANY STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO YOU THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE 1933 ACT, OR ANY APPLICABLE STATE SECURITIES LAWS.

## PLAIN ENGLISH WARRANT AGREEMENT

This is a **PLAIN ENGLISH WARRANT AGREEMENT** dated August 9, 2010 by and between ETSY, INC., a Delaware corporation, and TRIPLEPOINT CAPITAL LLC, a Delaware limited liability company.

The words "We", "Us", or "Our" refer to the warrant holder, which is TRIPLEPOINT CAPITAL LLC. The words "You" or "Your" refers to the issuer, which is ETSY, INC., and not to any individual. The words "The Parties" refers to both TRIPLEPOINT CAPITAL LLC and ETSY, INC. This Plain English Warrant Agreement may be referred to as the "Warrant Agreement".

The Parties have entered into a Plain English Master Lease Agreement dated as of May 15, 2008, and related Hardware and Software Facility Schedules and Summary Schedules which are collectively referred to in this Warrant Agreement as the "Lease Agreement". Capitalized terms used herein and not defined shall have the meanings set forth in the Lease Agreement.

In consideration of such Lease Agreement, the Parties agree to the following mutual agreements and conditions set forth below:

WARRANT INFORMATION			
<u>Effective Date</u>	<u>Warrant Number</u>	<u>Lease Facility Schedules</u>	
August 9, 2010	0552-W-02	0552-LE-02H/-02S	
<u>Warrant Coverage</u>	<u>Number of Shares</u>	<u>Price Per Share</u>	<u>Type of Stock</u>
\$75,000 (1.5% of \$5,000,000)	11,312, subject to adjustment as set forth in this Warrant Agreement	\$6.63, subject to adjustment as set forth in this Warrant Agreement	Series D Preferred Stock, subject to adjustment as set forth in this Warrant Agreement

OUR CONTACT INFORMATION		
<u>Name</u>	<u>Address For Notices</u>	<u>Contact Person</u>
TriplePoint Capital LLC	2755 Sand Hill Road, Ste. 150 Menlo Park, CA 94025 Tel: (650) 854-2090 Fax: (650) 854-1850	Sajal Srivastava, COO Tel: (650) 233-2102 Fax: (650) 854-1850 email: legal@triplepointcapital.com
YOUR CONTACT INFORMATION		
<u>Customer Name</u>	<u>Address For Notices</u>	<u>Contact Person</u>
Etsy, Inc.	55 Washington Street, Suite 512 Brooklyn, NY 11201	Sinohe Terrero, V.P. Finance and Controller Tel: (718) 880-3650 Fax: (718) 855-7956 email: sinohe@etsy.com

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## **1. WHAT YOU AGREE TO GRANT US**

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You grant to Us and We are entitled, upon the terms and subject to the conditions set forth in this Warrant Agreement, to purchase from You, at a price per share equal to the Exercise Price, that number of fully paid and non-assessable shares of Your Warrant Stock equal to Seventy Five Thousand Dollars (\$75,000), divided by the Exercise Price.

The number of shares of Warrant Stock and the Exercise Price of such Warrant Stock are subject to adjustment as provided in Section 4 hereof.

For purposes of this Warrant Agreement, the following capitalized terms have the meanings given below:

“Exercise Price” means (a) \$6.63, or (b) if the Next Round closes on or before September 30, 2010, the price per share for which Your preferred stock is sold in the Next Round.

“Next Round” means the next bona fide round of equity financing in which You issue and sell shares of your preferred stock for aggregate gross cash proceeds of at least \$1,000,000 (excluding any amounts received upon conversion or cancellation of indebtedness) subsequent to the Effective Date (anticipated to be Your Series E preferred stock financing), but does not include extensions of Your Series D Preferred Stock equity financing.

“Warrant Stock” means (a) Your Series D Preferred Stock or (b) if the Next Round closes on or before September 30, 2010, the class and series of Your preferred stock issued in the Next Round.

The Parties agree that this Warrant Agreement to purchase the Warrant Stock has a fair market value equal to \$100 and that \$100 of the issue price is included as part of the leased value and will be allocable to the Warrant Agreement and the original issue discount on the Lease Agreement shall be considered to be zero.

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## **2. WHEN ARE WE ENTITLED TO PURCHASE YOUR WARRANT STOCK.**

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The term of this Warrant Agreement and our right to purchase Warrant Stock will begin the Effective Date, and shall be available for (i) the greater of (A) 7 years from the Effective Date or (B) 5 years from the effective date of Your initial public offering or (ii) until terminated by virtue of its automatic exercise pursuant to the next paragraph.

Our right to purchase the Warrant Stock shall automatically be deemed to be exercised in full via the net issuance method in the manner set forth in Section 3, without any further action on behalf of Us upon the occurrence of a Merger Event, with a Person who is not one of Your affiliates in which Your common stock is exchanged for cash and/or stock that is traded on a recognized public exchange or on the NASDAQ National Market, provided that, upon consummation of the Merger Event, the consideration payable to Us pursuant to such exercise and on account of the Warrant Stock consists of (i) cash or (ii) stock that is traded on a recognized public exchange or on the NASDAQ National Market and the total per share consideration is equal to or greater than one and one tenths (1.1) times the aggregate Exercise Price (as adjusted). Not less than ten (10) business days prior to any Merger Event, You shall provide Us with written notice of the proposed Merger Event together with a copy of the executed merger agreement, or other definitive documentation (and all schedules and exhibits thereto). Upon consummation of the Merger Event, You shall promptly provide Us with (a) a copy of any modifications or amendments to the executed merger agreement, (b) any other documents in connection therewith, and, (c) upon request, by Us any other information reasonably necessary to an informed evaluation of Our rights under this Warrant Agreement.

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## **3. HOW WE MAY PURCHASE YOUR WARRANT STOCK.**

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We may exercise Our purchase rights, in whole or in part, at any time, or from time to time, after September 30, 2010 and prior to the expiration of the term of this Warrant Agreement, by giving You a completed and executed **Notice of Exercise** in the form attached as **Exhibit I**; **provided, however**, We may exercise Our purchase rights, in whole or in part, in connection with any Merger Event or initial public offering consummated prior to September 30, 2010. Promptly upon receipt of the Notice of Exercise and in any event no later than twenty-one (21) days after you have received Our Notice of Exercise and payment of the aggregate Exercise Price for the shares purchased, You will issue to Us a certificate for the number of shares of Warrant Stock that We have purchased and You will execute the **Acknowledgment of Exercise** in the form attached hereto as **Exhibit II** indicating the number of shares which will be available to Us for future purchases, if any.

We may pay for the Warrant Stock by either (i) cash or check, or (ii) by the **net issuance method** as determined below. If We elect the Net Issuance method, You will issue Warrant Stock using the following formula:

$$X = \frac{Y(A-B)}{A}$$

**Where :**

- X = the number of shares of Warrant Stock to be issued to Us.
- Y = the number of shares of Warrant Stock We request to be exercised under this Warrant Agreement.
- A = the fair market value of one share of Warrant Stock.
- B = the Exercise Price.

For purposes of the above calculation, current fair market value of Warrant Stock shall mean with respect to each share of Warrant Stock:

**If the exercise is in connection with and effective at or before the closing of the initial public offering of Your Common Stock , and if Your registration statement relating to such public offering has been declared effective by the Securities and Exchange Commission (the “SEC”), then the fair market value per share shall be the product of (x) the initial “Price to Public” specified in the final prospectus of the offering and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible at the time of such exercise;**

**If this Warrant Agreement is exercised after, and not in connection with the Your initial public offering, and :**

- ⇒ if traded on a securities exchange, the fair market value shall be the product of (x) the average of the closing prices over a five (5) day period ending three (3) days before the day the current fair market value of the securities is being determined and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible at the time of such exercise; or
- ⇒ if actively traded over-the-counter, the fair market value shall be the product of (x) the average of the closing bid and asked prices quoted on the NASDAQ system (or similar system) over the five (5) day period ending three (3) days before the day the current fair market value of the securities is being determined and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible at the time of such exercise.

**If this Warrant Agreement is exercised prior to or after Your initial public offering, and:**

- ⇒ Your Common Stock is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the current fair market value of Warrant Stock shall be the product of (x) the fair market value of a share of Your Common Stock (the highest price per share which You could obtain from a willing buyer (not a current employee or director) for shares of Common Stock sold, from authorized but unissued shares), as determined in good faith by Your Board of Directors and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible at the time of such exercise, unless You shall become subject to a merger, acquisition or other consolidation pursuant to which You are not the surviving party, in which case the fair market value of Warrant Stock shall be deemed to be the value received by the holders of the Your Warrant Stock on a common equivalent basis pursuant to such merger or acquisition or other consolidation.

On the earlier to occur of (i) the closing of the Next Round and (ii) September 30, 2010, and at all times from and after such date until the end of the term of the Warrant Agreement, You will have authorized and reserved a sufficient number of shares of (a) Warrant Stock to provide for the exercise of our rights to purchase Warrant Stock, and (b) Common Stock to provide for the conversion of the Warrant Stock. In addition, if a Merger Event or initial public offering is anticipated to be consummated prior to September 30, 2010, within five (5) days of signing an acquisition agreement or filing for an initial public offering, and at all times from and after such date until the end of the term of the Warrant Agreement, You will have authorized and reserved a sufficient number of shares of Warrant Stock to provide for the exercise of our rights to purchase Warrant Stock, and (b) Common Stock to provide for the conversion of the Warrant Stock.

If We elect to exercise part of the Warrant Agreement, You will promptly issue to Us an amended Warrant Agreement stating the remaining number of shares that are available. All other terms and conditions of that amended Warrant Agreement shall be identical to those contained in this Warrant Agreement.

If at the end of the term of this Warrant Agreement, the fair market value of one share of Warrant Stock (or other security issuable upon the exercise hereof) as determined in accordance herewith is greater than the Exercise Price in effect on such date, then this Warrant Agreement shall automatically be deemed on and as of such date to be converted pursuant hereto as to all shares of Warrant Stock (or such other securities) for which it shall not previously have been exercised or converted, and You shall promptly deliver a certificate representing the shares of Warrant Stock (or such other securities) issued upon such conversion to Us.

#### **4. WHEN WILL THE NUMBER OF SHARES AND EXERCISE PRICE CHANGE.**

- ⇒ **If You are Acquired.** If at any time: (i) there is a reorganization of Your stock (other than a reclassification, exchange or subdivision of Your stock otherwise provided for in this Warrant Agreement); (ii) You merge or consolidate with or into another entity, whether or not You are the surviving entity; (iii) You sell or convey, or grant an exclusive license with respect to, all or substantially all of Your assets to any other person; or (iv) there occurs any transaction or series of related transactions that result in the transfer of fifty percent (50%) or more of the outstanding voting power of the capital stock of You (each of the foregoing events are referred to as a “Merger Event”), then, as a part of such Merger Event, lawful provision shall be made so that We shall thereafter be entitled to receive, upon exercise of Our rights under this Warrant Agreement, the number of shares of preferred stock or other securities of the successor or surviving person resulting from such Merger Event, equal in value to that which would have been issuable if We had exercised Our rights under this Warrant Agreement immediately prior to the Merger Event. In any such case, appropriate adjustment (as determined in good faith by the Your Board of Directors) shall be made in the application of the provisions of this Warrant Agreement with respect to Our rights and interest after the Merger Event so that the provisions of this Warrant Agreement (including adjustments of the Exercise Price and number of shares of Warrant Stock purchasable) shall be applicable to the greatest extent possible.
- ⇒ **If You Reclassify Your Stock.** If at any time You combine, reclassify, exchange or subdivide Your securities or otherwise, change any of the securities as to which purchase rights under this Warrant Agreement exist into the same or a different number of securities of any other class or classes, this Warrant Agreement will thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities which were subject to the purchase rights under this Warrant Agreement immediately prior to such combination, reclassification, exchange, subdivision or other change.
- ⇒ **If You Subdivide or Combine Your Shares.** If at any time You combine or subdivide Your Warrant Stock, the Exercise Price will be proportionately decreased in the case of a subdivision, or proportionately increased in the case of a combination.
- ⇒ **If You Pay Stock Dividends.** If at any time You pay a dividend payable in, or make any other distribution (except any distribution specifically provided for in the above paragraphs) of Your Warrant Stock, then the Exercise Price shall be adjusted, from and after the record date of such dividend or distribution, to that price determined by multiplying the Exercise Price in effect immediately prior to such record date by a fraction (i) the numerator of which shall be the total number of all shares of Your Warrant Stock outstanding immediately prior to such dividend or distribution, and (ii) the denominator of which shall be the total number of all shares of Your Warrant Stock outstanding immediately after such dividend or distribution. We will thereafter be entitled to purchase, at the Exercise Price resulting from such adjustment, the number of shares of Warrant Stock (calculated to the nearest whole share) obtained by multiplying the Exercise Price in effect immediately prior to such adjustment by the number of shares of Warrant Stock issuable upon the exercise hereof immediately prior to such adjustment and dividing the product thereof by the Exercise Price resulting from such adjustment.
- ⇒ **If You Change the Antidilution Rights of the Warrant Stock or Issue New Preferred or Convertible Stock.** All antidilution rights applicable to the Warrant Stock purchasable under this Warrant Agreement are as set forth in Your Certificate of Incorporation, as amended through the Effective Date. You will promptly provide Us with any restatement, amendment, modification of or waiver of any right under Your Certificate of Incorporation. You will provide Us with prior written notice of any issuance of Your stock or other equity security to occur after the Effective Date (other than issuances of stock or equity securities pursuant to customary employee stock plans), which notice shall include (a) the price at which such stock or security is to be sold, (b) the number of shares to be issued, and (c) such other information as necessary for Us to determine if a dilutive event has occurred or will occur as a result of such issuance.

- ⇒ **If You Lease More Than the Commitment Amounts Under the Lease Agreement.** If the total cost of equipment leased pursuant to Part 1 of the Lease Agreement exceeds \$5,000,000, We will have the right to purchase from You, at the Exercise Price (adjusted as set forth herein), an additional number of shares of Warrant Stock, which number shall be determined by (i) multiplying the amount by which the equipment cost financed under the Lease Agreement exceeds \$5,000,000 by 1.5%, and (ii) dividing the product by the Exercise Price per share referenced in Section 1 above.

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## 5. WE CAN TRANSFER THIS PLAIN ENGLISH WARRANT AGREEMENT.

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Subject to the terms and conditions contained in Section 7, We (or any successor transferee) may transfer in whole or in part this Warrant Agreement and all its rights. You will record the transfer on Your books when You receive Our Notice of Transfer in the form attached hereto as Exhibit III, and Our payment of all transfer taxes and other governmental charges involved in such transfer.

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## 6. REPRESENTATIONS, WARRANTIES, AND COVENANTS FROM YOU.

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- ⇒ **Reservation of Warrant Stock.** The Warrant Stock issuable upon exercise of Our rights under this Warrant Agreement will be duly and validly reserved and when issued in accordance with the provisions of this Warrant Agreement will be validly issued, fully paid and non-assessable, and will be free of any taxes, liens, charges or encumbrances of any nature whatsoever; **provided , however** , that the Warrant Stock issuable pursuant to this Warrant Agreement may be subject to restrictions on transfer under state and/or Federal securities laws. Upon Our exercise, You will issue to Us certificates for shares of Warrant Stock without charging Us any tax, or other cost incurred by You in connection with such exercise and the related issuance of shares of Warrant Stock. You will not be required to pay any tax, which may be payable in respect of any transfer involving the Warrant Stock and the issuance and delivery of any certificate in a name other than TriplePoint Capital LLC.
- ⇒ **Due Authority.** Except for the reservation of the Warrant Stock issuable upon exercise of the Warrant Agreement (which shall be reserved on the earlier to occur of (i) the closing of the Next Round and (ii) September 30, 2010), Your execution and delivery of this Warrant Agreement and the performance of Your obligations hereunder, including the issuance to Us of the right to acquire the shares of Warrant Stock, have been duly authorized by all necessary corporate action on Your part and this Warrant Agreement is not inconsistent with the Your Certificate of Incorporation or Bylaws, does not contravene any law or governmental rule, regulation or order applicable to it, does not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which You are a party or by which You are bound, and this Warrant Agreement constitutes a legal, valid and binding agreement, enforceable in accordance with its respective terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and the rules of law or principles at equity governing specific performance, injunctive relief and other equitable remedies.
- ⇒ **Consents and Approvals.** No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of any state, Federal or other governmental authority or agency is required with respect to execution, delivery and Your performance of Your obligations under this Warrant Agreement, except for the filing of any required notices pursuant to Federal and state securities laws, which filings will be effective by the times required thereby.
- ⇒ **Issued Securities.** All of Your issued and outstanding shares of Common Stock, Warrant Stock or any other securities have been duly authorized and validly issued and are fully paid and nonassessable, All outstanding shares of Common Stock and Warrant Stock were issued in full compliance with all Federal and state securities laws. In addition as of the Effective Date:

As of the date of this Warrant Agreement, your authorized capital consists of (A) 18,200,000 shares of Common Stock, of which 5,722,185 shares are issued and outstanding, and (B) 9,907,839 shares of preferred stock. Of the authorized shares of preferred stock, (i) 1,400,000 shares are designated Series A Preferred Stock, of which 792,913 shares are issued and outstanding, (ii) 1,570,873 shares are designated Series A-1 Preferred Stock, all of which shares are issued and outstanding, (iii) 1,250,000 shares are designated Series B Preferred Stock, of which 1,128,431 shares are issued and outstanding, (iv) 1,243,447 shares are designated Series C Preferred Stock, of which 1,217,230 shares are issued and outstanding, (v) 3,431,522 shares are designated Series D Preferred Stock, of which 3,407,012 shares are issued and outstanding, (vi) 808,598 shares are designated Series D-1 Preferred Stock, all of which shares are issued and outstanding and (vii) 203,399 shares are designated Series 1 Preferred Stock, all of which shares are issued and outstanding.

As of the date of this Warrant Agreement, you have reserved (a) 9,907,839 shares of Common Stock issuable upon conversion of the preferred stock, (b) 2,373,188 shares of Common Stock for issuance under Your Stock Incentive Plan, under which (i) 1,237,344 options are outstanding, (ii) 631,450 options remain available for grant and (iii) 504,394 options have been exercised, (b) 16,854 shares of Series C Preferred Stock for issuance upon exercise of outstanding warrants to purchase Series C Preferred Stock and (c) 24,510 shares of Series D Preferred Stock for issuance upon exercise of outstanding warrants to purchase Series D Preferred Stock. Except as otherwise provided in this Warrant Agreement and as noted above, there are no other options, warrants, conversion privileges or other rights presently outstanding to purchase or otherwise acquire any authorized but unissued shares of the Your capital stock or other of Your securities.

Except as set forth in Your Investor's Rights Agreement, a true, correct and complete copy of which has been delivered to Us prior to the issuance of this Warrant, Your stockholders do not have preemptive rights to purchase new issuances of Your capital stock.

- ⇒ **Other Commitments to Register Securities.** Except as set forth in this Warrant Agreement and the Investors' Rights' Agreement, You are not, pursuant to the terms of any other agreement currently in existence, under any obligation to register under the 1933 Act any of Your presently outstanding securities or any of Your securities which may hereafter be issued.
- ⇒ **Exempt Transaction.** Subject to the accuracy of Our representations in Section 7 hereof, the issuance of the Warrant Stock upon exercise of this Warrant Agreement will constitute a transaction exempt from (i) the registration requirements of Section 5 of the 1933 Act, in reliance upon Section 4(2) thereof, and (ii) the qualification requirements of the applicable state securities laws.
- ⇒ **Compliance with Rule 144.** We may sell the Warrant Stock issuable hereunder in compliance with Rule 144 promulgated by the SEC. Within ten (10) days of Our request, You agree to furnish Us, a written statement confirming Your compliance with the filing requirements of the SEC as set forth in such Rule 144, as may be amended.
- ⇒ **No Impairment.** You agree not to, by amendment of Your Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by You, but shall at all times in good faith assist in carrying out of all the provisions of this Warrant and in taking all such action as may be necessary or appropriate to protect Our rights under this Warrant against impairment. However, You shall not be deemed to have impaired Our rights if You amend Your Certificate of Incorporation, or the holders of Your preferred stock waive their rights thereunder, in a manner that does not (individually or when considered in the context of any other actions being taken in connection with such amendments or waivers) affect Us in a manner different from the effect that such amendments or waivers have on the rights of other holders of the same series and class as the Warrant Stock.

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## 7. OUR REPRESENTATIONS AND COVENANTS TO YOU.

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- ⇒ **Investment Purpose.** The right to acquire Warrant Stock or the Warrant Stock issuable upon exercise of Our rights contained herein and the Common Stock issuable upon conversion will be acquired for investment purposes and not with a view to the sale or distribution of any part thereof, and We have no present intention of selling or engaging in any public distribution of the same in violation of the 1933 Act.
- ⇒ **Private Issue.** We understand (i) that this Warrant Agreement, the Warrant Stock issuable upon exercise of this Warrant Agreement and the Common Stock issuable upon conversion of the Warrant Stock are not registered under the 1933 Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant Agreement will be exempt from the registration and qualifications requirements thereof, and (ii) that Your reliance on such exemption is predicated on the representations set forth in this Section 7.
- ⇒ **Disposition of Our Rights.** In no event will We make a disposition of any of Our rights to acquire Warrant Stock or Warrant Stock issuable upon exercise of such rights or the Common Stock issuable upon conversion of the Warrant

Stock unless and until (i) We shall have notified You in writing of the proposed disposition, and (ii) the transferee agrees to be bound in writing to the applicable terms and conditions of this Warrant Agreement, and (iii) if You request, We shall have furnished You with an opinion of counsel satisfactory to You and Your counsel to the effect that (A) appropriate action necessary for compliance with the 1933 Act has been taken, or (B) an exemption from the registration requirements of the 1933 Act is available. Notwithstanding the foregoing, the restrictions imposed upon the transferability of any of Our rights to acquire Warrant Stock or Warrant Stock issuable on the exercise of such rights or the Common Stock issuable upon conversion of the Warrant Stock do not apply to transfers from the beneficial owner of any of the aforementioned securities to its nominee or from such nominee to its beneficial owner, and shall terminate as to any particular share of Warrant Stock when (1) such security shall have been effectively registered under the 1933 Act and sold by the holder thereof in accordance with such registration or (2) such security shall have been sold without registration in compliance with Rule 144 under the 1933 Act, or (3) a letter shall have been issued to You at Our request by the staff of the SEC or a ruling shall have been issued to You at Our request by the SEC stating that no action shall be recommended by such staff or taken by the SEC, as the case may be, if such security is transferred without registration under the 1933 Act in accordance with the conditions set forth in such letter or ruling and such letter or ruling specifies that no subsequent restrictions on transfer are required. Whenever the restrictions imposed hereunder shall terminate, as hereinabove provided, the holder of a share of Warrant Stock then outstanding as to which such restrictions have terminated shall be entitled to receive from You, without expense to such holder, one or more new certificates for the Warrant or for such shares of Warrant Stock not bearing any restrictive legend referring to 1933 Act registration or exemption.

- ⇒ **Financial Risk.** We have such knowledge and experience in financial and business matters and knowledge of Your business affairs and financial condition as to be capable of evaluating the merits and risks of Our investment, and have the ability to bear the economic risks of Our investment.
- ⇒ **Risk of No Registration.** We understand that if You do not register with the SEC pursuant to Section 12 of the Securities Exchange Act of 1934 Act, as amended (the “1934 Act”), or file reports pursuant to Section 15(d), of the 1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when We desire to sell (i) the rights to purchase Warrant Stock pursuant to this Warrant Agreement, or (ii) the Warrant Stock issuable upon exercise of the right to purchase, or (iii) the Common Stock issuable upon conversion of the Warrant Stock, We may be required to hold such securities for an indefinite period. We also understand that any sale of Our right to purchase Warrant Stock or Warrant Stock or Common Stock issuable upon conversion of the Warrant Stock, which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.
- ⇒ **Accredited Investor.** We are an “accredited investor” within the meaning of the Securities and Exchange Rule 501 of Regulation D of the 1933 Act, as presently in effect.

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## 8. NOTICES YOU AGREE TO PROVIDE US.

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You agree to give Us at least twenty (20) days prior written notice of the following events:

- ⇒ If You Pay a Dividend or distribution declaration upon your stock.
- ⇒ If You offer for subscription pro-rata to the existing shareholders additional stock or other rights.
- ⇒ If You consummate or sign definitive documents providing for a Merger Event.
- ⇒ If You consummate an IPO.
- ⇒ If You dissolve or liquidate.

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All notices in this Section must describe the event in reasonable detail, including how the event adjusts either Our number of shares or Our Exercise Price and the method used for such adjustment.

**Timely Notice.** Your failure to timely provide such notice required above shall entitle Us to retain the benefit of the applicable notice period notwithstanding anything to the contrary contained in any insufficient notice received by Us.

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## 9. DOCUMENTS YOU WILL PROVIDE US.

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- ⇒ Certified Resolutions
- ⇒ Certificate of Incorporation
- ⇒ Investor's Rights Agreement
- ⇒ Bylaws
- ⇒ Other documents as We may from time to time reasonably request.

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## 10. REGISTRATION RIGHTS UNDER THE 1933 ACT.

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The shares of Your common stock into which the Warrant Stock is convertible shall have certain incidental or "piggyback" registration rights as set forth in the Fourth Amended and Restated Investor Rights Agreement, dated as of December 16, 2009 (as may be amended from time to time, the "Investor Rights Agreement"). The provisions set forth in Your Investor Rights Agreement relating to such piggyback registration rights in effect as of the date of this Warrant Agreement may not be amended, modified or waived without Our prior written consent of unless such amendment, modification or waiver affects the piggyback registration rights associated with the shares of common stock into which the Warrant Stock is convertible in the same manner as such amendment, modification, or waiver affects the piggyback registration rights associated with all other shares of the same series and class of stock as the Warrant Stock.

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## 11. OTHER LEGAL PROVISIONS THE PARTIES WILL ABIDE BY.

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**Effective Date.** This Warrant Agreement shall be construed and shall be given effect in all respects as if it had been executed and delivered by the Parties on the date hereof. This Warrant Agreement shall be binding upon any of the successors or assigns of the Parties.

**Attorney's Fees.** In any litigation, arbitration or court proceeding between the Parties relating to this Warrant Agreement, the prevailing party shall be entitled to attorneys' fees and expenses and all costs of proceedings incurred in enforcing this Warrant Agreement.

**Governing Law.** This Warrant Agreement shall be governed by and construed for all purposes under and in accordance with the laws of the State of California without giving effect to that body of law pertaining to conflicts of laws.

**Consent to Jurisdiction and Venue.** All judicial proceedings arising in or under or related to this Warrant Agreement may be brought in any state or federal court of competent jurisdiction located in the State of California. By execution and delivery of this Warrant Agreement, each party hereto generally and unconditionally: (a) consents to personal jurisdiction in San Mateo County, State of California; (b) waives any objection as to jurisdiction or venue in San Mateo County, State of California; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Warrant Agreement. Service of process on any party hereto in any action arising out of or relating to this agreement shall be effective if given in accordance with the requirements for notice set forth in this Section, and shall be deemed effective and received as set forth therein. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of either party to bring proceedings in the courts of any other jurisdiction.

**Mutual Waiver of Jury Trial; Judicial Reference.** Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and The Parties wish applicable state and federal laws to apply (rather than arbitration rules), The Parties desire that their disputes be resolved by

a judge applying such applicable laws. EACH OF THE PARTIES SPECIFICALLY WAIVES ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, “CLAIMS”) ASERTED BY YOU AGAINST US OR OUR ASSIGNEE OR BY US OR OUR ASSIGNEE AGAINST YOU. IN THE EVENT THAT THE FOREGOING JURY TRIAL WAIVER IS NOT ENFORCEABLE, ALL CLAIMS, INCLUDING ANY AND ALL QUESTIONS OF LAW OR FACT, RELATING THERETO, SHALL, AT THE WRITTEN REQUEST OF ANY PARTY, BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE (“REFERENCE”). THE PARTIES SHALL SELECT A SINGLE NEUTRAL REFEREE, WHO SHALL BE A RETIRED STATE OR FEDERAL JUDGE. IN THE EVENT THAT THE PARTIES CANNOT AGREE UPON A REFEREE, THE REFEREE SHALL BE APPOINTED BY THE COURT. THE REFEREE SHALL REPORT A STATEMENT OF DECISION TO THE COURT. NOTHING IN THIS SECTION SHALL LIMIT THE RIGHT OF ANY PARTY AT ANY TIME TO EXERCISE LAWFUL SELF-HELP REMEDIES, FORECLOSE AGAINST COLLATERAL OR OBTAIN PROVISIONAL REMEDIES. THE PARTIES SHALL BEAR THE FEES AND EXPENSES OF THE REFEREE EQUALLY UNLESS THE REFEREE ORDERS OTHERWISE. THE REFEREE SHALL ALSO DETERMINE ALL ISSUES RELATING TO THE APPLICABILITY, INTERPRETATION, AND ENFORCEABILITY OF THIS SECTION. THE PARTIES ACKNOWLEDGE THAT THE CLAIMS WILL NOT BE ADJUDICATED BY A JURY. This waiver extends to all such Claims, including Claims that involve Persons other than You and Us; Claims that arise out of or are in any way connected to the relationship between You and Us; and any Claims for damages, breach of contract, specific performance, or any equitable or legal relief of any kind, arising out of this Warrant Agreement.

**Counterparts.** This Warrant Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Notices.** Any notice required or permitted under this Warrant Agreement shall be given in writing and shall be deemed effectively given upon the earlier of (1) actual receipt or 3 days after mailing if mailed postage prepaid by regular or airmail to Us or You or (2) one day after it is sent by overnight mail via nationally recognized courier or (3) on the same day as sent via confirmed facsimile transmission, provided that the original is sent by personal delivery or mail by the sending party.

**Remedies.** In the event of any default hereunder, the non-defaulting party may proceed to protect and enforce its rights either by suit in equity and/or by action at law, including but not limited to an action for damages as a result of any such default, and/or an action for specific performance for any default where such party will not have an adequate remedy at law and where damages will not be readily ascertainable. Each party expressly acknowledges and agrees that there is no adequate remedy at law for any breach of this Warrant Agreement and that in the event of any breach of this Warrant Agreement, the injured party shall be entitled to specific performance of any or all provisions hereof or an injunction prohibiting the other party from continuing to commit any such breach of this Warrant Agreement.

**Survival.** The representations, warranties, covenants, and conditions of the Parties contained herein or made pursuant to this Warrant Agreement shall survive the execution and delivery of this Warrant Agreement.

**Severability.** In the event any one or more of the provisions of this Warrant Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Warrant Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision, which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

**Entire Agreement.** This Warrant Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and undertakings of the Parties, whether oral or written, with respect to such subject matter.

**Amendments.** Any provision of this Warrant Agreement may only be amended by a written instrument signed by the Parties.

**Lost Warrants or Stock Certificates.** You covenant to Us that, upon receipt of evidence reasonably satisfactory to Us of the loss, theft, destruction or mutilation of this Warrant Agreement or any stock certificate and, in the case of any such loss, theft or destruction, upon receipt of an indemnity reasonably satisfactory to You, or in the case of any such mutilation upon surrender and cancellation of such Warrant Agreement or stock certificate. You will make and deliver a new Warrant Agreement or stock certificate, of like tenor, in lieu of the lost, stolen, destroyed or mutilated Warrant Agreement or stock certificate.

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**Rights as Stockholders.** We shall not, as a party to this Warrant Agreement, be entitled to vote or receive dividends or be deemed the holder of Warrant Stock or any of Your other securities which may at any time be issuable upon the exercise hereof for any purpose, nor shall anything contained herein be construed to confer upon Us any of the rights of one of Your stockholders or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to receive dividends or subscription rights or otherwise until this Warrant Agreement is exercised and the shares purchasable upon the exercise hereof shall have become deliverable, as provided herein.

**Facsimile Signatures.** This Warrant Agreement may be executed and delivered by facsimile and upon such delivery the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

**(Signature Page to Follow)**

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**IN WITNESS WHEREOF**, each of the Parties have caused this Warrant Agreement to be executed by its officers who are duly authorized as of the Effective Date.

You: **ETSY, INC.**  
Signature:   
Print Name: Robert Kalin  
Title: CEO

Us: **TRIPLEPOINT CAPITAL LLC**  
Signature:   
Print Name: Jim Labe  
Title: CEO

[SIGNATURE PAGE TO WARRANT AGREEMENT 0552-W-02]

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## EXHIBIT I

### NOTICE OF EXERCISE

**To:** [ \_\_\_\_\_ ]

1. We hereby elect to purchase [ \_\_\_\_ ] shares of the Series [ \_\_ ] Preferred Stock of Etsy, Inc., pursuant to the terms of the Plain English Warrant Agreement dated the 9<sup>th</sup> day of August, 2010 (the "Plain English Warrant Agreement") between You and Us, We hereby tender here payment of the purchase price for such shares in full, together with all applicable transfer taxes, if any.
2. Method of Exercise (Please initial the applicable blank)
  - a. \_\_\_\_\_ The undersigned elects to exercise the Plain English Warrant Agreement by means of a cash payment, and gives You full payment for the purchase price of the shares being purchased, together with all applicable transfer taxes, if any.
  - b. \_\_\_\_\_ The undersigned elects to exercise the Plain English Warrant Agreement by means of the Net Issuance Exercise method of Section 3 of the Plain English Warrant Agreement.
3. In exercising Our rights to purchase the Series [ \_\_ ] Preferred Stock of Etsy, Inc., We hereby confirm and acknowledge the investment representations, warranties and covenants made in Section 7 of the Plain English Warrant Agreement.

Please issue a certificate or certificates representing these purchased shares of Series [ \_\_ ] Preferred Stock in Our name or in such other name as is specified below.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

**US: TRIPLEPOINT CAPITAL LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## **EXHIBIT II**

### **ACKNOWLEDGMENT OF EXERCISE**

Etsy, Inc., hereby acknowledges receipt of the “Notice of Exercise” from TRIPLEPOINT CAPITAL LLC, to purchase [ \_\_\_\_ ] shares of the Series [ \_\_ ] Preferred Stock of Etsy, Inc., pursuant to the terms of the Plain English Warrant Agreement, and further acknowledges that [ \_\_\_\_ ] shares remain subject to purchase under the terms of the Plain English Warrant Agreement.

**YOU:** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## **EXHIBIT III**

### **TRANSFER NOTICE**

**FOR VALUE RECEIVED** , the foregoing Plain English Warrant Agreement and all rights evidenced thereby are hereby transferred and assigned to

(Please Print)

**Whose address is** \_\_\_\_\_

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**Dated:** \_\_\_\_\_

**Holder's Signature:** \_\_\_\_\_

**Holder's Address:** \_\_\_\_\_

**Transferee's Signature:** \_\_\_\_\_

**Transferee's Address:** \_\_\_\_\_

**Signature Guaranteed:** \_\_\_\_\_

**NOTE:** The signature to this Transfer Notice must correspond with the name as it appears on the face of the Plain English Warrant Agreement, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Plain English Warrant Agreement.

**E TSY, INC.**

**2006 STOCK PLAN**

**ADOPTED BY BOARD OF DIRECTORS ON MAY 17, 2006**

**APPROVED BY STOCKHOLDERS ON JUNE 1, 2006**

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# **E TSY, INC. 2006 STOCK PLAN**

## **SECTION 1. ESTABLISHMENT AND PURPOSE .**

The purpose of the Plan is to offer selected persons an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, by purchasing Shares of the Company's Stock. The Plan provides both for the direct award or sale of Shares and for the grant of Options to purchase Shares. Options granted under the Plan may include Nonstatutory Options as well as ISOs intended to qualify under Section 422 of the Code.

Capitalized terms are defined in Section 12.

## **SECTION 2. ADMINISTRATION .**

**(a) Committees of the Board of Directors .** The Plan may be administered by one or more Committees. Each Committee shall consist of one or more members of the Board of Directors who have been appointed by the Board of Directors. Each Committee shall have such authority and be responsible for such functions as the Board of Directors has assigned to it. If no Committee has been appointed, the entire Board of Directors shall administer the Plan. Any reference to the Board of Directors in the Plan shall be construed as a reference to the Committee (if any) to whom the Board of Directors has assigned a particular function.

**(b) Authority of the Board of Directors .** Subject to the provisions of the Plan, the Board of Directors shall have full authority and discretion to take any actions it deems necessary or advisable for the administration of the Plan. All decisions, interpretations and other actions of the Board of Directors shall be final and binding on all Purchasers, all Optionees and all persons deriving their rights from a Purchaser or Optionee.

## **SECTION 3. ELIGIBILITY .**

**(a) General Rule .** Only Employees, Outside Directors and Consultants shall be eligible for the grant of Nonstatutory Options or the direct award or sale of Shares. Only Employees shall be eligible for the grant of ISOs.

**(b) Ten-Percent Stockholders .** A person who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Company, its Parent or any of its Subsidiaries shall not be eligible for the grant of an ISO unless (i) the Exercise Price is at least 110% of the Fair Market Value of a Share on the date of grant and (ii) such ISO by its terms is not exercisable after the expiration of five years from the date of grant. For purposes of this Subsection (b), in determining stock ownership, the attribution rules of Section 424(d) of the Code shall be applied.

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## **SECTION 4. STOCK SUBJECT TO PLAN .**

**(a) Basic Limitation .** Not more than 1,279,127 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares.

**(b) Additional Shares .** In the event that Shares previously issued under the Plan are reacquired by the Company, such Shares shall be added to the number of Shares then available for issuance under the Plan. In the event that an outstanding Option or other right for any reason expires or is canceled, the Shares allocable to the unexercised portion of such Option or other right shall be added to the number of Shares then available for issuance under the Plan.

## **SECTION 5. TERMS AND CONDITIONS OF AWARDS OR SALES .**

**(a) Stock Purchase Agreement .** Each award or sale of Shares under the Plan (other than upon exercise of an Option) shall be evidenced by a Stock Purchase Agreement between the Purchaser and the Company. Such award or sale shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Purchase Agreement. The provisions of the various Stock Purchase Agreements entered into under the Plan need not be identical.

**(b) Duration of Offers and Nontransferability of Rights .** Any right to acquire Shares under the Plan (other than an Option) shall automatically expire if not exercised by the Purchaser within 30 days after the grant of such right was communicated to the Purchaser by the Company. Such right shall not be transferable and shall be exercisable only by the Purchaser to whom such right was granted.

**(c) Purchase Price .** The Purchase Price of Shares to be offered under the Plan, if newly issued, shall not be less than the par value of such Shares. Subject to the preceding sentence, the Board of Directors shall determine the Purchase Price at its sole discretion. The Purchase Price shall be payable in a form described in Section 7.

**(d) Withholding Taxes .** As a condition to the purchase of Shares, the Purchaser shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such purchase.

**(e) Restrictions on Transfer of Shares .** Any Shares awarded or sold under the Plan shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Purchase Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally. A Stock Purchase Agreement may provide for accelerated vesting in the event of the Purchaser's death, disability or retirement or other events.

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## **SECTION 6. TERMS AND CONDITIONS OF OPTIONS .**

**(a) Stock Option Agreement .** Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Option Agreement. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical.

**(b) Number of Shares .** Each Stock Option Agreement shall specify the number of Shares that are subject to the Option and shall provide for the adjustment of such number in accordance with Section 8. The Stock Option Agreement shall also specify whether the Option is an ISO or a Nonstatutory Option.

**(c) Exercise Price .** Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of an ISO shall not be less than 100% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be required by Section 3(b). The Exercise Price of a Nonstatutory Option shall not be less than 100% of the Fair Market Value of a Share on the date of grant. Subject to the preceding two sentences, the Exercise Price under an Option shall be determined by the Board of Directors at its sole discretion. The Exercise Price shall be payable in a form described in Section 7.

**(d) Exercisability .** Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable. No Option shall be exercisable unless the Optionee has delivered an executed copy of the Stock Option Agreement to the Company. The Board of Directors shall determine the exercisability provisions of any Stock Option Agreement at its sole discretion. All of an Optionee's Options shall become exercisable in full if Section 8(b)(iv) applies.

**(e) Term .** The Stock Option Agreement shall specify the term of the Option. The term shall not exceed 10 years from the date of grant, and in the case of an ISO a shorter term may be required by Section 3(b). Subject to the preceding sentence, the Board of Directors at its sole discretion shall determine when an Option is to expire. A Stock Option Agreement may provide for expiration prior to the end of its term in the event of the termination of the Optionee's Service or death.

**(f) Restrictions on Transfer of Shares .** Any Shares issued upon exercise of an Option shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Option Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally.

**(g) Transferability of Options .** An Option shall be transferable by the Optionee only by (i) a beneficiary designation, (ii) a will or (iii) the laws of descent and

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distribution, except as provided in the next sentence. If the applicable Stock Option Agreement so provides, a Nonstatutory Option shall also be transferable by gift or domestic relations order to a Family Member of the Optionee. An ISO may be exercised during the lifetime of the Optionee only by the Optionee or by the Optionee's guardian or legal representative.

**(h) Withholding Taxes .** As a condition to the exercise of an Option, the Optionee shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such exercise. The Optionee shall also make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the disposition of Shares acquired by exercising an Option.

**(i) No Rights as a Stockholder .** An Optionee, or a transferee of an Optionee, shall have no rights as a stockholder with respect to any Shares covered by the Optionee's Option until such person becomes entitled to receive such Shares by filing a notice of exercise and paying the Exercise Price pursuant to the terms of such Option.

**(j) Modification, Extension and Assumption of Options .** Within the limitations of the Plan, the Board of Directors may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether granted by the Company or another issuer) in return for the grant of new Options for the same or a different number of Shares and at the same or a different Exercise Price. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, impair the Optionee's rights or increase the Optionee's obligations under such Option.

## **SECTION 7. PAYMENT FOR SHARES .**

**(a) General Rule .** The entire Purchase Price or Exercise Price of Shares issued under the Plan shall be payable in cash or cash equivalents at the time when such Shares are purchased, except as otherwise provided in this Section 7.

**(b) Surrender of Stock .** At the discretion of the Board of Directors, all or any part of the Exercise Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value on the date when the Option is exercised. The Optionee shall not surrender, or attest to the ownership of, Shares in payment of the Exercise Price if such action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to the Option for financial reporting purposes.

**(c) Services Rendered .** At the discretion of the Board of Directors, Shares may be awarded under the Plan in consideration of services rendered to the Company, a Parent or a Subsidiary prior to the award.

**(d) Promissory Note .** At the discretion of the Board of Directors, all or a portion of the Exercise Price or Purchase Price (as the case may be) of Shares issued under the Plan may be paid with a full-recourse promissory note. The Shares shall be pledged as security

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for payment of the principal amount of the promissory note and interest thereon. The interest rate payable under the terms of the promissory note shall not be less than the minimum rate (if any) required to avoid (i) the imputation of additional interest under the Code and (ii) the recognition of compensation expense (or additional compensation expense) with respect to the Option for financial reporting purposes. Subject to the foregoing, the Board of Directors (at its sole discretion) shall specify the term, interest rate, amortization requirements (if any) and other provisions of such note.

(e) **Exercise/Sale**. To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(f) **Exercise/Pledge**. To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to pledge Shares to a securities broker or lender approved by the Company, as security for a loan, and to deliver all or part of the loan proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(g) **Other Forms of Payment**. At the discretion of the Board of Directors, the Purchase Price or Exercise Price of Shares issued under the Plan may be paid in any other form permitted by the Delaware General Corporation Law, as amended.

## **SECTION 8. ADJUSTMENT OF SHARES .**

(a) **General**. In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares or a combination or consolidation of the outstanding Stock into a lesser number of Shares, corresponding adjustments shall automatically be made in each of (i) the number of Shares available for future grants under Section 4, (ii) the number of Shares covered by each outstanding Option and (iii) the Exercise Price under each outstanding Option. In the event of a declaration of an extraordinary dividend payable in a form other than Shares in an amount that has a material effect on the Fair Market Value of the Stock, a recapitalization, a spin-off, a reclassification or a similar occurrence, the Board of Directors at its sole discretion may make appropriate adjustments in one or more of (i) the number of Shares available for future grants under Section 4, (ii) the number of Shares covered by each outstanding Option or (iii) the Exercise Price under each outstanding Option.

(b) **Mergers and Consolidations**. In the event that the Company is a party to a merger or consolidation, all outstanding Options shall be subject to the agreement of merger or consolidation. Such agreement shall provide for one or more of the following:

(i) The continuation of such outstanding Options by the Company (if the Company is the surviving corporation).

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(ii) The assumption of such outstanding Options by the surviving corporation or its parent in a manner that complies with Section 424(a) of the Code (whether or not such Options are ISOs).

(iii) The substitution by the surviving corporation or its parent of new options for such outstanding Options in a manner that complies with Section 424(a) of the Code (whether or not such Options are ISOs).

(iv) Full exercisability of such outstanding Options and full vesting of the Shares subject to such Options, followed by the cancellation of such Options. The full exercisability of such Options and full vesting of the Shares subject to such Options may be contingent on the closing of such merger or consolidation. The Optionees shall be able to exercise such Options during a period of not less than five full business days preceding the closing date of such merger or consolidation, unless (A) a shorter period is required to permit a timely closing of such merger or consolidation and (B) such shorter period still offers the Optionees a reasonable opportunity to exercise such Options. Any exercise of such Options during such period may be contingent on the closing of such merger or consolidation.

(v) The cancellation of such outstanding Options and a payment to the Optionees equal to the excess of (A) the Fair Market Value of the Shares subject to such Options (whether or not such Options are then exercisable or such Shares are then vested) as of the closing date of such merger or consolidation over (B) their Exercise Price. Such payment shall be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Such payment may be made in installments and may be deferred until the date or dates when such Options would have become exercisable or such Shares would have vested. Such payment may be subject to vesting based on the Optionee's continuing Service, provided that the vesting schedule shall not be less favorable to the Optionees than the schedule under which such Options would have become exercisable or such Shares would have vested. If the Exercise Price of the Shares subject to such Options exceeds the Fair Market Value of such Shares, then such Options may be cancelled without making a payment to the Optionees. For purposes of this Paragraph (v), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security.

## **SECTION 9. SECURITIES LAW REQUIREMENTS .**

Shares shall not be issued under the Plan unless the issuance and delivery of such Shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded.

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## **SECTION 10. NO RETENTION RIGHTS .**

Nothing in the Plan or in any right or Option granted under the Plan shall confer upon the Purchaser or Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Purchaser or Optionee) or of the Purchaser or Optionee, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

## **SECTION 11. DURATION AND AMENDMENTS .**

**(a) Term of the Plan .** The Plan, as set forth herein, shall become effective on the date of its adoption by the Board of Directors, subject to the approval of the Company's stockholders. If the stockholders fail to approve the Plan within 12 months after its adoption by the Board of Directors, then any grants, exercises or sales that have already occurred under the Plan shall be rescinded and no additional grants, exercises or sales shall thereafter be made under the Plan. The Plan shall terminate automatically 10 years after the later of (i) its adoption by the Board of Directors or (ii) the most recent increase in the number of Shares reserved under Section 4 that was approved by the Company's stockholders. The Plan may be terminated on any earlier date pursuant to Subsection (b) below.

**(b) Right to Amend or Terminate the Plan .** The Board of Directors may amend, suspend or terminate the Plan at any time and for any reason; provided, however, that any amendment of the Plan shall be subject to the approval of the Company's stockholders if it (i) increases the number of Shares available for issuance under the Plan (except as provided in Section 8) or (ii) materially changes the class of persons who are eligible for the grant of ISOs. Stockholder approval shall not be required for any other amendment of the Plan. If the stockholders fail to approve an increase in the number of Shares reserved under Section 4 within 12 months after its adoption by the Board of Directors, then any grants, exercises or sales that have already occurred in reliance on such increase shall be rescinded and no additional grants, exercises or sales shall thereafter be made in reliance on such increase.

**(c) Effect of Amendment or Termination .** No Shares shall be issued or sold under the Plan after the termination thereof, except upon exercise of an Option granted prior to such termination. The termination of the Plan, or any amendment thereof, shall not affect any Share previously issued or any Option previously granted under the Plan.

## **SECTION 12. DEFINITIONS .**

- (a) “Board of Directors”** shall mean the Board of Directors of the Company, as constituted from time to time.
- (b) “Code”** shall mean the Internal Revenue Code of 1986, as amended.
- (c) “Committee”** shall mean a committee of the Board of Directors, as described in Section 2(a).

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(d) “**Company**” shall mean Etsy, Inc., a Delaware corporation.

(e) “**Consultant**” shall mean a person who performs bona fide services for the Company, a Parent or a Subsidiary as a consultant or advisor, excluding Employees and Outside Directors.

(f) “**Employee**” shall mean any individual who is a common-law employee of the Company, a Parent or a Subsidiary.

(g) “**Exercise Price**” shall mean the amount for which one Share may be purchased upon exercise of an Option, as specified by the Board of Directors in the applicable Stock Option Agreement.

(h) “**Fair Market Value**” shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.

(i) “**Family Member**” shall mean (i) any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, (ii) any person sharing the Optionee’s household (other than a tenant or employee), (iii) a trust in which persons described in Clause (i) or (ii) have more than 50% of the beneficial interest, (iv) a foundation in which persons described in Clause (i) or (ii) or the Optionee control the management of assets and (v) any other entity in which persons described in Clause (i) or (ii) or the Optionee own more than 50% of the voting interests.

(j) “**ISO**” shall mean an employee incentive stock option described in Section 422(b) of the Code.

(k) “**Nonstatutory Option**” shall mean a stock option not described in Sections 422(b) or 423(b) of the Code.

(l) “**Option**” shall mean an ISO or Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.

(m) “**Optionee**” shall mean a person who holds an Option.

(n) “**Outside Director**” shall mean a member of the Board of Directors who is not an Employee.

(o) “**Parent**” shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

(p) “**Plan**” shall mean this Etsy, Inc. 2006 Stock Plan.

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(q) “**Purchase Price**” shall mean the consideration for which one Share may be acquired under the Plan (other than upon exercise of an Option), as specified by the Board of Directors.

(r) “**Purchaser**” shall mean a person to whom the Board of Directors has offered the right to acquire Shares under the Plan (other than upon exercise of an Option).

(s) “**Service**” shall mean service as an Employee, Outside Director or Consultant.

(t) “**Share**” shall mean one share of Stock, as adjusted in accordance with Section 8 (if applicable).

(u) “**Stock**” shall mean the Common Stock of the Company, with a par value of \$0.001 per Share.

(v) “**Stock Option Agreement**” shall mean the agreement between the Company and an Optionee that contains the terms, conditions and restrictions pertaining to the Optionee’s Option.

(w) “**Stock Purchase Agreement**” shall mean the agreement between the Company and a Purchaser who acquires Shares under the Plan that contains the terms, conditions and restrictions pertaining to the acquisition of such Shares.

(x) “**Subsidiary**” shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

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**AMENDMENT NO. 1 TO THE  
ETSY, INC.  
2006 STOCK PLAN**

Etsy, Inc., a Delaware corporation (the “Company”), adopted the 2006 Stock Plan on May 17, 2006 (the “Plan”). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

“(a) Basic Limitation. Not more than 2,373,188 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares.”

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

Adopted by the Board of Directors: January 20, 2008

Adopted by the Stockholders: January 25, 2008

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**AMENDMENT NO. 2 TO THE  
ETSY, INC.  
2006 STOCK PLAN**

Etsy, Inc., a Delaware corporation (the “Company”), adopted the 2006 Stock Plan on May 17, 2006, as amended January 20, 2008 (the “Plan”). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

“(a) Basic Limitation. Not more than 2,611,780 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares.”

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

Adopted by the Board of Directors: August 9, 2010

Adopted by the Stockholders: August 10, 2010

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**AMENDMENT NO. 3 TO THE  
ETSY, INC.  
2006 STOCK PLAN**

Etsy, Inc., a Delaware corporation (the “Company”), adopted the 2006 Stock Plan on May 17, 2006, as amended on January 20, 2008 and August 9, 2010 (the “Plan”). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

“(a) Basic Limitation. Not more than 3,497,511 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares.”

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

Adopted by the Board of Directors: April 27, 2011

Adopted by the Stockholders: April 28, 2011

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**AMENDMENT NO. 4 TO THE  
ETSY, INC.  
2006 STOCK PLAN**

Etsy, Inc., a Delaware corporation (the “Company”), adopted the 2006 Stock Plan on May 17, 2006, as amended on January 20, 2008, August 9, 2010 and April 27, 2011 (the “Plan”). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

“(a) Basic Limitation. Not more than 43,432,935 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares.”

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

Adopted by the Board of Directors: April 27, 2012

Adopted by the Stockholders: April 27, 2012

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**AMENDMENT NO. 5 TO THE  
ETSY, INC.  
2006 STOCK PLAN**

Etsy, Inc., a Delaware corporation (the “Company”), adopted the 2006 Stock Plan on May 17, 2006, as amended on January 20, 2008, August 9, 2010, April 27, 2011 and April 27, 2012 (the “Plan”). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

“**(a) Basic Limitation**. Not more than 48,505,935 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares.”

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

Adopted by the Board: December 11, 2013

Adopted by the Stockholders: January 13, 2014

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# E TSY, INC. 2006 STOCK PLAN

## NOTICE OF STOCK OPTION GRANT

You have been granted the following option to purchase shares of the Common Stock of Etsy, Inc. (the “Company”):

Name of Optionee:	«Name»
Total Number of Shares:	«TotalShares»
Type of Option:	«ISO» Incentive Stock Option (ISO) «NSO» Nonstatutory Stock Option (NSO)
Exercise Price Per Share:	\$«PricePerShare»
Date of Grant:	«DateGrant»
Date Exercisable:	This option may be exercised with respect to the first «Percent»% of the Shares subject to this option when the Optionee completes «CliffPeriod» months of continuous Service after the Vesting Commencement Date set forth below. This option may be exercised with respect to an additional «Fraction»% of the Shares subject to this option when the Optionee completes each month of continuous Service thereafter.
Vesting Commencement Date:	«VestComDate»
Expiration Date:	«ExpDate». This option expires earlier if the Optionee’s Service terminates earlier, as provided in Section 6 of the Stock Option Agreement.

By your signature and the signature of the Company’s representative below, you and the Company agree that this option is granted under, and governed by the terms and conditions of, the 2006 Stock Plan and the Stock Option Agreement. Both of these documents are attached to, and made a part of, this Notice of Stock Option Grant. **Section 13 of the Stock Option Agreement includes important acknowledgements of the Optionee .**

**O PTIONEE :**

**E TSY, INC.**

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By: \_\_\_\_\_

Title: \_\_\_\_\_

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**THE OPTION GRANTED PURSUANT TO THIS AGREEMENT AND THE SHARES ISSUABLE UPON THE EXERCISE THEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED.**

## **E TSY , I NC . 2006 S TOCK P LAN : S TOCK O PTION A GREEMENT**

### **SECTION 1. GRANT OF OPTION.**

(a) **Option** . On the terms and conditions set forth in the Notice of Stock Option Grant and this Agreement, the Company grants to the Optionee on the Date of Grant the option to purchase at the Exercise Price the number of Shares set forth in the Notice of Stock Option Grant. The Exercise Price is agreed to be at least 100% of the Fair Market Value per Share on the Date of Grant (110% of Fair Market Value if this option is designated as an ISO in the Notice of Stock Option Grant and Section 3(b) of the Plan applies). This option is intended to be an ISO or an NSO, as provided in the Notice of Stock Option Grant.

(b) **\$100,000 Limitation** . Even if this option is designated as an ISO in the Notice of Stock Option Grant, it shall be deemed to be an NSO to the extent (and only to the extent) required by the \$100,000 annual limitation under Section 422(d) of the Code.

(c) **Stock Plan and Defined Terms** . This option is granted pursuant to the Plan, a copy of which the Optionee acknowledges having received. The provisions of the Plan are incorporated into this Agreement by this reference. Capitalized terms are defined in Section 14 of this Agreement.

### **SECTION 2. RIGHT TO EXERCISE.**

(a) **Exercisability** . Subject to Subsection (b) below and the other conditions set forth in this Agreement, all or part of this option may be exercised prior to its expiration at the time or times set forth in the Notice of Stock Option Grant.

(b) **Stockholder Approval** . Any other provision of this Agreement notwithstanding, no portion of this option shall be exercisable at any time prior to the approval of the Plan by the Company's stockholders.

### **SECTION 3. NO TRANSFER OR ASSIGNMENT OF OPTION.**

Except as otherwise provided in this Agreement, this option and the rights and privileges conferred hereby shall not be sold, pledged or otherwise transferred (whether by operation of law or otherwise) and shall not be subject to sale under execution, attachment, levy or similar process.

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## **SECTION 4. EXERCISE PROCEDURES.**

(a) **Notice of Exercise**. The Optionee or the Optionee's representative may exercise this option by giving written notice to the Company pursuant to Section 12(c). The notice shall specify the election to exercise this option, the number of Shares for which it is being exercised and the form of payment. The person exercising this option shall sign the notice. In the event that this option is being exercised by the representative of the Optionee, the notice shall be accompanied by proof (satisfactory to the Company) of the representative's right to exercise this option. The Optionee or the Optionee's representative shall deliver to the Company, at the time of giving the notice, payment in a form permissible under Section 5 for the full amount of the Purchase Price.

(b) **Issuance of Shares**. After receiving a proper notice of exercise, the Company shall cause to be issued one or more certificates evidencing the Shares for which this option has been exercised. Such Shares shall be registered (i) in the name of the person exercising this option, (ii) in the names of such person and his or her spouse as community property or as joint tenants with the right of survivorship or (iii) with the Company's consent, in the name of a revocable trust. The Company shall cause such certificates to be delivered to or upon the order of the person exercising this option.

(c) **Withholding Taxes**. In the event that the Company determines that it is required to withhold any tax as a result of the exercise of this option, the Optionee, as a condition to the exercise of this option, shall make arrangements satisfactory to the Company to enable it to satisfy all withholding requirements. The Optionee shall also make arrangements satisfactory to the Company to enable it to satisfy any withholding requirements that may arise in connection with the disposition of Shares purchased by exercising this option.

## **SECTION 5. PAYMENT FOR STOCK.**

(a) **Cash**. All or part of the Purchase Price may be paid in cash or cash equivalents.

(b) **Surrender of Stock**. At the discretion of the Board of Directors, all or any part of the Purchase Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value as of the date when this option is exercised.

(c) **Exercise/Sale**. All or part of the Purchase Price and any withholding taxes may be paid by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company. However, payment pursuant to this Subsection (c) shall be permitted only if (i) Stock then is publicly traded and (ii) such payment does not violate applicable law.

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## **SECTION 6. TERM AND EXPIRATION.**

(a) **Basic Term**. This option shall in any event expire on the expiration date set forth in the Notice of Stock Option Grant, which date is 10 years after the Date of Grant (five years after the Date of Grant if this option is designated as an ISO in the Notice of Stock Option Grant and Section 3(b) of the Plan applies).

(b) **Termination of Service (Except by Death)**. If the Optionee's Service terminates for any reason other than death, then this option shall expire on the earliest of the following occasions:

(i) The expiration date determined pursuant to Subsection (a) above;

(ii) The date three months after the termination of the Optionee's Service for any reason other than Disability; or

(iii) The date 12 months after the termination of the Optionee's Service by reason of Disability.

The Optionee may exercise all or part of this option at any time before its expiration under the preceding sentence, but only to the extent that this option had become exercisable before the Optionee's Service terminated. When the Optionee's Service terminates, this option shall expire immediately with respect to the number of Shares for which this option is not yet exercisable. In the event that the Optionee dies after termination of Service but before the expiration of this option, all or part of this option may be exercised (prior to expiration) by the executors or administrators of the Optionee's estate or by any person who has acquired this option directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that this option had become exercisable before the Optionee's Service terminated.

(c) **Death of the Optionee**. If the Optionee dies while in Service, then this option shall expire on the earlier of the following dates:

(i) The expiration date determined pursuant to Subsection (a) above; or

(ii) The date 12 months after the Optionee's death.

All or part of this option may be exercised at any time before its expiration under the preceding sentence by the executors or administrators of the Optionee's estate or by any person who has acquired this option directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that this option had become exercisable before the Optionee's death. When the Optionee dies, this option shall expire immediately with respect to the number of Shares for which this option is not yet exercisable.

(d) **Part-Time Employment and Leaves of Absence**. If the Optionee commences working on a part-time basis, then the Company may adjust the vesting schedule set forth in the Notice of Stock Option Grant in accordance with the Company's part-time work

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policy or the terms of an agreement between the Optionee and the Company pertaining to his or her part-time schedule. If the Optionee goes on a leave of absence, then the Company may adjust the vesting schedule set forth in the Notice of Stock Option Grant in accordance with the Company's leave of absence policy or the terms of such leave. Except as provided in the preceding sentence, Service shall be deemed to continue for any purpose under this Agreement while the Optionee is on a *bona fide* leave of absence, if (i) such leave was approved by the Company in writing and (ii) continued crediting of Service for such purpose is expressly required by the terms of such leave or by applicable law (as determined by the Company). Service shall be deemed to terminate when such leave ends, unless the Optionee immediately returns to active work.

(e) **Notice Concerning ISO Treatment**. Even if this option is designated as an ISO in the Notice of Stock Option Grant, it ceases to qualify for favorable tax treatment as an ISO to the extent that it is exercised:

(i) More than three months after the date when the Optionee ceases to be an Employee for any reason other than death or Disability;

(ii) More than 12 months after the date when the Optionee ceases to be an Employee by reason of Disability; or

(iii) More than three months after the date when the Optionee has been on a leave of absence for 90 days, unless the Optionee's reemployment rights following such leave were guaranteed by statute or by contract.

## **SECTION 7. RIGHT OF FIRST REFUSAL.**

(a) **Right of First Refusal**. Subject to Section 10(a), below, in the event that the Optionee proposes to sell, pledge or otherwise transfer to a third party any Shares acquired under this Agreement, or any interest in such Shares, the Company shall have the Right of First Refusal with respect to all (and not less than all) of such Shares. If the Optionee desires to transfer Shares acquired under this Agreement, the Optionee shall give a written Transfer Notice to the Company describing fully the proposed transfer, including the number of Shares proposed to be transferred, the proposed transfer price, the name and address of the proposed Transferee and proof satisfactory to the Company that the proposed sale or transfer will not violate any applicable federal, State or foreign securities laws. The Transfer Notice shall be signed both by the Optionee and by the proposed Transferee and must constitute a binding commitment of both parties to the transfer of the Shares. The Company shall have the right to purchase all, and not less than all, of the Shares on the terms of the proposal described in the Transfer Notice (subject, however, to any change in such terms permitted under Subsection (b) below) by delivery of a notice of exercise of the Right of First Refusal within 30 days after the date when the Transfer Notice was received by the Company.

(b) **Transfer of Shares**. If the Company fails to exercise its Right of First Refusal within 30 days after the date when it received the Transfer Notice, the Optionee may, not later than 90 days following receipt of the Transfer Notice by the Company, conclude a transfer of the Shares subject to the Transfer Notice on the terms and conditions described in the Transfer

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Notice, provided that any such sale is made in compliance with applicable federal, State and foreign securities laws and not in violation of any other contractual restrictions to which the Optionee is bound. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by the Optionee, shall again be subject to the Right of First Refusal and shall require compliance with the procedure described in Subsection (a) above. If the Company exercises its Right of First Refusal, the parties shall consummate the sale of the Shares on the terms set forth in the Transfer Notice within 60 days after the date when the Company received the Transfer Notice (or within such longer period as may have been specified in the Transfer Notice); provided, however, that in the event the Transfer Notice provided that payment for the Shares was to be made in a form other than cash or cash equivalents paid at the time of transfer, the Company shall have the option of paying for the Shares with cash or cash equivalents equal to the present value of the consideration described in the Transfer Notice.

(c) **Additional or Exchanged Securities and Property**. In the event of a merger or consolidation of the Company with or into another entity, any other corporate reorganization, a stock split, the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spin-off, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities, any securities or other property (including cash or cash equivalents) that are by reason of such transaction exchanged for, or distributed with respect to, any Shares subject to this Section 7 shall immediately be subject to the Right of First Refusal. Appropriate adjustments to reflect the exchange or distribution of such securities or property shall be made to the number and/or class of the Shares subject to this Section 7.

(d) **Termination of Right of First Refusal**. Any other provision of this Section 7 notwithstanding, in the event that the Stock is readily tradable on an established securities market when the Optionee desires to transfer Shares, the Company shall have no Right of First Refusal, and the Optionee shall have no obligation to comply with the procedures prescribed by Subsections (a) and (b) above.

(e) **Permitted Transfers**. This Section 7 shall not apply to (i) a transfer by beneficiary designation, will or intestate succession or (ii) a transfer to one or more members of the Optionee's Immediate Family or to a trust established by the Optionee for the benefit of the Optionee and/or one or more members of the Optionee's Immediate Family, provided in either case that the Transferee agrees in writing on a form prescribed by the Company to be bound by all provisions of this Agreement. If the Optionee transfers any Shares acquired under this Agreement, either under this Subsection (e) or after the Company has failed to exercise the Right of First Refusal, then this Agreement shall apply to the Transferee to the same extent as to the Optionee.

(f) **Termination of Rights as Stockholder**. If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Shares to be purchased in accordance with this Section 7, then after such time the person from whom such Shares are to be purchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed to have been purchased in accordance with the applicable provisions hereof, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

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(g) **Assignment of Right of First Refusal**. The Board of Directors may freely assign the Company's Right of First Refusal, in whole or in part. Any person who accepts an assignment of the Right of First Refusal from the Company shall assume all of the Company's rights and obligations under this Section 7.

## **SECTION 8. LEGALITY OF INITIAL ISSUANCE.**

No Shares shall be issued upon the exercise of this option unless and until the Company has determined that:

(a) It and the Optionee have taken any actions required to register the Shares under the Securities Act or to perfect an exemption from the registration requirements thereof;

(b) Any applicable listing requirement of any stock exchange or other securities market on which Stock is listed has been satisfied; and

(c) Any other applicable provision of federal, State or foreign law has been satisfied.

## **SECTION 9. NO REGISTRATION RIGHTS.**

The Company may, but shall not be obligated to, register or qualify the sale of Shares under the Securities Act or any other applicable law. The Company shall not be obligated to take any affirmative action in order to cause the sale of Shares under this Agreement to comply with any law.

## **SECTION 10. RESTRICTIONS ON TRANSFER OF SHARES.**

(a) **Bylaws Restrictions**. The Shares acquired under this Agreement shall be subject to the transfer restrictions in Article XIV of the Company's Amended and Restated Bylaws in addition to, and not in limitation of, the provisions of Section 7 of this Agreement.

(b) **Securities Law Restrictions**. Regardless of whether the offering and sale of Shares under the Plan have been registered under the Securities Act or have been registered or qualified under the securities laws of any State, the Company at its discretion may impose restrictions upon the sale, pledge or other transfer of such Shares (including the placement of appropriate legends on stock certificates or the imposition of stop-transfer instructions) if, in the judgment of the Company, such restrictions are necessary or desirable in order to achieve compliance with the Securities Act, the securities laws of any State or any other law.

(c) **Market Stand-Off**. In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act, including the Company's initial public offering, the Optionee or a Transferee shall not directly or indirectly sell, make any short sale of, loan, hypothecate, pledge, offer, grant

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or sell any option or other contract for the purchase of, purchase any option or other contract for the sale of, or otherwise dispose of or transfer, or agree to engage in any of the foregoing transactions with respect to, any Shares acquired under this Agreement without the prior written consent of the Company or its managing underwriter. Such restriction (the "Market Stand-Off") shall be in effect for such period of time following the date of the final prospectus for the offering as may be requested by the Company or such underwriter. In no event, however, shall such period exceed 180 days plus such additional period as may reasonably be requested by the Company or such underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports or (ii) analyst recommendations and opinions, including (without limitation) the restrictions set forth in Rule 2711(f)(4) of the National Association of Securities Dealers and Rule 472(f)(4) of the New York Stock Exchange, as amended, or any similar successor rules. The Market Stand-Off shall in any event terminate two years after the date of the Company's initial public offering. In the event of the declaration of a stock dividend, a spin-off, a stock split, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities without receipt of consideration, any new, substituted or additional securities which are by reason of such transaction distributed with respect to any Shares subject to the Market Stand-Off, or into which such Shares thereby become convertible, shall immediately be subject to the Market Stand-Off. In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Shares acquired under this Agreement until the end of the applicable stand-off period. The Company's underwriters shall be beneficiaries of the agreement set forth in this Subsection (c). This Subsection (c) shall not apply to Shares registered in the public offering under the Securities Act.

(d) **Investment Intent at Grant**. The Optionee represents and agrees that the Shares to be acquired upon exercising this option will be acquired for investment, and not with a view to the sale or distribution thereof.

(e) **Investment Intent at Exercise**. In the event that the sale of Shares under the Plan is not registered under the Securities Act but an exemption is available that requires an investment representation or other representation, the Optionee shall represent and agree at the time of exercise that the Shares being acquired upon exercising this option are being acquired for investment, and not with a view to the sale or distribution thereof, and shall make such other representations as are deemed necessary or appropriate by the Company and its counsel.

(f) **Legends**. All certificates evidencing Shares purchased under this Agreement shall bear the following legends:

"THE SHARES REPRESENTED HEREBY MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED OR IN ANY MANNER DISPOSED OF, EXCEPT IN COMPLIANCE WITH THE TERMS OF A WRITTEN AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER OF THE SHARES (OR THE PREDECESSOR IN INTEREST TO THE SHARES). SUCH AGREEMENT GRANTS TO THE COMPANY CERTAIN RIGHTS OF FIRST REFUSAL UPON AN ATTEMPTED TRANSFER OF THE SHARES. THE SECRETARY OF THE COMPANY WILL UPON WRITTEN REQUEST FURNISH A COPY OF SUCH AGREEMENT TO THE HOLDER HEREOF WITHOUT CHARGE."

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"THE SHARES REPRESENTED HEREBY MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR IN ANY MANNER DISPOSED OF, EXCEPT IN COMPLIANCE WITH THE BYLAWS OF THE COMPANY. COPIES OF THE BYLAWS OF THE COMPANY MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY."

All certificates evidencing Shares purchased under this Agreement in an unregistered transaction shall bear the following legend (and such other restrictive legends as are required or deemed advisable under the provisions of any applicable law):

"THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED."

(g) **Removal of Legends**. If, in the opinion of the Company and its counsel, any legend placed on a stock certificate representing Shares sold under this Agreement is no longer required, the holder of such certificate shall be entitled to exchange such certificate for a certificate representing the same number of Shares but without such legend.

(h) **Administration**. Any determination by the Company and its counsel in connection with any of the matters set forth in this Section 10 shall be conclusive and binding on the Optionee and all other persons.

## **SECTION 11. ADJUSTMENT OF SHARES.**

In the event of any transaction described in Section 8(a) of the Plan, the terms of this option (including, without limitation, the number and kind of Shares subject to this option and the Exercise Price) shall be adjusted as set forth in Section 8(a) of the Plan. In the event that the Company is a party to a merger or consolidation, this option shall be subject to the agreement of merger or consolidation, as provided in Section 8(b) of the Plan.

## **SECTION 12. MISCELLANEOUS PROVISIONS.**

(a) **Rights as a Stockholder**. Neither the Optionee nor the Optionee's representative shall have any rights as a stockholder with respect to any Shares subject to this option until the Optionee or the Optionee's representative becomes entitled to receive such Shares by filing a notice of exercise and paying the Purchase Price pursuant to Sections 4 and 5.

(b) **No Retention Rights**. Nothing in this option or in the Plan shall confer upon the Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Optionee) or of the Optionee, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

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(c) **Notice**. Any notice required by the terms of this Agreement shall be given in writing. It shall be deemed effective upon (i) personal delivery, (ii) deposit with the United States Postal Service, by registered or certified mail, with postage and fees prepaid or (iii) deposit with Federal Express Corporation, with shipping charges prepaid. Notice shall be addressed to the Company at its principal executive office and to the Optionee at the address that he or she most recently provided to the Company in accordance with this Subsection (c).

(d) **Entire Agreement**. The Notice of Stock Option Grant, this Agreement and the Plan constitute the entire contract between the parties hereto with regard to the subject matter hereof. They supersede any other agreements, representations or understandings (whether oral or written and whether express or implied) that relate to the subject matter hereof.

(e) **Choice of Law**. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, as such laws are applied to contracts entered into and performed in such State.

## **SECTION 13. ACKNOWLEDGEMENTS OF THE OPTIONEE.**

(a) **Tax Consequences**. The Optionee agrees that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes the Optionee's tax liabilities. The Optionee shall not make any claim against the Company or its Board of Directors, officers or employees related to tax liabilities arising from this option or the Optionee's other compensation. In particular, the Optionee acknowledges that this option is exempt from Section 409A of the Code only if the Exercise Price is at least equal to the Fair Market Value per Share on the Date of Grant. Since Shares are not traded on an established securities market, the determination of their Fair Market Value is made by the Board of Directors or by an independent valuation firm retained by the Company. The Optionee acknowledges that there is no guarantee in either case that the Internal Revenue Service will agree with the valuation, and the Optionee shall not make any claim against the Company or its Board of Directors, officers or employees in the event that the Internal Revenue Service asserts that the valuation was too low.

(b) **Electronic Delivery of Documents**. The Optionee agrees that the Company may deliver by email all documents relating to the Plan or this option (including, without limitation, a copy of the Plan) and all other documents that the Company is required to deliver to its security holders (including, without limitation, disclosures that may be required by the Securities and Exchange Commission). The Optionee also agrees that the Company may deliver these documents by posting them on a website maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a website, it shall notify the Optionee by email.

## **SECTION 14. DEFINITIONS.**

(a) **"Agreement"** shall mean this Stock Option Agreement.

(b) **"Board of Directors"** shall mean the Board of Directors of the Company, as constituted from time to time or, if a Committee has been appointed, such Committee.

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- (c) “**Code**” shall mean the Internal Revenue Code of 1986, as amended.
  - (d) “**Committee**” shall mean a committee of the Board of Directors, as described in Section 2 of the Plan.
  - (e) “**Company**” shall mean Etsy, Inc., a Delaware corporation.
  - (f) “**Consultant**” shall mean a person who performs bona fide services for the Company, a Parent or a Subsidiary as a consultant or advisor, excluding Employees and Outside Directors.
  - (g) “**Date of Grant**” shall mean the date of grant specified in the Notice of Stock Option Grant, which date shall be the later of (i) the date on which the Board of Directors resolved to grant this option or (ii) the first day of the Optionee’s Service.
  - (h) “**Disability**” shall mean that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 12 months.
  - (i) “**Employee**” shall mean any individual who is a common-law employee of the Company, a Parent or a Subsidiary.
  - (j) “**Exercise Price**” shall mean the amount for which one Share may be purchased upon exercise of this option, as specified in the Notice of Stock Option Grant.
  - (k) “**Fair Market Value**” shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.
  - (l) “**Immediate Family**” shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law and shall include adoptive relationships.
  - (m) “**ISO**” shall mean an employee incentive stock option described in Section 422(b) of the Code.
  - (n) “**Notice of Stock Option Grant**” shall mean the document so entitled to which this Agreement is attached.
  - (o) “**NSO**” shall mean a stock option not described in Sections 422(b) or 423(b) of the Code.
  - (p) “**Optionee**” shall mean the person named in the Notice of Stock Option Grant.
  - (q) “**Outside Director**” shall mean a member of the Board of Directors who is not an Employee.

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(r) “**Parent**” shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(s) “**Plan**” shall mean the Etsy, Inc. 2006 Stock Plan, as in effect on the Date of Grant.

(t) “**Purchase Price**” shall mean the Exercise Price multiplied by the number of Shares with respect to which this option is being exercised.

(u) “**Right of First Refusal**” shall mean the Company’s right of first refusal described in Section 7.

(v) “**Securities Act**” shall mean the Securities Act of 1933, as amended.

(w) “**Service**” shall mean service as an Employee, Outside Director or Consultant.

(x) “**Share**” shall mean one share of Stock, as adjusted in accordance with Section 8 of the Plan (if applicable).

(y) “**Stock**” shall mean the Common Stock of the Company.

(z) “**Subsidiary**” shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(aa) “**Transferee**” shall mean any person to whom the Optionee has directly or indirectly transferred any Share acquired under this Agreement.

(bb) “**Transfer Notice**” shall mean the notice of a proposed transfer of Shares described in Section 7.

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N OTICE OF S TOCK O PTION G RANT**

You have been granted the following option to purchase shares of the Common Stock of Etsy, Inc. (the “Company”):

Name of Optionee: Chad Dickerson

Total Number of Shares:

Type of Option: Incentive Stock Option (ISO)

Nonstatutory Stock Option (NSO)

Exercise Price Per Share: \$

Date of Grant:

Date Exercisable: This option may be exercised with respect to the first   % of the Shares subject to this option when the Optionee completes   months of continuous Service after the Vesting Commencement Date set forth below. This option may be exercised with respect to an additional   of the Shares subject to this option when the Optionee completes each month of continuous Service thereafter. This option may become exercisable on an accelerated basis under Section 2(a) of the Stock Option Agreement.

Vesting Commencement Date:

Expiration Date: . This option expires earlier if the Optionee’s Service terminates earlier, as provided in Section 6 of the Stock Option Agreement.

By your signature and the signature of the Company’s representative below, you and the Company agree that this option is granted under, and governed by the terms and conditions of, the 2006 Stock Plan and the Stock Option Agreement. Both of these documents are attached to, and made a part of, this Notice of Stock Option Grant. **Section 13 of the Stock Option Agreement includes important acknowledgements of the Optionee .**

**O PTIONEE :**

Chad Dickerson

**E TSY , I NC .**

By: \_\_\_\_\_  
Sinohe Terrero  
Treasurer

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**THE OPTION GRANTED PURSUANT TO THIS AGREEMENT AND THE SHARES ISSUABLE UPON THE EXERCISE THEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED.**

**E TSY , I NC . 2006 S TOCK P LAN :  
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**SECTION 1. GRANT OF OPTION.**

(a) **Option** . On the terms and conditions set forth in the Notice of Stock Option Grant and this Agreement, the Company grants to the Optionee on the Date of Grant the option to purchase at the Exercise Price the number of Shares set forth in the Notice of Stock Option Grant. The Exercise Price is agreed to be at least 100% of the Fair Market Value per Share on the Date of Grant (110% of Fair Market Value if this option is designated as an ISO in the Notice of Stock Option Grant and Section 3(b) of the Plan applies). This option is intended to be an ISO or an NSO, as provided in the Notice of Stock Option Grant.

(b) **\$100,000 Limitation** . Even if this option is designated as an ISO in the Notice of Stock Option Grant, it shall be deemed to be an NSO to the extent (and only to the extent) required by the \$100,000 annual limitation under Section 422(d) of the Code.

(c) **Stock Plan and Defined Terms** . This option is granted pursuant to the Plan, a copy of which the Optionee acknowledges having received. The provisions of the Plan are incorporated into this Agreement by this reference. Capitalized terms are defined in Section 14 of this Agreement.

**SECTION 2. RIGHT TO EXERCISE.**

(a) **Exercisability** . Subject to Subsection (b) below and the other conditions set forth in this Agreement, all or part of this option may be exercised prior to its expiration at the time or times set forth in the Notice of Stock Option Grant. In addition, if the Company is subject to a Change in Control before the Optionee's Service terminates and if the Optionee is subject to an Involuntary Termination within 12 months after the Change in Control, then this option shall become fully exercisable for 100% of the Shares.

(b) **Stockholder Approval** . Any other provision of this Agreement notwithstanding, no portion of this option shall be exercisable at any time prior to the approval of the Plan by the Company's stockholders.

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### **SECTION 3. NO TRANSFER OR ASSIGNMENT OF OPTION.**

Except as otherwise provided in this Agreement, this option and the rights and privileges conferred hereby shall not be sold, pledged or otherwise transferred (whether by operation of law or otherwise) and shall not be subject to sale under execution, attachment, levy or similar process.

### **SECTION 4. EXERCISE PROCEDURES.**

(a) **Notice of Exercise**. The Optionee or the Optionee's representative may exercise this option by giving written notice to the Company pursuant to Section 12(c). The notice shall specify the election to exercise this option, the number of Shares for which it is being exercised and the form of payment. The person exercising this option shall sign the notice. In the event that this option is being exercised by the representative of the Optionee, the notice shall be accompanied by proof (satisfactory to the Company) of the representative's right to exercise this option. The Optionee or the Optionee's representative shall deliver to the Company, at the time of giving the notice, payment in a form permissible under Section 5 for the full amount of the Purchase Price.

(b) **Issuance of Shares**. After receiving a proper notice of exercise, the Company shall cause to be issued one or more certificates evidencing the Shares for which this option has been exercised. Such Shares shall be registered (i) in the name of the person exercising this option, (ii) in the names of such person and his or her spouse as community property or as joint tenants with the right of survivorship or (iii) with the Company's consent, in the name of a revocable trust. The Company shall cause such certificates to be delivered to or upon the order of the person exercising this option.

(c) **Withholding Taxes**. In the event that the Company determines that it is required to withhold any tax as a result of the exercise of this option, the Optionee, as a condition to the exercise of this option, shall make arrangements satisfactory to the Company to enable it to satisfy all withholding requirements. The Optionee shall also make arrangements satisfactory to the Company to enable it to satisfy any withholding requirements that may arise in connection with the disposition of Shares purchased by exercising this option.

### **SECTION 5. PAYMENT FOR STOCK.**

(a) **Cash**. All or part of the Purchase Price may be paid in cash or cash equivalents.

(b) **Surrender of Stock**. At the discretion of the Board of Directors, all or any part of the Purchase Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value as of the date when this option is exercised.

(c) **Exercise/Sale**. All or part of the Purchase Price and any withholding taxes may be paid by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part

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of the sales proceeds to the Company. However, payment pursuant to this Subsection (c) shall be permitted only if (i) Stock then is publicly traded and (ii) such payment does not violate applicable law.

## **SECTION 6. TERM AND EXPIRATION.**

(a) **Basic Term** . This option shall in any event expire on the expiration date set forth in the Notice of Stock Option Grant, which date is 10 years after the Date of Grant (five years after the Date of Grant if this option is designated as an ISO in the Notice of Stock Option Grant and Section 3(b) of the Plan applies).

(b) **Termination of Service (Except by Death)** . If the Optionee's Service terminates for any reason other than death, then this option shall expire on the earliest of the following occasions:

- (i) The expiration date determined pursuant to Subsection (a) above;
- (ii) The date three months after the termination of the Optionee's Service for any reason other than Disability; or
- (iii) The date 12 months after the termination of the Optionee's Service by reason of Disability.

The Optionee may exercise all or part of this option at any time before its expiration under the preceding sentence, but only to the extent that this option had become exercisable before the Optionee's Service terminated. When the Optionee's Service terminates, this option shall expire immediately with respect to the number of Shares for which this option is not yet exercisable. In the event that the Optionee dies after termination of Service but before the expiration of this option, all or part of this option may be exercised (prior to expiration) by the executors or administrators of the Optionee's estate or by any person who has acquired this option directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that this option had become exercisable before the Optionee's Service terminated.

(c) **Death of the Optionee** . If the Optionee dies while in Service, then this option shall expire on the earlier of the following dates:

- (i) The expiration date determined pursuant to Subsection (a) above; or
- (ii) The date 12 months after the Optionee's death.

All or part of this option may be exercised at any time before its expiration under the preceding sentence by the executors or administrators of the Optionee's estate or by any person who has acquired this option directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that this option had become exercisable before the Optionee's death. When the Optionee dies, this option shall expire immediately with respect to the number of Shares for which this option is not yet exercisable.

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**(d) Part-Time Employment and Leaves of Absence .** If the Optionee commences working on a part-time basis, then the Company may adjust the vesting schedule set forth in the Notice of Stock Option Grant in accordance with the Company's part-time work policy or the terms of an agreement between the Optionee and the Company pertaining to his or her part-time schedule. If the Optionee goes on a leave of absence, then the Company may adjust the vesting schedule set forth in the Notice of Stock Option Grant in accordance with the Company's leave of absence policy or the terms of such leave. Except as provided in the preceding sentence, Service shall be deemed to continue for any purpose under this Agreement while the Optionee is on a *bona fide* leave of absence, if (i) such leave was approved by the Company in writing and (ii) continued crediting of Service for such purpose is expressly required by the terms of such leave or by applicable law (as determined by the Company). Service shall be deemed to terminate when such leave ends, unless the Optionee immediately returns to active work.

**(e) Notice Concerning ISO Treatment .** Even if this option is designated as an ISO in the Notice of Stock Option Grant, it ceases to qualify for favorable tax treatment as an ISO to the extent that it is exercised:

- (i) More than three months after the date when the Optionee ceases to be an Employee for any reason other than death or Disability;
- (ii) More than 12 months after the date when the Optionee ceases to be an Employee by reason of Disability; or
- (iii) More than three months after the date when the Optionee has been on a leave of absence for 90 days, unless the Optionee's reemployment rights following such leave were guaranteed by statute or by contract.

## **SECTION 7. RIGHT OF FIRST REFUSAL.**

**(a) Right of First Refusal .** In the event that the Optionee proposes to sell, pledge or otherwise transfer to a third party any Shares acquired under this Agreement, or any interest in such Shares, the Company shall have the Right of First Refusal with respect to all (and not less than all) of such Shares. If the Optionee desires to transfer Shares acquired under this Agreement, the Optionee shall give a written Transfer Notice to the Company describing fully the proposed transfer, including the number of Shares proposed to be transferred, the proposed transfer price, the name and address of the proposed Transferee and proof satisfactory to the Company that the proposed sale or transfer will not violate any applicable federal, State or foreign securities laws. The Transfer Notice shall be signed both by the Optionee and by the proposed Transferee and must constitute a binding commitment of both parties to the transfer of the Shares. The Company shall have the right to purchase all, and not less than all, of the Shares on the terms of the proposal described in the Transfer Notice (subject, however, to any change in such terms permitted under Subsection (b) below) by delivery of a notice of exercise of the Right of First Refusal within 30 days after the date when the Transfer Notice was received by the Company.

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**(b) Transfer of Shares .** If the Company fails to exercise its Right of First Refusal within 30 days after the date when it received the Transfer Notice, the Optionee may, not later than 90 days following receipt of the Transfer Notice by the Company, conclude a transfer of the Shares subject to the Transfer Notice on the terms and conditions described in the Transfer Notice, provided that any such sale is made in compliance with applicable federal, State and foreign securities laws and not in violation of any other contractual restrictions to which the Optionee is bound. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by the Optionee, shall again be subject to the Right of First Refusal and shall require compliance with the procedure described in Subsection (a) above. If the Company exercises its Right of First Refusal, the parties shall consummate the sale of the Shares on the terms set forth in the Transfer Notice within 60 days after the date when the Company received the Transfer Notice (or within such longer period as may have been specified in the Transfer Notice); provided, however, that in the event the Transfer Notice provided that payment for the Shares was to be made in a form other than cash or cash equivalents paid at the time of transfer, the Company shall have the option of paying for the Shares with cash or cash equivalents equal to the present value of the consideration described in the Transfer Notice.

**(c) Additional or Exchanged Securities and Property .** In the event of a merger or consolidation of the Company with or into another entity, any other corporate reorganization, a stock split, the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spin-off, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities, any securities or other property (including cash or cash equivalents) that are by reason of such transaction exchanged for, or distributed with respect to, any Shares subject to this Section 7 shall immediately be subject to the Right of First Refusal. Appropriate adjustments to reflect the exchange or distribution of such securities or property shall be made to the number and/or class of the Shares subject to this Section 7.

**(d) Termination of Right of First Refusal .** Any other provision of this Section 7 notwithstanding, in the event that the Stock is readily tradable on an established securities market when the Optionee desires to transfer Shares, the Company shall have no Right of First Refusal, and the Optionee shall have no obligation to comply with the procedures prescribed by Subsections (a) and (b) above.

**(e) Permitted Transfers .** This Section 7 shall not apply to (i) a transfer by beneficiary designation, will or intestate succession or (ii) a transfer to one or more members of the Optionee's Immediate Family or to a trust established by the Optionee for the benefit of the Optionee and/or one or more members of the Optionee's Immediate Family, provided in either case that the Transferee agrees in writing on a form prescribed by the Company to be bound by all provisions of this Agreement. If the Optionee transfers any Shares acquired under this Agreement, either under this Subsection (e) or after the Company has failed to exercise the Right of First Refusal, then this Agreement shall apply to the Transferee to the same extent as to the Optionee.

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**(f) Termination of Rights as Stockholder .** If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Shares to be purchased in accordance with this Section 7, then after such time the person from whom such Shares are to be purchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed to have been purchased in accordance with the applicable provisions hereof, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

**(g) Assignment of Right of First Refusal .** The Board of Directors may freely assign the Company's Right of First Refusal, in whole or in part. Any person who accepts an assignment of the Right of First Refusal from the Company shall assume all of the Company's rights and obligations under this Section 7.

## **SECTION 8. LEGALITY OF INITIAL ISSUANCE.**

No Shares shall be issued upon the exercise of this option unless and until the Company has determined that:

- (a) It and the Optionee have taken any actions required to register the Shares under the Securities Act or to perfect an exemption from the registration requirements thereof;
- (b) Any applicable listing requirement of any stock exchange or other securities market on which Stock is listed has been satisfied; and
- (c) Any other applicable provision of federal, State or foreign law has been satisfied.

## **SECTION 9. NO REGISTRATION RIGHTS.**

The Company may, but shall not be obligated to, register or qualify the sale of Shares under the Securities Act or any other applicable law. The Company shall not be obligated to take any affirmative action in order to cause the sale of Shares under this Agreement to comply with any law.

## **SECTION 10. RESTRICTIONS ON TRANSFER OF SHARES.**

**(a) Securities Law Restrictions .** Regardless of whether the offering and sale of Shares under the Plan have been registered under the Securities Act or have been registered or qualified under the securities laws of any State, the Company at its discretion may impose restrictions upon the sale, pledge or other transfer of such Shares (including the placement of appropriate legends on stock certificates or the imposition of stop-transfer instructions) if, in the judgment of the Company, such restrictions are necessary or desirable in order to achieve compliance with the Securities Act, the securities laws of any State or any other law.

**(b) Market Stand-Off .** In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act, including the Company's initial public offering, the Optionee or a Transferee shall not directly or indirectly sell, make any short sale of, loan, hypothecate, pledge, offer, grant

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or sell any option or other contract for the purchase of, purchase any option or other contract for the sale of, or otherwise dispose of or transfer, or agree to engage in any of the foregoing transactions with respect to, any Shares acquired under this Agreement without the prior written consent of the Company or its managing underwriter. Such restriction (the “Market Stand-Off”) shall be in effect for such period of time following the date of the final prospectus for the offering as may be requested by the Company or such underwriter. In no event, however, shall such period exceed 180 days plus such additional period as may reasonably be requested by the Company or such underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports or (ii) analyst recommendations and opinions, including (without limitation) the restrictions set forth in Rule 2711(f)(4) of the National Association of Securities Dealers and Rule 472(f)(4) of the New York Stock Exchange, as amended, or any similar successor rules. The Market Stand-Off shall in any event terminate two years after the date of the Company’s initial public offering. In the event of the declaration of a stock dividend, a spin-off, a stock split, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company’s outstanding securities without receipt of consideration, any new, substituted or additional securities which are by reason of such transaction distributed with respect to any Shares subject to the Market Stand-Off, or into which such Shares thereby become convertible, shall immediately be subject to the Market Stand-Off. In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Shares acquired under this Agreement until the end of the applicable stand-off period. The Company’s underwriters shall be beneficiaries of the agreement set forth in this Subsection (b). This Subsection (b) shall not apply to Shares registered in the public offering under the Securities Act.

(c) **Investment Intent at Grant**. The Optionee represents and agrees that the Shares to be acquired upon exercising this option will be acquired for investment, and not with a view to the sale or distribution thereof.

(d) **Investment Intent at Exercise**. In the event that the sale of Shares under the Plan is not registered under the Securities Act but an exemption is available that requires an investment representation or other representation, the Optionee shall represent and agree at the time of exercise that the Shares being acquired upon exercising this option are being acquired for investment, and not with a view to the sale or distribution thereof, and shall make such other representations as are deemed necessary or appropriate by the Company and its counsel.

(e) **Legends**. All certificates evidencing Shares purchased under this Agreement shall bear the following legend:

“THE SHARES REPRESENTED HEREBY MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED OR IN ANY MANNER DISPOSED OF, EXCEPT IN COMPLIANCE WITH THE TERMS OF A WRITTEN AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER OF THE SHARES (OR THE PREDECESSOR IN INTEREST TO THE SHARES). SUCH AGREEMENT GRANTS TO THE COMPANY CERTAIN RIGHTS OF FIRST REFUSAL UPON AN ATTEMPTED TRANSFER OF THE SHARES. THE SECRETARY OF THE COMPANY WILL UPON WRITTEN REQUEST FURNISH A COPY OF SUCH AGREEMENT TO THE HOLDER HEREOF WITHOUT CHARGE.”

All certificates evidencing Shares purchased under this Agreement in an unregistered transaction shall bear the following legend (and such other restrictive legends as are required or deemed advisable under the provisions of any applicable law):

“THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED.”

(f) **Removal of Legends** . If, in the opinion of the Company and its counsel, any legend placed on a stock certificate representing Shares sold under this Agreement is no longer required, the holder of such certificate shall be entitled to exchange such certificate for a certificate representing the same number of Shares but without such legend.

(g) **Administration** . Any determination by the Company and its counsel in connection with any of the matters set forth in this Section 10 shall be conclusive and binding on the Optionee and all other persons.

## **SECTION 11. ADJUSTMENT OF SHARES.**

In the event of any transaction described in Section 8(a) of the Plan, the terms of this option (including, without limitation, the number and kind of Shares subject to this option and the Exercise Price) shall be adjusted as set forth in Section 8(a) of the Plan. In the event that the Company is a party to a merger or consolidation, this option shall be subject to the agreement of merger or consolidation, as provided in Section 8(b) of the Plan.

## **SECTION 12. MISCELLANEOUS PROVISIONS.**

(a) **Rights as a Stockholder** . Neither the Optionee nor the Optionee’s representative shall have any rights as a stockholder with respect to any Shares subject to this option until the Optionee or the Optionee’s representative becomes entitled to receive such Shares by filing a notice of exercise and paying the Purchase Price pursuant to Sections 4 and 5.

(b) **No Retention Rights** . Nothing in this option or in the Plan shall confer upon the Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Optionee) or of the Optionee, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

(c) **Notice** . Any notice required by the terms of this Agreement shall be given in writing. It shall be deemed effective upon (i) personal delivery, (ii) deposit with the United States Postal Service, by registered or certified mail, with postage and fees prepaid or (iii) deposit with Federal Express Corporation, with shipping charges prepaid. Notice shall be addressed to the Company at its principal executive office and to the Optionee at the address that he or she most recently provided to the Company in accordance with this Subsection (c).

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(d) **Entire Agreement**. The Notice of Stock Option Grant, this Agreement and the Plan constitute the entire contract between the parties hereto with regard to the subject matter hereof. They supersede any other agreements, representations or understandings (whether oral or written and whether express or implied) that relate to the subject matter hereof.

(e) **Choice of Law**. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, as such laws are applied to contracts entered into and performed in such State.

## **SECTION 13. ACKNOWLEDGEMENTS OF THE OPTIONEE.**

(a) **Tax Consequences**. The Optionee agrees that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes the Optionee's tax liabilities. The Optionee shall not make any claim against the Company or its Board of Directors, officers or employees related to tax liabilities arising from this option or the Optionee's other compensation. In particular, the Optionee acknowledges that this option is exempt from Section 409A of the Code only if the Exercise Price is at least equal to the Fair Market Value per Share on the Date of Grant. Since Shares are not traded on an established securities market, the determination of their Fair Market Value is made by the Board of Directors or by an independent valuation firm retained by the Company. The Optionee acknowledges that there is no guarantee in either case that the Internal Revenue Service will agree with the valuation, and the Optionee shall not make any claim against the Company or its Board of Directors, officers or employees in the event that the Internal Revenue Service asserts that the valuation was too low.

(b) **Electronic Delivery of Documents**. The Optionee agrees that the Company may deliver by email all documents relating to the Plan or this option (including, without limitation, a copy of the Plan) and all other documents that the Company is required to deliver to its security holders (including, without limitation, disclosures that may be required by the Securities and Exchange Commission). The Optionee also agrees that the Company may deliver these documents by posting them on a website maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a website, it shall notify the Optionee by email.

## **SECTION 14. DEFINITIONS.**

(a) “**Agreement**” shall mean this Stock Option Agreement.

(b) “**Board of Directors**” shall mean the Board of Directors of the Company, as constituted from time to time or, if a Committee has been appointed, such Committee.

(c) “**Cause**” shall mean (a) Optionee’s unauthorized use or disclosure of the Company’s confidential information or trade secrets, which use or disclosure causes material harm to the Company, (b) Optionee’s material breach of any agreement between Optionee and the Company, (c) Optionee’s material failure to comply with the Company’s written policies or rules, (d) Optionee’s conviction of, or Optionee’s plea of “guilty” or “no contest” to, a felony under the laws of the United States or any State, (e) Optionee’s gross negligence or willful misconduct, (f) Optionee’s continuing failure to perform assigned duties after receiving written

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notification of the failure from the Company's Board of Directors or (g) Optionee's failure to cooperate in good faith with a governmental or internal investigation of the Company or its directors, officers or employees, if the Company has requested Optionee's cooperation, provided that in the case of clause (b), (c), (e) or (g) Optionee does not remedy the condition within 30 days after receipt of written notice from the Company thereof.

(d) "**Change in Control**" shall mean (a) the consummation of a sale of all or substantially all of the Company's assets; (b) the consummation of a merger or consolidation of the Company with or into another entity; or (c) the dissolution, liquidation or winding up of the Company. The foregoing notwithstanding, a merger or consolidation of the Company does not constitute a "Change in Control" if immediately after the merger or consolidation a majority of the voting power of the capital stock of the continuing or surviving entity, or any direct or indirect parent corporation of the continuing or surviving entity, will be owned by the persons who were the Company's stockholders immediately prior to such merger or consolidation in substantially the same proportions as their ownership of the voting power of the Company's capital stock immediately prior to the merger or consolidation.

(e) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(f) "**Committee**" shall mean a committee of the Board of Directors, as described in Section 2 of the Plan.

(g) "**Company**" shall mean Etsy, Inc., a Delaware corporation.

(h) "**Consultant**" shall mean a person who performs bona fide services for the Company, a Parent or a Subsidiary as a consultant or advisor, excluding Employees and Outside Directors.

(i) "**Date of Grant**" shall mean the date of grant specified in the Notice of Stock Option Grant, which date shall be the later of (i) the date on which the Board of Directors resolved to grant this option or (ii) the first day of the Optionee's Service.

(j) "**Disability**" shall mean that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 12 months.

(k) "**Employee**" shall mean any individual who is a common-law employee of the Company, a Parent or a Subsidiary.

(l) "**Exercise Price**" shall mean the amount for which one Share may be purchased upon exercise of this option, as specified in the Notice of Stock Option Grant.

(m) "**Fair Market Value**" shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.

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(n) “**Immediate Family**” shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law and shall include adoptive relationships.

(o) “**Involuntary Termination**” shall mean either (a) Optionee’s Termination Without Cause or (b) Optionee’s Resignation for Good Reason.

(p) “**ISO**” shall mean an employee incentive stock option described in Section 422(b) of the Code.

(q) “**Notice of Stock Option Grant**” shall mean the document so entitled to which this Agreement is attached.

(r) “**NSO**” shall mean a stock option not described in Sections 422(b) or 423(b) of the Code.

(s) “**Optionee**” shall mean the person named in the Notice of Stock Option Grant.

(t) “**Outside Director**” shall mean a member of the Board of Directors who is not an Employee.

(u) “**Parent**” shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(v) “**Plan**” shall mean the Etsy, Inc. 2006 Stock Plan, as in effect on the Date of Grant.

(w) “**Purchase Price**” shall mean the Exercise Price multiplied by the number of Shares with respect to which this option is being exercised.

(x) “**Resignation for Good Reason**” shall mean a Separation as a result of Optionee’s resignation within 12 months after one of the following conditions has come into existence without Optionee’s consent: (a) a reduction in Optionee’s base salary by more than 10%; (b) a material diminution of your authority, duties or responsibilities; or (c) a relocation of Optionee’s principal workplace by more than 50 miles. A Resignation for Good Reason will not be deemed to have occurred unless Optionee give the Company written notice of the condition within 90 days after the condition comes into existence and the Company fails to remedy the condition within 30 days after receiving Optionee’s written notice.

(y) “**Right of First Refusal**” shall mean the Company’s right of first refusal described in Section 7.

(z) “**Securities Act**” shall mean the Securities Act of 1933, as amended.

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- (aa) "**Separation**" shall mean a "separation from service," as defined in the regulations under Section 409A of the Code.
  - (bb) "**Service**" shall mean service as an Employee, Outside Director or Consultant.
  - (cc) "**Share**" shall mean one share of Stock, as adjusted in accordance with Section 8 of the Plan (if applicable).
  - (dd) "**Stock**" shall mean the Common Stock of the Company.
  - (ee) "**Subsidiary**" shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.
  - (ff) "**Termination Without Cause**" shall mean a Separation as a result of a termination of Optionee's employment by the Company without Cause, provided Optionee is willing and able to continue performing services within the meaning of Treasury Regulation 1.409A-1(n)(1).
  - (gg) "**Transferee**" shall mean any person to whom the Optionee has directly or indirectly transferred any Share acquired under this Agreement.
  - (hh) "**Transfer Notice**" shall mean the notice of a proposed transfer of Shares described in Section 7.

## STANDARD OFFICE/LOFT LEASE FORM

**Agreement of Lease**, made as of this 14<sup>th</sup> day of April, in the year 2009, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having a mailing address c/o Two Trees Management Co. LLC, 45 Main Street, Suite 602, Brooklyn, New York 11201, as landlord, ("Landlord"), and **ETSY, INC.**, a Delaware corporation qualified to do business in the State of New York, having an address of 325 Gold Street, 6<sup>th</sup> Floor, Brooklyn, New York 11201, as tenant ("Tenant").

**Witnesseth:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord certain premises known as Suite 512 on the fifth (5th) floor of that certain building (the "Building") known as 55 Washington Street in the Borough of Brooklyn, County of Kings and City and State of New York (which premises are herein the "demised premises" and are located in the approximate location of said floor shown on the drawing designated **Exhibit A** attached hereto and hereby made a part hereof) at the rents provided herein for a term (the "Term") of **seven (7) years** (unless such term shall sooner cease, terminate or expire as hereinafter provided). The Term shall commence on **August 1, 2009** (the "Commencement Date") and end on **July 31, 2016** (the "Expiration Date"), both dates inclusive.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant and agree as follows:

**Use :** 1. The demised premises shall be used by Tenant, subject to the terms of this Lease, solely as and for general and executive business offices for a company that provides online marketing services, video and crafting services and for no other purposes except the online sale of "Etsy" branded merchandise and shipment of such merchandise (provided that such shipping shall not make excessive demands on the Building's services or facilities), the making of videos related to the Tenant's online services and crafting services related to Tenant's online business (collectively the "Permitted Use") as provided herein. Notwithstanding anything to the contrary contained in this Lease, in no event shall the demised premises be used for the distribution of any goods, services or merchandise other than in connection with the Permitted Use (provided that such shipping shall not make excessive demands on the Building's services or facilities), nor shall any video-making or crafting done by Tenant in the demised premises create commercially unreasonable noise, odors and/or vibrations that can be heard, smelled or felt outside of the demised premises which will unreasonably disturb or materially interfere with the use and enjoyment of other tenant's in the Building. Tenant shall not suffer or permit the demised premises or the Building or any part of either to be used in any manner, nor suffer or permit anything to be done therein or anything to be brought into or kept therein, which, in the reasonable judgment of Landlord, shall in any way: impair the character, reputation or appearance of the Building as a high quality office building, materially impair or interfere with any of the Building's services or the proper and economic heating, cleaning, air conditioning, ventilating or other servicing of the Building or the demised premises, materially impair or interfere with the use of any part of the Building, or cause commercially unreasonable discomfort, inconvenience or annoyance to any of the other tenants or occupants of the Building. Tenant shall not use nor permit the use of the demised premises or the Building or any part of either in violation of the certificate of occupancy for the demised premises or the Building, if any, or any ground or underlying lease for the Building and/or the land of which the demised premises form a part, if any.

Notwithstanding anything to the contrary contained herein, Tenant shall not use or permit all or any part of the demised premises to be used for any of the following: (1) overnight stays or residential use of any kind (and Tenant hereby agrees to provide Landlord following request made therefor with such documentation as Landlord requests which proves that Tenant is not residing at or living in the demised premises, including, without limitation, paperwork filed with the Internal Revenue Service, utility bills, and/or a copy of a residential lease); (2) retail use of any kind that involves the presence of the general public in the demised premises; (3) real estate brokerage or property management; (4) an employment, personnel or executive search agency; (5) any health care, rehabilitation, massage, clinic, counseling or exercise facility of any kind, including, but not limited to, a medical or dental office; (6) any foreign or domestic government or any subdivision, agency, department, or instrumentality thereof, including, without limitation, any foreign, federal, state or local governmental or quasi-governmental body, agency or department, or any other authority or entity that is affiliated therewith or controlled thereby, or any person, group or entity that enjoys diplomatic, sovereign or any other form of immunity from civil or criminal process; (7) any political, labor, not-for-profit, religious, charitable, eleemosynary, school or educational entity, or any other similar type of organization; (8) the sale or distribution of any goods, services or merchandise not expressly permitted by the terms of this Lease; (9) the live performance of any form of entertainment, including, but not limited to, singing and/or the playing of any musical instrument of any kind in any manner whatsoever at any time, without regard to whether or not admission is charged for any live vocal or musical performance; (10) cooking, other than the warming of prepared foods for employee's lunches and snacks in a small microwave oven; (11) a messenger service; (12) banking, cash machine, check cashing and the like; (13) a recording studio; (14) sale, display or distribution of lewd or pornographic materials, alcohol, tobacco products or firearms of any kind; (15) the manufacture of any product; (16) any activity which involves the storage, use or generation of medical waste, corrosive or toxic solids, liquids or

gasses and/or any hazardous materials; (17) any occupancy or use which makes excessive demands on the Building's services or facilities and (18) any filming or a video production company other than as specifically permitted as part of the Permitted Use.

**Base Rent :** 2. Tenant shall pay Landlord during the Term hereof "annual base rent" (the minimum rent due and payable under this Lease) without prior demand, offset or deduction at the rates set forth below (dates inclusive):

Dates	annual base rent	monthly installment
8/1/09 to 7/31/10	\$ 345,873.00	\$ 28,822.75
8/1/10 to 7/31/11	\$ 355,384.51	\$ 29,615.38
8/1/11 to 7/31/12	\$ 365,157.58	\$ 30,429.80
8/1/12 to 7/31/13	\$ 375,199.41	\$ 31,266.62
8/1/13 to 7/31/14	\$ 385,517.39	\$ 32,126.45
8/1/14 to 7/31/15	\$ 425,497.38	\$ 35,458.12
8/1/15 to 7/31/16	\$ 437,198.56	\$ 36,433.21

Provided Tenant is not in default (beyond any applicable cure period) under its obligation under this Lease on August 1, 2009, September 1, 2009 and October 1, 2009, Tenant shall be entitled to a rent credit in the amount of \$86,468.25 which shall be applied by Landlord in three (3) equal installments of \$28,822.75 against the monthly installment of the annual base rent payable under this Lease for the months of August 2009, September 2009 and October 2009 (collectively the "free Rent and the "Free Rent Period"). Subject to Article 9 herein, in no event shall the rent credit payable under this paragraph exceed \$86,468.25.

Notwithstanding the foregoing, if prior to the Expiration Date (as the same may be amended from time to time), the demised premises are surrendered by Tenant or if Landlord obtains possession of the demised premises prior to the Expiration Date due to default(s) by Tenant under this Lease then in either case, Tenant shall immediately pay Landlord the unamortized portion of the Free Rent (which shall be amortized over the initial Term of the Lease using a straight line method) as additional rent hereunder and such payment obligation shall expressly survive the expiration or termination of this Lease. Annual base rent shall be paid in monthly installments in advance on the first day of each month during the Term hereof. Unless and until otherwise designated by Landlord in writing, all annual base rent and additional rent payable under this Lease shall be paid to "55 Washington Street LLC", c/o Two Trees Management, 45 Main Street, Suite 601, Brooklyn, New York 11201. Monthly installments of annual base rent payable for a partial month shall be prorated on a per diem basis based upon the number of days in the relevant month. All taxes, charges, costs, expenses and sums other than annual base rent payable by Tenant hereunder are deemed additional rent. Tenant shall pay annual base rent and additional rent as provided in this Lease in lawful money of the United States, which shall be legal tender in payment of all debts and dues, public and private at the time of payment, at the office of Landlord or such other place as Landlord may designate, without any set-off or deduction whatsoever. Any delay or failure of Landlord or its agent to prepare and deliver any bill, statement or invoice shall not constitute a waiver of the right to collect any payment that may have become due during the term of this Lease, including, without limitation, retroactive payments for any and all amounts unbilled. If no date shall be set forth herein for the payment of additional rent, then such sum shall be due and payable within ten (10) days after the date upon which Landlord demands such payment. If additional rent is not paid when due, Landlord shall have all the rights and remedies with respect to the collection of

the same and the enforcement of the Tenant's obligation to pay the same as in this Lease provided, and such rights and remedies as are available at law, equity or otherwise, in the case of non-payment of annual base rent. Although this Article is intended to facilitate the collection rights and remedies of Landlord under this Lease, it is not intended to alter the principle of reimbursable items by Tenant to Landlord, which reimbursable items shall in no event be deemed "income" to Landlord under any provisions of relevant tax law, or otherwise. If any out of state check of Tenant is dishonored, all subsequent checks shall be either certified checks or a check drawn upon a New York City Bank that is a member of the New York Clearing House Association (or its successor).

**Security Deposit :** 3. Tenant has deposited with Landlord the sum of \$320,000.00 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease. It is agreed that Landlord may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any amount payable hereunder as to which Tenant is in default under this Lease, or for any sum which Landlord may expend, or may be required to expend, by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the re-letting of the demised premises, whether such damages or deficiency accrued before or after summary proceedings or re-entry by Landlord. If Landlord uses, applies or retains any part or all of said security, as permitted hereunder, Tenant shall within five (5) days following demand, deposit with Landlord such amount as is necessary to restore the security to the amount Tenant is required to deposit with Landlord under this Article. If Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the security Landlord is then holding shall be returned promptly to Tenant after the date fixed as the end of the term hereof and after delivery of possession of the demised premises to Landlord. If the Building is sold or leased, Landlord shall have the right to transfer the security to the purchaser or lessee for the benefit of Tenant and Landlord, after giving notice to Tenant and the purchaser's assumption of this Lease, shall be deemed released by Tenant from all liability for the return of such security and Tenant shall look solely to the new owner or lessee for the return thereof. Tenant further covenants that it will not assign or encumber, or attempt to assign or encumber, the monies deposited herein as security, and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Notwithstanding the foregoing, Tenant may deliver to Landlord an unconditional letter of credit which complies with all of the provisions and conditions of this paragraph. The letter of credit must be in the sum of **THREE HUNDRED TWENTY THOUSAND AND 00/100 (\$320,000.00) DOLLARS** and shall serve as security for the faithful performance and observance by Tenant of the terms, provisions, covenants and conditions of this Lease, as amended to date and from time to time by the parties hereto. Said letter of credit shall name Two Trees Management Co. LLC, or an entity designated by Landlord, as sole beneficiary and it shall expire on the Expiration Date; provided, however, said letter of credit may provide that it will expire prior to the Expiration Date (but in no event prior to the one (1) year anniversary of the Commencement Date) if said letter of credit is renewed by Tenant, without amendment, and evidence of such renewal is delivered to Landlord prior to that date which is thirty (30) days prior to the Expiration Date hereof. The form

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Landlord: *MCT* Tenant *MCT*

of such letter of credit and the issuing bank shall be subject to the reasonable approval of Landlord and its counsel. The letter of credit shall provide that it may be presented for payment either at the counters of a branch of the issuing bank located in New York City or by mail at a specified branch located in New York City of the issuing bank. Upon any default by Tenant beyond the applicable notice and cure periods provided for herein, Two Trees Management Co. LLC shall be entitled to draw upon the letter of credit to the extent of the full amount thereof immediately upon delivery to the issuing bank of a sight draft. The letter of credit shall provide that partial drawings shall be permitted. If, for any reason, such letter of credit shall expire without Two Trees Management Co. LLC (as agent of Landlord) having drawn thereon for any reason, including, without limitation, the inadvertent failure to do so by Two Trees Management Co. LLC, then Tenant shall deliver to Two Trees Management Co. LLC within ten (10) days following demand made for it a replacement of such letter of credit or a cash deposit to bring the security deposit required hereunder to the appropriate balance. Said letter of credit shall specifically provide that Landlord and Two Trees Management Co. LLC will receive not less than forty-five (45) days written notice of the election of the issuing bank to not renew the same. Whether or not Landlord or Two Trees Management Co. LLC shall receive notice of cancellation or non-renewal of the letter of credit, Tenant shall deliver to Two Trees Management Co. LLC a replacement of such letter of credit prior to that date which is thirty (30) days prior to the cancellation date, expiration date or non-renewal date of the letter of credit. Tenant's failure to deliver evidence of the renewal of the letter of credit or a replacement letter of credit as aforesaid shall, in either case, be deemed a material default under this Lease, and on five (5) days written notice to Tenant, Two Trees Management Co. LLC shall be entitled to immediately draw upon the expiring letter of credit in the entire amount thereof. In the event Tenant defaults in respect of any of the provisions, covenants or conditions of this Lease, including, but not limited to, defaults in the payment of annual base rent or additional rent, beyond the applicable notice and cure periods provided for in this Lease, Two Trees Management Co. LLC may, on Landlord's behalf, from time to time draw upon the security deposit and use, apply, or retain the whole or any part thereof to the extent required for the payment of any annual base rent and additional rent or any other sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default, beyond the applicable notice and cure periods provided in this Lease, in respect of any of the provisions, covenants and conditions of this Lease, including, but not limited to, reasonable counsel fees and other collection charges, or with respect to any damages or deficiency in the re-letting, repairing or altering of the demised premises, whether such damages or deficiency accrued before or after summary proceedings or re-entry by Landlord (the amount which Two Trees Management Co. LLC may draw determined as set forth in this sentence is hereinafter referred to as the "default amount").

In the event Two Trees Management Co. LLC (as agent of Landlord) shall draw upon a letter of credit deposited as a security deposit hereunder and the amount drawn by Two Trees Management Co. LLC shall be in excess of the default amount, the excess shall be held by as cash security pursuant to the terms of this Lease. After the expiration of this Lease, and after delivery of possession of the entire demised premises to Landlord, and after applying or retaining any portion of the security required to cure any and all defaults by Tenant under

this Lease, the letter of credit and the cash security deposit, if any, then held by Landlord shall be promptly returned to Tenant. If, due to Tenant's default hereunder, Landlord shall be entitled to apply or retain any portion of said security, Tenant shall, within five (5) days following demand, secure for the sole benefit of Landlord, a new or additional letter of credit naming Tenant as beneficiary and complying with the requirements set forth herein or deliver to Landlord a cash security deposit sufficient to comply with this paragraph, including the required amount. Tenant shall not assign or encumber the security deposited hereunder and neither Landlord or its successors or assigns shall be bound by any such assignment or encumbrance.

In the absence of evidence satisfactory to Landlord of any assignment of the right to receive the security, or the remaining portion thereof, Landlord may return the security to the original tenant regardless of any number of assignments of this Lease itself. In the event of a sale of the demised premises or larger premises of which the demised premises form a part, Landlord shall have the right, at Tenant's cost and expense, to transfer the cash security and the beneficiary rights under any letter of credit to the purchaser who shall assume Landlord's obligations hereunder and hold the same for the benefit of Tenant in accordance with the terms of this Lease, and Landlord and Two Trees Management Co. LLC (after giving to Tenant notice and reasonable evidence that such transfer has occurred and that the purchaser is bound by the provisions of this Article), shall each be deemed released by Tenant from all liability for the return of such security and Tenant shall look solely to the new owner for the release or the return thereof. Tenant shall, upon request and at Tenant's cost and expense, deliver confirmation of said transfer of beneficiary rights and a replacement letter of credit naming the transferee as beneficiary if necessary or if requested, provided, however that the amount actually charged Tenant by the issuing bank to issue such a replacement letter of credit shall be reimbursed to Tenant by Landlord or the purchaser. Landlord agrees to return any letter of credit it is then holding with respect to this Lease to the issuing bank if required by the issuing bank to receive a replacement letter of credit. No holder of any mortgage upon the demised premises or the Building shall be responsible in connection with the security deposited hereunder unless such mortgagee shall have in fact received such security or be named beneficiary thereof and acknowledged such receipt or beneficiary status in writing to Tenant. In the event of a foreclosure of the demised premises, or the Building and the return of the letter of credit to the Tenant, then, Tenant shall at Tenant's cost and expense, on demand of mortgagee, reissue the letter of credit in compliance with this paragraph, naming the mortgagee, or such other party as may be designated by mortgagee, as the sole beneficiary.

Landlord agrees that if (i) Tenant is not then in default hereunder and has not been in default beyond applicable notice and cure periods from the Commencement Date and their shall not have occurred an event which, with the giving of notice or passage of time, shall constitute a default by Tenant under this Lease, Tenant shall be permitted to reduce the face amount of the letter of credit or the security deposit, as the case may be, to \$290,384.62 as of December 1, 2010, (ii) Tenant is not then in default hereunder and has not been in default beyond applicable notice and cure periods and their shall not have occurred an event which, with the giving of notice or passage of time, shall constitute a default by Tenant under this Lease, Tenant shall be permitted to further reduce the face amount of the letter of credit to \$259,954.82 as of December 1, 2011 and (iii) Tenant is not then in default hereunder and has not been in default beyond any

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applicable notice and cure periods and their shall not have occurred an event which, with the giving of notice or passage of time, shall constitute a default by Tenant under this Lease, Tenant shall be permitted to reduce the face amount of the letter of credit or the security deposit, as the case may be to \$228,688.20 as of December 1, 2012.

**Real Estate Taxes :** 4. If the “Real Estate Taxes” (hereinafter defined) in any twelve (12) month period commencing July 1<sup>st</sup> and ending the following June 30<sup>th</sup> (dates inclusive) occurring, in whole or in part, during the term hereof (any such July to June twelve month period being herein a “Tax Year”) exceed the amount of the Real Estate Taxes, as finally determined, for the Tax Year commencing July 1, 2009 and ending on June 30, 2010 (the “Base Tax Year”), then Tenant agrees to pay Landlord 4.367% (“Tenant’s Percentage”) of the difference between such amounts (the “Tax Escalation Payment”) within ten (10) days after demand made therefor as additional rent. Tenant’s Tax Escalation Payment shall be prorated for any Tax Year during the Term which does not consist of twelve (12) full calendar months. Landlord shall have the right, but not the obligation, to bill Tenant in one or more installments for the amounts payable under this Article. Tenant’s obligation to pay additional rent under this Article shall survive the termination of this Lease and Tenant shall pay all amounts payable under this Article notwithstanding the fact that an invoice is sent after the Expiration Date or sooner termination of the Term hereof.

“Real Estate Taxes” shall mean, for the purposes of this Lease, all taxes, assessments and impositions (general or special, foreseen or unforeseen, ordinary or extraordinary) levied, assessed or imposed (including, but not limited to, real property taxes and any building improvement district charges and assessments) by federal, state or local governments and their political subdivisions upon all or part of the improvements and land of which the demised premises forms a part, including the Building, and any sidewalks, curbs, plazas, air rights and the like appurtenant to them (the land, improvements and appurtenances collectively being the “Real Property”), but shall exclude any transfer, income, inheritance or gift taxes and any tax that does not relate to the Real Property. If, for any reason whatsoever, a new tax, charge or assessment of any type, including, without limitation, a real estate tax, franchise, income, school, capital, or use and occupancy tax, shall be assessed, confirmed, imposed or levied against Landlord and/or all or any part of the Real Property in addition to, or in substitution in whole or in part for, any tax which would constitute “Real Estate Taxes”, then such tax or imposition shall be deemed to be included within the term “Real Estate Taxes”. If the Real Estate Taxes for any Tax Year during the term hereof, including the Base Tax Year, shall be adjusted, corrected or reduced, then all of the Tax Escalation Payments payable hereunder shall be recalculated using the revised Real Estate Taxes and Landlord shall credit or refund to Tenant any excess amount paid by Tenant less Tenant’s percentage of expenses incurred in obtaining such refund or credit including attorney’s fees and Tenant shall pay Landlord any amounts due hereunder within ten (10) days following demand. Tenant shall have no right to institute or participate in any real estate tax proceedings relating in whole or in part to the Real Property, it being understood that the commencement, maintenance, settlement or conduct thereof shall be in the sole discretion of Landlord. Tenant shall be liable for all taxes on or against property and trade fixtures and equipment placed by Tenant in or about the demised premises, and all taxes on Tenant’s right to occupy the demised premises. If any such taxes are levied against Landlord or Landlord’s property, and if

Landlord pays same, or if the assessed valuation of Landlord’s property is increased by the inclusion therein of a value placed upon such property, and if the Landlord pays the taxes based on such increased assessment, Tenant, upon demand, shall repay to Landlord the taxes so paid by Landlord or the portion of such taxes resulting from such increase in assessment.

**Electricity :** 5. Tenant shall pay for all electric current furnished to and/or consumed in the demised premises. Electric current is provided to the demised premises as specified in the rider attached to this Lease. Tenant agrees that at all times its use of electric current shall not exceed the capacity of the Building’s existing feeders, risers or wiring installation, and Tenant may not use any equipment which, in Landlord’s reasonable opinion, will overload such feeders, risers or installations or interfere with the businesses of other tenants or occupants of the Building. Landlord shall not be liable or responsible to Tenant for any loss, damages or expenses which Tenant may sustain as a result of any change in the character of electric service provided to the demised premises. Subject to Article 44 herein, Landlord represents that throughout the term of the Lease, Landlord shall supply electricity of 400 amps, 3 phase 220 to Suite 512.

**Utilities & Other Services :** 6. Unless expressly provided elsewhere in this Lease to the contrary, Tenant shall pay for any and all utility services furnished to and/or consumed in the demised premises at any time during the Term. As used herein, “utility services” shall include, but not be limited to, energy charges, any internet access fees, cable company services, and local and long distance wired and wireless telephone charges for voice and/or data. Such obligation shall expressly survive the expiration or termination of this Lease. Tenant shall indemnify, defend and hold Landlord harmless from and against any liability of Landlord for Tenant’s failure to timely pay for utility services furnished to and/or consumed in the demised premises during the Term. Tenant shall pay for cleaning services, trash collection and air-conditioning as provided in the rider attached hereto.

**Building Services :** 7. Landlord shall: (a) provide passenger elevator service twenty-four hours a day, seven days a week; (b) provide freight elevator service only on regular business days between the hours of 8 a.m. and 4 p.m.; (c) furnish heat, between the calendar months of November 1<sup>st</sup> and April 15<sup>th</sup> on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m. and other services which Landlord has expressly agreed to supply, if any, to the demised premises, when and as required by law; and (d) clean the public halls and public portions of the Building which are used in common by the Building’s tenants. Landlord reserves the right to stop the aforesaid services when necessary, by reason of accident or emergency or for repairs, alterations, replacements or improvements, however, Landlord shall use commercially reasonable efforts to restore such services so as not to materially interfere with Tenant’s business operations from the demised premises.

**As Is :** 8. Tenant acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the demised premises and the Building and Tenant has examined and has made a complete inspection of the same and is familiar with the physical condition thereof and agrees to accept the demised premises and the Building in “as is” condition except as may be expressly set forth herein to the contrary. Notwithstanding anything to the contrary herein, Landlord represents that as of the

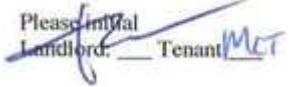
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Commencement Date (or such later date as Landlord substantially completes Landlord's Work), the demised premises will be free and clear of all occupants; all systems servicing the demised premises including, but not limited to plumbing, electrical, and HVAC will be in working order. Landlord has not made and does not make any representation as to the physical condition or any other matter affecting or relating to the demised premises and the Building, except as specifically set forth in this Lease and Tenant specifically acknowledges that no such representation has been made. No rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease. If one or more governmental licenses or permits shall be required for the proper and lawful conduct of Tenant's business in the demised premises, Tenant shall be responsible for, and shall procure and maintain, such license or permit.

**Failure to Give Possession :** 9. Landlord represents that as of the date hereof the demised premises are vacant and not subject to any leases. If Landlord is unable to deliver possession of all or part of the demised premises to Tenant on the Commencement Date hereof because of construction or work in the Building or in all or part of the demised premises, or the failure to obtain a certificate of occupancy, then Landlord shall not, in any such event, be subject to any liability for failure to give possession on said date and the validity of this Lease shall not be impaired under such circumstances, nor shall the same be construed to extend the term of this Lease, but provided that Tenant has satisfied the Documentary Requirements set forth below on or before April 15, 2009, the Free Rent Period shall extend by one day for each day after the Commencement Date that the demised premises have not been delivered in the condition required herein (provided Tenant is not responsible for Landlord's inability to deliver possession of the demised premises to Tenant or complete any work) until Landlord substantially completes Landlord's Work and delivers to Tenant possession of all of the demised premises. However, in the event Landlord is unable to deliver possession of the demised premises in the condition required hereon on or before December 31, 2009; provided that on or before April 15, 2009 Landlord has received from Tenant (a) three (3) originals of this Lease duly notarized and fully executed by Tenant, (b) a valid and in effect insurance certificate satisfying all of the conditions of this Lease covering all of the demised premises, (c) a certified check made payable to Landlord in the amount of the first month's rent; (d) either a certified check made payable to Landlord in the amount of the security deposit or a letter of credit in the amount of the security deposit satisfying all of the conditions of this Lease; and (e) a W-9 with Tenant's name, address and EIN signed by Tenant ((a) – (e) being collectively referred to as the "Documentary Requirements"), then Tenant shall have the right to terminate this Lease by giving Landlord written notice (the "termination notice") thereof on or before January 10, 2010 (time of the essence); provided that the demised premises are not available for Tenant to take possession in the condition required hereunder by the date Tenant gives the termination notice. If Tenant shall timely give Landlord a termination notice, then this Lease shall be deemed terminated and be null and void and of no further force and effect, and the parties shall be mutually released of and from all rights and obligations hereunder, and the security deposit or Letter of Credit shall be promptly returned to Tenant. If, however, a termination notice shall not be given by Tenant on or before the Termination Date or if the demised premises are available for Tenant to take possession on or before the date the termination

notice is given, then Tenant's right to terminate this Lease under this Article shall be deemed waived and of no further force and effect. If Tenant is given possession of all or part of the demised premises in the condition required hereunder or any other premises prior to the Commencement Date hereof, Tenant covenants and agrees that such possession and occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Lease, except the obligation to pay annual base rent. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of §223-a of the New York Real Property Law.

**Alterations :** 10. Tenant shall make no structural changes in or to the demised premises of any nature without Landlord's prior written consent (it being understood that Landlord's Work has been approved by Landlord as of the date hereof). Landlord's prior written consent shall not be unreasonably withheld, conditioned or delayed with respect to Tenant's request to perform nonstructural alterations (a "Minor Alteration"), provided Tenant complies with all of the conditions, provisions and covenants of this Lease. If Landlord obtains possession of the demised premises prior to July 31, 2016, then, upon Landlord's request, Tenant shall either (a) restore the demised premises to the condition the demised premises were in as of the Commencement Date (or such other date as Landlord completes Landlord's Work) or (b) pay Landlord at the end of the term of this Lease upon demand, the amount it will cost Landlord to restore the demised premises to the condition the demised premises were in as of the Commencement Date. Tenant's obligation to either pay Landlord to restore the demised premises or restore the demised premises as set for this in this article shall expressly survive the expiration and/or termination of this Lease. In the event Tenant timely exercises Tenant's option to add the Adjacent Unit (as hereinafter defined) to the demised premises, Landlord's prior written consent to any nonstructural changes in connection with Tenant's initial work on the Adjacent Unit pursuant to plans reviewed by Landlord with respect to the Adjacent Unit (the "Adjacent Unit Plans") shall not be unreasonably withheld, conditioned or delayed. In no event, however, shall Tenant install or permit the installation of any art in the demised premises that an artist could prevent the removal of pursuant to a governmental or court law, code, rule, regulation or order. In no event shall Landlord be required to consent to any Tenant Changes that would adversely affect the structure of the Building, the exterior thereof, any part of the Building outside of the demised premises or the mechanical, electrical, heating, ventilation, air-conditioning, sanitary, plumbing or other service systems and facilities of the Building. Tenant shall, at its expense, before making any alterations, additions, installations or improvements: (a) obtain and promptly deliver to Landlord a copy of all permits, approvals and certificates required by any governmental or quasi-governmental bodies (and upon completion, certificates of final approval thereof) and (b) submit to Landlord, for Landlord's prior written approval, plans, drawings and specifications of all changes, alterations, additions, improvements and work (herein "Tenant Changes") Tenant wants to perform in the demised premises or the Building. Tenant shall make all revisions to its plans, drawings and specifications reasonably requested by Landlord and shall provide Landlord with all Landlord requested details. Except with respect to the Landlord's Work, Tenant shall, promptly upon demand, reimburse Landlord for all reasonable out-of-pocket fees, expenses and other charges incurred by Landlord and/or its agent in connection with the approval of the plans, drawings and specifications (including fees paid to other parties for their opinion and comments)

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Notwithstanding anything contained in this Lease to the contrary, in the event that Tenant alleges that Landlord was unreasonable in withholding its consent to a Minor Alteration or the Adjacent Unit Plans, Tenant shall not be entitled to damages or any other affirmative relief or remedy as a result thereof and Tenant's sole remedy shall be to commence an expedited arbitration proceeding before the American Arbitration Association to be determined by a single arbitrator with at least ten (10) years experience in the subject matter of the dispute and the parties will have no right to object if the arbitrator renders a decision within fifteen (15) business days from the selection of the arbitrator; provided however, that prior to Tenant resorting to expedited arbitration, Tenant shall notify Landlord by written notice ("Arbitration Notice") of Tenant's intent to pursue such arbitration and Landlord and Tenant shall use reasonable efforts to resolve the matter without an arbitrator within thirty (30) days of the date Landlord receives Tenant's Arbitration Notice. In the event an arbitration is commenced, the sole issue to be determined by the arbitrator shall be whether Landlord unreasonably withheld its consent to the Minor Alteration requested by Tenant and if the arbitrator determines that Landlord was unreasonable, Tenant's sole remedy shall be that Landlord's consent shall be deemed granted in the case of that particular Minor Alteration request.

Immediately following approval by Landlord, Tenant (or, at Landlord's option, Landlord at Tenant's expense) shall file the approved plans and drawings with the appropriate governmental and quasi-governmental authorities having jurisdiction. If requested by Landlord, Tenant shall use an expeditor designated or approved in advance by Landlord to assist with the filings. Notwithstanding the foregoing or anything to the contrary contained herein, no consent or approval issued by Landlord shall constitute an express or implied representation by Landlord that the Building or the demised premises (with or without any Tenant Change) will be suitable, feasible or lawful for any general or specific use, purpose or requirement of Tenant. Tenant shall, at its sole cost and expense, in making any Tenant Change, comply with all Legal Requirements (hereinafter defined), including, without limitation, all requirements of Local Law No. 5 of 1973 of the City of New York and The Americans With Disabilities Act of 1990, as amended to date. All materials and equipment used in connection with Tenant Changes shall be new and first quality and no materials or equipment shall be subject to any lien, encumbrance, chattel mortgage, title retention or security agreement. If any Tenant Change is to be made to the fire safety system, Tenant shall use only a contractor (or, if necessary, contractors) reasonably approved by Landlord and upon the completion of such work, Tenant shall deliver to Landlord a letter issued by the Building's fire safety system vendor/service provider indicating that all fire safety system devices located on the demised premises' floor are functioning properly and a schedule indicating the dates for the pre-testing and final testing of the fire safety system (and which final testing must be within six (6) months of the date the plans for the Tenant Change were filed with the New York City Department of Buildings). Tenant agrees to carry, and will cause its contractors and sub-contractors to carry, such worker compensation, general liability, personal and property damage insurance as Landlord may require in form, amount, carriers and coverages satisfactory to Landlord (including, but not limited to, adequate Builder's Risk coverage). Such insurance shall be in addition to and not in lieu of any other insurance required under this Lease. Tenant shall not, at any time prior to or during the

term of this Lease, directly or indirectly employ, or permit the employment of, any contractor, mechanic or laborer in the demised premises, whether in connection with any Tenant Changes or otherwise, if, in Landlord's sole reasonable discretion, such employment will interfere or cause any conflict with other contractors, mechanics, or laborers engaged in the construction, maintenance or operation of all or part of the Building. In the event of any interference or conflict, Tenant, upon demand of Landlord, shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Building immediately and shall replace such contractors, mechanics and laborers with contractors, mechanics and laborers who, in Landlord's reasonable judgment, will not interfere or conflict with the construction, maintenance or operation of all or part of the Building and, in such event, Landlord may require that Tenant use union labor.

Nothing in this Lease is intended to constitute a consent by Landlord to the subjection of Landlord's or Tenant's interest in the Building, the demised premises and/or the Real Property to any lien or claim by any person that performs and/or supplies any work, labor, material, service or equipment to Tenant and/or the demised premises. Landlord hereby notifies all such persons of such intent and each such person agrees, to the extent permitted by law, that by performing any work for or supplying any materials to Tenant it accepts that Landlord has not granted such consent and that such person shall not have a right to file any lien or claim against any interest of Landlord in the demised premises, the Building and/or the Real Property. If any mechanic's lien is filed against the demised premises, the Building and/or the Real Property for work claimed to have been done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within thirty (30) days thereafter, at Tenant's expense, by payment or filing a bond as permitted by law.

All fixtures and all paneling, partitions, railings and like installations, installed in the demised premises at any time, either by Tenant or by Landlord on Tenant's behalf, shall, upon installation, become the property of Landlord and shall remain upon and be surrendered with the demised premises unless Landlord obtains possession of the demised premises prior to July 31, 2016, then Landlord, by notice to Tenant shall have the right to elect to relinquish Landlord's right thereto and to have them removed by Tenant, in which event the same shall be removed from the demised premises by Tenant prior to the end of the term of this Lease, at Tenant's expense. Nothing in this article shall be construed to give Landlord title to, or to prevent Tenant's removal of, trade fixtures, moveable office furniture and equipment, but in no event shall Tenant remove any fixtures and equipment which are part of the operation of the demised premises and/or the Building. Upon removal of Tenant's trade fixtures, moveable office furniture and equipment from the demised premises as permitted herein, or upon removal or other installations as may be required by Landlord, Tenant shall immediately, and at its expense, repair and restore the demised premises to the condition existing prior to any such installations upon removal of same from the demised premises or upon removal of other installations as may be required by Landlord, Tenant shall immediately, at its expense, repair and restore the demised premises to the condition existing prior to any such installations, reasonable wear and tear excepted, and repair any damage to the demised premises or the Building due to such removal. All property permitted or required to be removed by Tenant at the end of the term which remains in the demised premises after Tenant surrenders possession of the demised

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premises to Landlord shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or removed from the demised premises by Landlord, at Tenant's expense. Tenant's obligations under this Article shall expressly survive the expiration or sooner termination of this Lease.

**Repairs :** 11. Subject to Landlord's rights in **Article 18** of this Lease, Landlord shall maintain and repair the exterior of and the lobby, elevators and other public portions of the Building relating to the demised premises and those portions of the electrical system, fire safety system, sprinkler system and heating system which serve the demised premises but are in the common areas of the Building outside of the demised premises and the plumbing starting from the point where the waste line meets any other tenants line or a main line (it being understood that Tenant shall be responsible for the repair and maintenance of the waste line running from the demised premises to the point where the waste line meets any other tenants line or a main line) to the extent necessary so that said systems are in good working order at the point where they enter the demised premises; except if such repairs are necessitated by Tenant's negligence, omission or improper conduct, in which case, such maintenance shall be performed at Tenant's cost and expense and Tenant shall reimburse Landlord for the cost thereof within ten (10) days following demand made therefor as additional rent hereunder. Tenant shall, during the term hereof, at its expense, take good care of, maintain, clean, replace and repair the demised premises (including all bathrooms and lavatory facilities located within the demised premises), the windows and window frames, entrance door and the fixtures and appurtenances therein, and promptly make all non-structural repairs thereto except if caused by Landlord's negligence, omission or improper conduct. Tenant shall make, at its expense, all non-structural repairs to the Building caused by, or resulting from, moving any of its property and/or caused by the carelessness, omission, neglect or improper conduct of Tenant, Tenant's servants, employees, invitees, or licensees, and whether or not arising from Tenant's conduct or omission, when required by other provisions of this Lease. If any structural repairs are necessary to the Building as a result of Tenant's use or manner of use of the demised premises or as a result of moving its property or as a result of the acts, omissions, negligence or willful misconduct of Tenant, Tenant's servants, employees, invitees, or licensees or if any structural repairs are necessary for any reason in the demised premises, Tenant shall immediately notify Landlord of the need for such repairs and Landlord shall make such structural repairs at Tenant's cost and expense. In no event shall Landlord have any obligation to perform any work hereunder at overtime or premium rates. Tenant shall pay Landlord for the cost and expense of such structural repairs within ten (10) days following demand therefor as additional rent hereunder. All maintenance, repairs and replacements to be made to the fire safety system serving the demised premises by Tenant shall be made only by contractors reasonably approved in advance by Landlord. All parties employed by Tenant to clean, maintain and/or repair the demised premises shall be approved in advance by Landlord which approval shall not be unreasonably withheld. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the New York State Labor Law or any other applicable law, or of the Rules of the Board of Standards and Appeals, or of any other board or body having or asserting jurisdiction. Landlord shall replace, at Tenant's expense, any and all plate and other glass damaged or broken from any cause

whatsoever in and about the demised premises. If Tenant does not maintain insurance on all plate and other glass in the demised premises, Landlord may insure, and keep insured, at Tenant's expense, all plate and other glass in the demised premises for and in the name of Landlord and, in such event, Tenant shall pay landlord, as additional rent for the costs of the premium for said insurance within ten (10) days following demand made therefor. All repairs made by Tenant or on behalf of Tenant shall be of quality or class equal to the original work or construction. If Tenant fails, after ten (10) days notice, to proceed with due diligence to make repairs required to be made by Tenant, the same may be made by Landlord at the expense of Tenant, and the expenses thereof incurred by Landlord shall be collectible, as additional rent, after rendition of a bill or statement therefor.

Tenant shall give Landlord prompt notice of any defective condition in any plumbing, heating system or electrical lines located in the demised premises and following such notice, Landlord shall remedy the condition with due diligence at the expense of Tenant; provided, however, that if the defective condition was solely and directly caused by Landlord or Landlord's agent, employee, contractor or subcontractor, then Landlord shall remedy the condition at the expense of Landlord. Except as specifically provided elsewhere in this Lease, there shall be no allowance to Tenant for a diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the Building or the demised premises, or in and to the fixtures, appurtenances or equipment thereof. Except as may be expressly set forth herein to the contrary, it is specifically agreed that Tenant shall not be entitled to any set-off or reduction of rent by reason of any failure of Landlord to comply with the covenants of this or any other article of this Lease. However, notwithstanding the foregoing, Landlord shall use commercially reasonable efforts to perform its repair obligations hereunder so as not to materially interfere with Tenant's business operations from the demised premises; provided, however, that Landlord shall not be obligated to pay overtime or premium rates. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract.

**Landlord's Access to Demised Premises :** 12. Landlord and its agents and designees shall each have the right to enter the demised premises, at all times in the event of an emergency and otherwise at reasonable times, to examine the same, to enter, use, exit and/or perform work in the closet outside of the demised premises accessible from the demised premises and/or to make such repairs or alterations as Landlord may deem necessary or reasonably desirable for the Building or which Landlord shall be required to or shall have the right to make by the provisions of this Lease or any other lease in the Building (and Landlord may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed). Landlord and its agents and designees shall be allowed to take all material into and upon the demised premises that may be required for the repairs or alterations above mentioned as the same is required for such purpose, without the same constituting an eviction of Tenant in whole or in part, actual or constructive, and the rent payable hereunder shall in no wise abate while said repairs or alterations are being made by reason of loss or interruption of the business

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of Tenant because of the prosecution of any such work. In connection with the repairs and alterations to be performed by Landlord pursuant to this Article 12, Landlord shall use commercially reasonable efforts to minimize the disturbance and not to materially interfere with Tenant's business operations from the demised premises but nothing contained herein shall be deemed to require Landlord to perform the same on an overtime or premium pay basis, unless Tenant agrees to pay the cost thereof. Tenant shall permit Landlord and Landlord's agents and designees to use, maintain and replace pipes and conduits in and through the demised premises, and to erect new pipes and conduits therein provided the same does not materially interfere with Tenant's business operations from the demised premises.

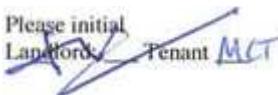
If Tenant is not present to open and permit an entry into the demised premises, Landlord or Landlord's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly, and provided reasonable care is exercised to safeguard Tenant's property; although such entry shall not render Landlord or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom, Landlord may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation, and such act shall have no effect on this Lease or Tenant's obligation hereunder. Tenant acknowledges and agrees that it and its employees, guests, invitees, and agents shall not, at any time, for any reason whatsoever, use, access, enter or have any rights in or to the roof or roof top area of the Building. Tenant's failure to abide by the terms of the foregoing sentence shall be deemed a material default of the Lease. Landlord shall also have the right to enter the demised premises upon reasonable advance telephone notice of at least one (1) day for the purpose of exhibiting them to prospective purchasers or lessees of the Building or to prospective mortgagees or to prospective assignees of any such mortgages or to the holder of any mortgage on the Landlord's or ground lessors, if any, interest in the Real Property, its agents or designees. During the last six (6) months of the term, Landlord may enter the demised premises at reasonable times for the purpose of showing the same to prospective tenants and place upon the demised premises the usual notices "To Let" and "For Sale" which Tenant shall permit to remain without molestation.

**Compliance with Laws, Building Insurance, Floor Loads : 13.**  
The term "Legal Requirements" means all laws, statutes, ordinances, codes, orders, rules, regulations, directives and requirements of all federal, state, county, city and borough departments, bureaus, boards, agencies, offices, commissions and other subdivisions thereof, or any official thereof, or of any other governmental public or quasi-public authority, or of any insurance companies providing coverage for all or part of the Building, or of any utility company providing service to all or part of the Building, in any case, whether now or hereafter in force, which are applicable to all or part of the Real Property and all requirements, obligations and conditions of all instruments of record as of the date hereof. Tenant shall, immediately following receipt of the same, deliver to Landlord a copy of any and all notices Tenant receives of any Legal Requirement violation pertaining to Tenant, the demised premises, the Building and/or the Real Property.

During the term hereof and at all times prior that Tenant is in possession of the demised premises, Tenant shall, at Tenant's sole cost and expense, promptly comply with all present and

future Legal Requirements pertaining to the use or manner of use of the demised premises and/or the Building by Tenant and by its officers, employees, invitees, agents, designees, contractors and subcontractors and/or to the business of Tenant or Tenant's method of operation in the demised premises, including, without limitation, the rules and regulations of the Landmarks Preservation Commission or a historic preservation district, if applicable, except that Tenant shall not be liable for the violation of any Legal Requirement by Landlord or other tenants of the Building. If Tenant has, by its manner of use of the demised premises or method of operation therein, violated any Legal Requirements and structural repairs and/or alterations are necessary to cure such violations, then, and, in such event, Landlord may make such structural repairs and alterations and Tenant shall reimburse Landlord for the cost of such work within ten days following demand therefor as additional rent. For the purposes hereof the cost of any alteration or improvement shall be deemed to include the cost of labor and materials and the cost to prepare and file plans for such alteration and improvements. Tenant shall not place a load upon any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Landlord reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Landlord's judgment, to absorb and prevent vibration, noise and annoyance.

For purposes of this Lease, "hazardous materials" means any explosives, radioactive materials, hazardous wastes, or hazardous substances, including, without limitation, substances defined as "hazardous substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9657; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901-6987; or any other similar laws (collectively, "hazardous materials laws"). Supplementing the foregoing parts of this Article, Tenant will not cause or permit the storage, use, generation, or disposition of any "hazardous materials" in, on, or about the demised premises or the Building. Further Tenant will not permit the demised premises to be used or operated in a manner that may cause all or part of the Real Property to be contaminated by any hazardous materials. Tenant shall be solely responsible for and will defend, indemnify and hold Landlord, its agents and employees harmless from and against all claims, costs and liabilities, including, but not limited to, attorneys' fees and costs, arising out of or in connection with Tenant's breach of its obligations in this Article, including, but not limited to, the removal, cleanup, and restoration work and materials necessary to return the demised premises and any other property of whatever nature located within the Real Property to their condition existing prior to the appearance of Tenant's hazardous materials. Such indemnity and all obligations under this Article shall expressly survive the expiration, cancellation or termination of this Lease. Tenant will immediately advise Landlord in writing of (1) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed, or threatened with respect to any hazardous materials affecting the demised premises or Real Property; and (2) all claims made or threatened by any third party against Tenant, Landlord, or the demised premises relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from any hazardous

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materials in or about the demised premises. Without Landlord's prior written consent, Tenant will not take any remedial action or enter into any agreements or settlements in response to the presence of any hazardous materials in, on, or about the demised premises or Real Property. Tenant's obligations under this Article shall expressly survive the expiration or other termination of this Lease. Tenant acknowledges and agrees that Landlord shall have no liability to Tenant for bad air, mold, or "sick building syndrome".

Tenant shall not do or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Landlord. Tenant shall not keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and in such quantity so as not to increase the rate for fire insurance applicable to the Building, nor use the demised premises in a manner which will increase the insurance rate for the Building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. If by reason of failure to comply with the foregoing the fire insurance rate shall, at the beginning of this Lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Landlord, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Landlord which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "makeup" or rate for the Building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to said premises.

Anything in this Lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the New York Fire Insurance Exchange or any bureau, department or official of the federal, state or city government recommend or require the installation of a sprinkler system, or require any changes, modifications or alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's specific business use in the demised premises, the location of partitions, trade fixtures, or other contents of the demised premises, or if, as a result of Tenant's particular business or particular use or manner of use of the demised premises or the location of partitions, trade fixtures or other contents of the demised premises, any such sprinkler system installations, modifications, alterations, additional sprinkler heads or such other equipment becomes necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any of the aforesaid entities, or by any fire insurance company, then Landlord or Landlord's agent shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications and alterations and supply additional sprinkler heads or other equipment as required, whether the work involved shall be structural or non-structural in nature. In such event, Tenant shall pay to Landlord, as additional rent hereunder, for Landlord's expenses within ten (10) days following demand made therefor and Tenant shall pay Landlord Tenant's proportionate share of the contract price for any sprinkler supervisory service provided to the demised premises.

Irrespective of the place of execution or performance, this Lease shall be governed and construed in accordance with the laws of the State of New York. Tenant hereby agrees to be subject to in personam jurisdiction in any court of appropriate subject matter jurisdiction located in the City, County and State of New York or located in Brooklyn, Kings County, New York for any action brought by Landlord against the Tenant arising out of, or relating to this Lease.

**Signs :** 14. Tenant shall obtain Landlord's prior consent for all signs, advertisements, notices or other lettering that Tenant wants to exhibit, inscribe, paint or affix on any part of the outside of the demised premises, or in the common areas or the outside of the Building, including, without limitation, on the entrance door to the demised premises and/or in the common hallway adjacent to the demised premises, or on the inside of the demised premises if the same is visible from the outside of the demised premises. No awnings or other projections shall be attached to the Building's outside walls. Landlord may remove any such signs, advertisements, notices, lettering, awning and projections which it did not consent to in advance and Tenant shall pay Landlord upon demand for the expense incurred by such removal as additional rent hereunder. Landlord and Tenant hereby acknowledge and agree that Tenant plans to affix a sign to the entrance door to the demised premises or in the common hallway adjacent to the demised premises. Landlord's consent to such sign shall not be unreasonably withheld or delayed provided that the sign is (i) three (3) square feet or less, (ii) either affixed to the door or on the wall adjacent to the demised premises (as the case may be) and (iii) affixed to the door or wall with an adhesive.

**Garbage :** 15. Tenant shall remove all refuse and rubbish from the demised premises and shall deposit the same in the receptacles and in the locations designated and in the manner described by Landlord. Tenant shall, at its sole cost and expense, comply with all Legal Requirements regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant shall sort and separate such waste products, garbage, refuse and trash into such categories as provided by law and as requested by Landlord. Each separately sorted category of waste products, garbage, refuse and trash shall be placed in separate receptacles reasonably approved by Landlord. Tenant shall also comply with all Legal Requirements regarding the collection and recycling of industrial/office equipment, including without limitation, computers, printers and monitors and Tenant shall cause any such industrial/office equipment to be removed, at Tenant's sole cost and expense, by a contractor reasonably acceptable to Landlord. Tenant shall remove, or cause to be removed, at its expense, by a contractor reasonably acceptable to Landlord, at Landlord's sole discretion, such items other than daily refuse generated in the ordinary course of Tenant's business as landlord may expressly designate. Landlord may, at its option, refuse to collect or accept from Tenant waste products, garbage, refuse or trash (a) that is not separated and sorted as required by Legal Requirements or (b) which consists of items which are not ordinary, typical and usual for typical office tenants in the Building or if ordinary, typical and usual, if such items are in such quantities and amounts as are not ordinary, typical and usual for typical office tenants in the Building who occupy the same rentable square footage as Tenant, and to require Tenant to arrange for such collection at Tenant's sole cost and expense, utilizing a contractor satisfactory to Landlord. If so required, Tenant shall immediately thereafter arrange for such collection

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at Tenant's sole cost and expense, utilizing a contractor satisfactory to Landlord. Tenant shall pay all costs, expenses, fines, penalties, or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this Article, and, at Tenant's sole cost and expense, shall indemnify, defend and hold Landlord harmless (including reasonable legal fees and expenses) from and against any actions, claims and suits arising from such noncompliance, utilizing counsel reasonably satisfactory to Landlord. Without limiting Landlord's obligation to maintain the common areas of the Building, if the demised premises become infested with vermin Tenant shall, at its expense, cause the same to be exterminated.

**Additional Covenants :** 16. Tenant covenants and agrees for itself, its officers, employees, contractors, agents, servants, licensees, invitees, subtenants, concessionaires, and all others doing business with Tenant (hereinafter for the purposes of this Article, collectively referred to as "Tenant") that:

1. Tenant shall not obstruct or encumber the Building's common areas, including, without limitation, the sidewalks, entrances, driveways, passages, courtyards, elevators, vestibules, stairways, corridors or halls, nor use them for any purpose other than going to and from the demised premises. All deliveries shall be made in a prompt and efficient manner using elevators and passageways designated for such type of delivery by Landlord and hand trucks equipped with rubber tires and sideguards.

2. Tenant shall not use the bathrooms, sinks, toilets and plumbing fixtures for any purposes other than those for which they were designed or constructed, and no sweepings, rubbish, rags, acids, liquids, chemicals or other substances shall be poured or deposited therein. If Tenant violates the foregoing, Tenant shall pay Landlord for all resulting repairs as additional rent hereunder and such obligation shall survive the expiration of the term of this Lease.

3. Tenant shall not hang, shake, sweep or throw anything out of any Building window, nor sweep or throw, or permit to be swept or thrown, from the demised premises, any dirt or other substances into any of the Building's common areas, elevators, stairwells or halls.

4. Tenant shall not disturb or interfere in any way with other Building tenants or those having business in the Building. Tenant shall not use, keep, or permit to be used or kept, any foul or noxious gas or substance in the demised premises, nor permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Landlord or other Building occupants by reason of noise, odors, and or vibrations. Further, Tenant shall not permit the emission from the demised premises of any objectionable noise or odor. Tenant shall not install or use any equipment other than such equipment ordinarily found in a modern day office that could have, in Landlord's reasonable judgment, an adverse effect on the demised premises, the Building and/or the comfort or convenience of other tenants and occupants of the Building. Tenant shall not injure, overload, deface, commit waste, nuisance or otherwise harm the demised premises or any part thereof.

5. No bicycles, vehicles, animals, fish or birds may be kept in or about the Building. Tenant covenants and agrees that there shall be no smoking in or on any portion of the Building.

6. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and

removed from the demised premises only on the freight elevators and only during hours, and in a manner approved by Landlord. Landlord reserves the right to inspect all freight to be brought into the Building, and to exclude from the Building all freight which it deems a security risk or a violation of any of the terms of this Lease.

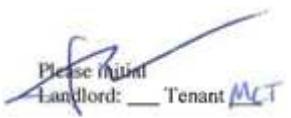
7. Canvassing, soliciting and peddling in the Building is prohibited and Tenant shall cooperate to prevent the same. Tenant shall not have bartering or boot-blacking services provided in the demised premises.

8. Landlord shall have the right to maintain any reasonable security system it deems necessary in the Building, including, without limitation, a system requiring Building passes, metal detectors and identification checks. Tenant shall not have a claim against Landlord by reason of Landlord excluding from the Building any person who does not pass Landlord's reasonable security requirements. Landlord may prevent access to the Building at all times, except on business days from 8:00 a.m. to 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m., provided that Tenant is provided with a means of accessing the demised premises before and after said hours, such as, by way of example only, a key to the front door of the Building.

9. Landlord shall have the right to prohibit any advertising by Tenant which in Landlord's opinion, tends to impair the reputation of the Building or its desirability, and upon written notice from Landlord, Tenant shall refrain from and discontinue such advertising.

**Rules and Regulations :** 17. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with such reasonable rules and regulations as Landlord or Landlord's agents may from time to time adopt provided that, unless such rules or regulations are imposed by any Legal Requirement(s), such rules do not materially diminish Tenant's rights or materially increase its obligations hereunder and are applied in a nondiscriminatory manner to all tenants in the Building that are similar in size to Tenant, use their space for a similar use as Tenant and have similar fixtures, appliances and finishes as Tenant has in the demised premises. Notice of any rules or regulations shall be given in such manner as Landlord may elect without limiting Tenant's right to quiet enjoyment, nothing in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the rules and regulations or terms, covenants or conditions in any other lease as against any other tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

**Building Alterations :** 18. Tenant acknowledges that from time to time, throughout the term of this Lease, Landlord may perform or have performed work in and about the Building and such work may result in noise and disruption to Tenant's business, however Landlord shall use commercially reasonable efforts to minimize any material interference with Tenant's business operations; provided, however, that Landlord shall not be obligated to pay overtime or premium rates. Landlord shall have the right, at any time, without the same constituting an eviction and without incurring liability to Tenant therefor, to change (i) the arrangement, number and/or location of the Building's entrances, hallways, passageways, doors, doorways, corridors, elevators, stairs, toilets and other public parts provided such changes do not deny reasonable means of access to the demised premises and/or Building, (ii) the Building's

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facade and exterior and/or (iii) the name, number and/or designation by which the Building may be known. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord performing or causing to be performed any work in the Building and/or making any of the aforesaid changes and/or arising from another tenant or occupant making any repairs in the Building. If an elevator shaftway or vault is located in whole or in part within the demised premises, Tenant expressly acknowledges to Landlord that it understands that said elevator shaftway and any elevator therein and such vault are not included within and are not a part of the demised premises. Tenant hereby acknowledges and agrees that Landlord may at any time and from time to time seal up any elevator shaftway and vault in the Building, including, without limitation, any elevator shaftway and/or vault located within all or part of the demised premises and Landlord reserves the right to remove the elevator from said shaftway and deck over any shaftway at any time at its sole option.

**Excavation Shoring :** 19. If an excavation shall be made upon land adjacent to or under the Building, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, a license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the Building's walls from injury or damage and to support the same by proper foundations, without any claim for damages or indemnity against Landlord, or diminution or abatement of rent.

**Property Loss, Indemnity, Tenant's Insurance :** 20. Except with respect to the negligent acts or willful misconduct of the Landlord or its agents, Landlord, its officers, agents, employees, subsidiaries and affiliated entities and corporations shall not be liable for any loss of, theft of, damage to or destruction of any of Tenant's goods, merchandise, fixtures, furniture or other property of whatsoever nature, caused by fire, theft, carelessness or any other cause whatsoever, including, without limitation, the negligence of any third parties, and Tenant hereby releases and waives any right of recovery against Landlord, its officers, agents, employees, subsidiaries and affiliated entities and corporations for any such loss. Tenant shall procure a waiver of subrogation on the part of the insurer against such parties by an endorsement to all insurance policies whereby the insurer recognizes the provisions of this Article. The foregoing waiver shall be in force only if the insurance policies contain a clause providing that such a waiver shall not invalidate the insurance. Landlord and its agents shall not be liable for any damage caused by other tenants or persons in, upon or about said Building or caused by operations in connection with any private, public or quasi public work. Landlord shall not have the right to permanently close or brick up any of the demised premises' windows except where and when required by law and in such event Tenant shall be entitled to a corresponding rent credit reflecting the diminution of rental value.

Tenant hereby indemnifies and saves harmless Landlord from and against any claims and all loss, cost, liability, damage and/or expense, including, but not limited to, reasonable counsel fees, penalties and fines, incurred in connection with or arising from (i) any default by Tenant in the observance or performance of any of the provisions, covenants or conditions of this Lease on Tenant's part to be observed or performed, (ii) the use or occupancy or manner of use or occupancy of the demised premises by Tenant or any person claiming through or under

Tenant, or (iii) any acts, omissions, or negligence of Tenant or any contractor, agent, servant, employee, visitor or licensee of Tenant, or any person claiming through or under Tenant, in or about the demised premises. If any action or proceeding shall be brought against Landlord based upon any such claim, Tenant, upon notice from Landlord, shall cause such action or proceeding to be defended, at Tenant's expense, by counsel acting for Tenant's insurance carriers in connection with such defense or by other counsel reasonably satisfactory to Landlord. This indemnity shall not require any payment by Landlord as a condition precedent to recovery. In addition, if any person not a party to this Lease shall institute any other type of action against Tenant in which Landlord shall be made a party defendant, Tenant shall indemnify, hold Landlord harmless from and defend Landlord from all liabilities and costs by reason thereof. If, on account of the failure of Tenant to comply with the provisions of this Article, Landlord is adjudged a co-insurer by its insurance carrier, then any loss or damage Landlord shall sustain by reason thereof shall be borne by Tenant and shall be immediately paid by Tenant upon receipt of a bill therefor and evidence of such loss.

To the extent not covered by the insurance required to be carried by Tenant hereunder and not covered by any other insurance then maintained by Tenant, Tenant, its officers, agents, employees, subsidiaries and affiliated entities and corporations shall not be liable for any destruction or substantial damage of the Building (other than the demised premises) caused by fire or explosions and not caused by the negligence or willful misconduct of Tenant, its officers, agents, employees, subsidiaries and affiliated entities and corporation, and Landlord hereby releases and waives any right of recovery against Tenant, its officers, agents, employees, subsidiaries and affiliated entities and corporations for any such loss.

Commencing on the date Tenant is given possession of the demised premises and thereafter during the term of this Lease, Tenant shall provide and maintain commercial general liability policies with broad form endorsements and water damage legal liability coverage against liability occasioned by accident or occurrence, such policies to be written by recognized and well-rated insurance companies authorized to transact business in the State of New York, and shall have a limit of not less than \$1,000,000 per occurrence for bodily or personal injury (including death), \$2,000,000 for more than one occurrence and \$500,000 for loss and damage to property. Tenant shall obtain and maintain "All Risk" insurance having extended coverage for fire and other casualties for its personal property, fixtures and equipment for the full replacement value thereof and plate glass insurance covering all plate glass in the demised premises. Notwithstanding anything to the contrary set forth herein, Tenant may "self-insure" the plate glass insurance required under this paragraph so long as Tenant has a net worth in excess of \$1,000,000.00 (and provided Landlord is reasonably satisfied that Tenant has a net worth in excess of \$1,000,000.00). If at any time during the term of this Lease it appears, in Landlord's reasonable judgment, that public liability or property damage limits in New York City for premises similarly situated, due regard being given to the use and occupancy thereof, are higher than the foregoing limits, then Tenant shall increase the foregoing limits accordingly. Landlord, its managing agent, leasing agent and mortgagee(s) and ground lessors, as appropriate, shall be named as additional insureds in the aforesaid general liability insurance policies. All policies shall provide that Landlord shall be given thirty (30) days' prior notice of cancellation of such insurance. Tenant shall deliver to

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Landlord:   
Tenant 

Landlord evidence of such insurance policies prior to occupying the demised premises. All premiums and charges for the aforesaid insurance shall be paid by Tenant and if Tenant shall fail to make such payment when due, Landlord may pay it (after notice and expiration of period to cure) and the amount thereof shall be repaid to Landlord by Tenant on demand and the amount thereof may, at the option of Landlord be added to and become a part of the additional rent payable hereunder. Tenant shall not violate or permit to be violated any condition of any of said policies and Tenant shall perform and satisfy the requirements of the companies writing such policies.

**Destruction, Fire and Other Casualty :** 21. If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Landlord and this Lease shall continue in full force and effect except as hereinafter set forth. If the demised premises shall be partially damaged by fire or other casualty, the damages shall be repaired by and at the expense of Landlord and the annual base rent, until such repairs shall be made, shall abate equitably according to the part of the demised premises which is unusable by Tenant or, if by reason thereof, the demised premises are rendered untenantable, said annual base rental shall totally abate until the demised premises are tenantable. After any such casualty, Tenant shall cooperate with Landlord by removing from the demised premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property so that Landlord may make repairs. Notwithstanding the foregoing, if the demised premises or the Building shall be damaged to such extent that Landlord shall decide to demolish same, or not to rebuild same, then, and in such event, Landlord may terminate this Lease upon notice to the Tenant within ninety (90) days following such event, and upon the date specified in such notice, which date shall not be less than thirty (30) days nor more than sixty (60) days following the giving of said notice, this Lease shall terminate and Tenant shall vacate and surrender the demised premises to Landlord. Any annual base rent prepaid by Tenant beyond said date shall be promptly refunded to Tenant. If this Lease shall not be terminated as provided above in this Article, Landlord shall, at its expense, proceed with the restoration of the demised premises; provided Landlord's obligations hereunder shall not exceed the scope of Landlord's initial construction obligations under this Lease and further provided, that Landlord's restoration obligations shall be subject to building and zoning laws then in effect.

If Landlord shall be obligated to repair or restore the demised premises under the provisions of Article 21 and does not commence such repair or restoration within sixty (60) days after receipt of approval to proceed by Landlord's insurance carrier and mortgagee, or does not substantially complete such restoration or repair within two hundred ten (210) days following the date of the casualty, then Tenant may on sixty (60) days notice terminate this Lease by giving Landlord written notice of Tenant's election to do so any time following the expiration of the sixty (60)-day or two hundred ten (210)-day period, as applicable and which notice must be received by Landlord prior to the date Landlord commences the repair or restoration or substantially completes the restoration of the demised premises, as the case may be, or such notice shall be deemed null and void,. No penalty shall accrue for reasonable delay which may arise by reason of adjustment of insurance, labor troubles and causes beyond Landlord's control. If Landlord shall so restore the demised premises, Tenant shall

repair, restore and redecorate the demised premises and reoccupy and reopen the demised premises, within thirty (30) days following restoration, in a manner and to the condition existing prior to the event of damage, except to the extent that Landlord is obligated above, and Tenant shall hold in trust the proceeds of all insurance carried by Tenant on its property for the purpose of such repair and restoration.

During the last twelve (12) months of the term (or any extension term) of this Lease, if the demised premises shall be so damaged by fire or other casualty that 20% or more is rendered untenantable, Tenant shall send Landlord written notice of such fact which notice shall state that Tenant has the right to terminate this Lease if Landlord is unable or chooses not to restore the demised premises within ninety (90) days of the date of Tenant's notice and that Landlord's reply to Tenant's notice is required within fifteen (15) days. Within fifteen (15) days of Landlord's receipt of such notice, Landlord may send Tenant written notice ("Restoration Notice") stating that, in Landlord's reasonable determination, Landlord can restore the demised premises within ninety (90) days of the date Landlord received Tenant's notice. In such event Landlord shall restore the demised premises to the condition required pursuant to this Article 21; provided however, if Landlord is unable to restore the demised premises within such ninety (90) day period then Tenant may terminate this lease by notice to Landlord given within fifteen (15) days of the date on which Landlord was required to restore the demised premises (which notice must be received by Landlord prior to the date Landlord substantially completes the restoration of the demised premises or such notice shall be null and void), specifying a date for the expiration of this Lease which shall not be later 60 days after the giving of such notice. Upon the effective date of such termination notice, the term of this Lease shall expire as fully and completely as if such date were the date fixed for the expiration of this Lease. If Landlord fails to timely send Tenant Landlord's Restoration Notice, tenant may terminate this Lease by notice to Landlord within twenty (20) days of the date of the fire or casualty specifying the date for the expiration of this Lease which shall be no later than 60 days after the giving of such notice. Any rent or additional rent owing shall be paid up to such date and any payments of rent and additional rent made by Tenant for a period beyond such date shall promptly be refunded to Tenant. Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof. Tenant's right to an abatement of rent hereunder shall not be construed to limit or affect Landlord's right to payment under any rental loss coverage carried by Landlord.

**Eminent Domain :** 22. If the whole of the demised premises shall be acquired or condemned by eminent domain for any public or quasi public use or purpose, then and in that event, the term of this Lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease. If only a part of the demised premises shall be condemned or taken, then, effective as of the date of vesting of title or taking possession, the rent shall be abated in an amount apportioned according to the area of the demised premises so condemned or taken and Tenant's Percentage shall be amended to reflect the new rentable square footage of the demised premises and the new square footage of the Building. If only a part of the Building shall be so condemned or taken, then (a) Landlord may, at its option, terminate this Lease as of the date of such



vesting of title, by notifying Tenant in writing of such termination, or (b) if such condemnation or taking shall be a permanent condemnation or taking of a substantial part of the demised premises in Tenant's reasonable judgment, Tenant may, at Tenant's option, by delivery of written notice to Landlord within thirty (30) days following the date on which Tenant shall have received notice of vesting of title or taking possession, terminate this Lease as of the date of vesting of title or taking possession, or (c) if neither Landlord nor Tenant elects to terminate this Lease, as aforesaid, this Lease shall be and remain unaffected by such condemnation or taking, except that the rent shall be abated in an amount thereof apportioned according to the area of the demised premises so condemned or taken and Tenant's Percentage shall be amended to reflect the new rentable square footage of the demised premises and the new square footage of the Building and Landlord, at its expense, subject to building codes then in effect and subject to the extent of proceeds actually received by Landlord for such taking, shall proceed with reasonable diligence to repair, alter and restore the remaining parts of the Building and the demised premises to substantially their former condition (which in no event shall exceed Landlord's pre-term construction obligations and which shall not include Tenant's Work, if any) to the extent that the same may be feasible and so as to constitute a complete and tenantable Building and demised premises. If this Lease is terminated by Landlord or Tenant under this Article, this Lease and the term and estate hereby granted shall expire as of the date of such termination with the same effect as if that were the Expiration Date, and the rent payable hereunder shall be apportioned as of such date. It is expressly understood and agreed that, at Landlord's option exercised in Landlord's sole discretion, the provisions of this Article shall not be applicable to any condemnation or taking for governmental occupancy for a limited period. Landlord shall be entitled to receive the entire award in any condemnation proceeding, including any award made for the value of the estate vested by this Lease in Tenant, and Tenant hereby expressly assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in or to any such award or any part thereof, and Tenant shall be entitled to receive no part of such award, provided, however that Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment provided Tenant is entitled pursuant to the terms hereof to remove such property, trade fixtures and equipment at the end of the term and provided further that such claim does not reduce Landlord's award.

#### **Surrender/Demolition :**

23.

A. If pursuant to any Legal Requirement Tenant is required to surrender a portion of the demised premises to Landlord and if the balance of the demised premises shall be tenantable following such surrender, then Landlord shall have the right to give Tenant a minimum of 30 days prior written notice to surrender to Landlord said portion of the demised premises. If Landlord exercises its option, Tenant shall surrender the requested portion of the demised premises to Landlord and give Landlord access to the balance of the demised premises for the purpose of erecting walls and related work. From and after the date on which Landlord commences such work in accordance with said notice, the rent shall be adjusted on a \$/rsf basis and Tenant's Percentage shall be adjusted to reflect the new rentable square footage of the demised premises.

B. At any time after July 31, 2016, Landlord shall be entitled, on at least two hundred seventy (270) days' prior written notice thereof, to terminate this Lease for the purpose of (i) demolishing the Building or (ii) renovating the entire Building for a conversion to residential use, and, in either case, this Lease shall come to an end on the date in such notice specified with the same force and effect as if such date were the date originally specified for the expiration of the term of this Lease. However, if Tenant has exercised its option to renew the Lease pursuant to Section 49 hereof and Tenant has exercised the Adjacent Unit Option, then, in the event Landlord terminates this Lease pursuant to this Article 23B, Landlord shall pay to Tenant as a condition to the surrender of the demised premises as provided in this Section 23B, the unamortized costs of Tenant's improvements to the Adjacent Unit as reasonably documented by Tenant and as amortized on a straight line basis over a term of ten years commencing on February 1, 2011.

**Assignments & Subleases :** 24. Tenant expressly covenants that it shall not assign, mortgage or encumber this Lease, nor sublet or underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Landlord in each instance; provided however, that Landlord's consent shall not be unreasonably withheld, conditioned or delayed if (i) the Tenant is Etsy, Inc. or its immediate successor, (ii) an Event of Default has not occurred, (iii) the proposed assignee or sublessee has a net worth at least equal to that of Tenant on the date hereof or on the date of the assignment or sublease, whichever is greater, in a certification delivered to Landlord simultaneously with the assignment or sublease, as the case may be, (iv) the purpose of such assignment or sublease is not solely the acquisition of Tenant's interest in this Lease or to circumvent the provisions of this Section and (v) the proposed assignee or sublessee continues to use the demised premises only for the Permitted Use. Transfer of the majority of the stock of a corporate tenant or the majority partnership interest of a partnership tenant or the majority interest of any other tenant entity shall each be deemed an assignment except as otherwise set forth herein. If Tenant desires to assign this Lease or sublet all or a portion of the demised premises, Tenant shall first notify Landlord in writing of its intention, and such notice shall include the amount of consideration paid for the assignment and/or sublease, the rents to be paid with respect to a sublease, the name of the proposed assignee or subtenant, together with its full address and a description of its proposed use (but nothing contained herein shall permit, nor obligate Landlord to permit to a use other than the use permitted by Article 1 of this Lease, it being understood that any change in use shall be subject to Landlord's consent, which Tenant agrees may, notwithstanding anything contained herein to the contrary, be unreasonably withheld). Tenant shall include with such notification such financial information as may be available concerning the proposed assignee or subtenant, including, without limitation, current updated financial statements (which financial information shall be supplemented on demand if required by Landlord). If this Lease be assigned, or if the demised premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed an acceptance of the assignee, subtenant or occupant as tenant, or a waiver or release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Landlord to an assignment or subletting shall not be

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construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or subletting. Tenant shall pay Landlord, promptly upon demand therefor, for all reasonable costs and expenses not to exceed \$2,000.00 per each request for an assignment or sublet (including, but not limited to, reasonable attorneys' fees and disbursements) incurred by Landlord in connection with any assignment, transfer of interest or subletting (whether or not Landlord consents thereto) as additional rent hereunder.

If this Lease is assigned or all or any portion of the demised premises is sublet, the obligations of Tenant and any guarantor of this Lease or any guarantor of the obligations of Tenant under this Lease as a primary obligor shall be unaffected and shall remain in full force and effect. No assignment, sublease or transfer of interest shall be effective unless and until the assignee, transferee or subtenant shall execute, acknowledge and deliver to Landlord a recordable agreement, in form and substance reasonably satisfactory to Landlord and counsel for Landlord, whereby the assignee, transferee or subtenant shall assume for the benefit of Landlord the obligations and performance of this Lease and agree to be personally bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed, and whereby Tenant (and all guarantors of this Lease or of the Tenant's obligations hereunder) covenants and agrees to remain liable as a primary obligor for the due performance of all of the covenants, agreements, terms, provisions and conditions of this Lease on the part of Tenant to be performed or observed, including, without limitation Article 1 hereof. Notwithstanding anything contained in this Lease to the contrary, in the event that Tenant alleges that Landlord was unreasonable in withholding its consent to the assignment of this Lease or the subletting of all or any portion of the demised premises in an instance where Landlord is expressly required to be reasonable in granting such consent, Tenant shall not be entitled to damages or any other affirmative relief or remedy as a result thereof and Tenant's sole remedy shall be to commence an expedited arbitration proceeding before the American Arbitration Association to be determined by a single arbitrator with at least ten (10) years experience in the subject matter of the dispute; provided however, that prior to Tenant resorting to expedited arbitration, Tenant shall notify Landlord by written notice ("Arbitration Notice") of Tenant's intent to pursue such arbitration and Landlord and Tenant shall use reasonable efforts to resolve the matter without an arbitrator within fifteen (15) days of the date Landlord receives Tenant's Arbitration Notice. In the event an arbitration is commenced, the sole issue to be determined by the arbitrator shall be whether Landlord unreasonably withheld its consent to the assignment or sublease requested by Tenant and if the arbitrator determines that Landlord was unreasonable, Tenant's sole remedy shall be that Landlord's consent shall be deemed granted in the case of that particular request for an assignment or sublease. The parties will have no right to object if the arbitrator renders a decision within fifteen (15) business days from the selection of the arbitrator. In the event of a leveraged buy-out or other take-over of Tenant, Landlord's consent to an assignment of this Lease or subletting of the demised premises to the successor entity shall not be deemed to have been unreasonably withheld if said successor entity shall not have a net worth (in the event of a corporate entity, on a market value basis) as certified to by a certified public accountant at least equal to the net worth of Tenant upon the date of execution of this Lease. Every sublease of the demised premises, in whole or in part, shall be subject and subordinate to this Lease.

Notwithstanding any provision in this Lease to the contrary, Tenant shall have the right, subject to the terms and conditions hereinafter set forth in this paragraph, without the consent of Landlord, to assign its interest in this Lease or sublease the demised premises (i) to an unaffiliated third party which is a successor to Tenant as a result of a bona fide sale of more than fifty (50%) percent of Tenant's business for a legitimate business purpose, provided that this provision is only applicable to Etsy, Inc., or (ii) to an existing member of Tenant, or (iii) to a person or entity which shall either (1) Control (hereinafter defined), (2) be under the Control of, or (3) be under common Control with Tenant. Any assignee or subtenant under this paragraph shall be referred to as a "Permitted Transferee." In addition, Tenant shall have the right, without Landlord's consent, to sublet a portion of the demised premises not exceeding fifteen (15%) of the rentable square footage thereof, to an entity that shares a commonality of ownership with Tenant's members, provided that such sublessee uses the demised premises for the Permitted Use and provided that Tenant may not collect rent and/or additional rent from such subtenant in excess of the rent and additional rent paid hereunder on a pro rata basis. The term "Control," as used herein, shall mean the power to direct or cause the direction of the management and policies of the controlled entity through the ownership of more than fifty percent (50%) of the voting rights in such controlled entity except the transfer to a Permitted Transferee shall not be deemed to effect control. Any assignment or sublease may only be made upon the condition that (a) any such assignee or subtenant shall have a net worth at least equal to that of Tenant on the date hereof or on the date of the assignment or sublease, whichever is greater, in a certification delivered to Landlord simultaneously with the assignment or sublease, as the case may be, and continue to use the demised premises only for the Permitted Use, it being understood that any change in the use is subject to Landlord's consent which Tenant agrees, may be unreasonably withheld, (b) the purpose of such assignment or sublease is not solely the acquisition of Tenant's interest in this Lease or to circumvent the provisions of this Section, (c) such assignee or subtenant, as the case may be, shall execute and deliver to Landlord, promptly following such assignment or sublease, an agreement in form reasonably satisfactory to Landlord, in which such assignee or subtenant, as the case may be, assumes, for the benefit of Landlord, all of the obligations of the tenant under this Lease as if the assignee had signed this Lease originally as the tenant, (d) Tenant provides Landlord with written notice of such assignment or sublease, including the identity and mailing address of the assignee or subtenant, as the case may be, no less than thirty (30) days prior to the effective date of such assignment or sublease (e) the obligations of Tenant and any guarantor of this Lease or any guarantor of the obligation of Tenant under this Lease as a primary obligor shall be unaffected and shall remain in full force and effect, and (f) no Event of Default has occurred upon the date Tenant notifies Landlord of such assignment or sublease and on the effective date of the assignment or sublease.

Except with respect to an assignment or sublease that does not require Landlord's consent or in connection with a leveraged buy out, Tenant shall promptly pay to Landlord, as additional rent hereunder, one-half of all net consideration paid for all assignments of this Lease and all rent or additional rent or sum which Tenant shall receive from or on behalf of any assignee(s) or subtenant(s) or any occupant by, through or under Tenant,

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which is in excess of the rent and additional rent payable by Tenant in accordance with the provisions of this Lease (or in the event of a subletting of less than the whole of the demised premises, the rent and additional rent allocable to that portion of the demised premises affected by such sublease) and the cost of any brokerage commission and tenant improvements made to the demised premises in connection with such subletting or assignment.

In no event shall an assignee or sublessee be any of the following: a prospective tenant (or its designee) who is discussing or has discussed in the last five (5) months with Landlord (or Landlord's agent) its need for space in the Building; a current tenant, subtenant or occupant of space in the Building or any other Building owned by Landlord or an entity under common control with Landlord or a subsidiary, affiliate, parent, or successor thereof; any party not financially responsible or unable to adequately evidence financial responsibility to Landlord's reasonable satisfaction, any party that will be engaged in a business or use that will require services from Landlord, or place demands on facilities in the Building of a different nature or to a greater extent than Landlord was required to afford before under this Lease, that is likely to adversely affect (or increase burdens on) any operation of Landlord or any tenant or occupant of the Building, breach this Lease or violate a restrictive covenant of Landlord, contravene any provision of a mortgage, net lease or any other agreement of Landlord's; any party with whom Landlord has been involved in litigation; any party that is a domestic or foreign governmental entity; and/or who may claim diplomatic immunity.

Anything contained in this Lease to the contrary notwithstanding with respect to any subletting or assignment that requires Landlord's consent, then within fifteen (15) days after Landlord's receipt of all information required by Landlord under this Article with respect to a proposed assignment or subletting, Landlord may give notice electing to terminate this Lease effective as of the last day of the month occurring sixty (60) days after such notice of termination is given. If Landlord shall give its termination notice as provided in this paragraph, the Term shall end on the effective date of termination as if such date had been the original Expiration Date hereof.

**Subordination** : 25. Subject to the last paragraph of this Section 25, this Lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the Real Property and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate or agreement that Landlord may request. Tenant agrees that if any holder of a superior lien succeeds to Landlord's interest in the demised premises, Tenant will pay to such holder all rents subsequently payable under this Lease. Further, Tenant agrees that in the event of the enforcement by the holder of a superior lien of the remedies provided for by law or by such superior lien, Tenant will, upon request of any person or party succeeding to the interest of Landlord as a result of such enforcement (the "Successor Landlord"), automatically (at the option of such holder) become the tenant of and attorn to such successor in interest without change in the terms or provisions of this Lease. Such successor in interest will not be bound by: any

payment of rent or additional rent paid more than one month in advance other than the Free Rent; any amendment or modification of this Lease made without the written consent of such successor in interest; any claim against Landlord arising prior to the date on which such successor in interest succeeded to Landlord's interest, other than the obligation to complete Landlord's Work, as defined in Section 45; and any security deposit required hereunder unless said sums have actually been received by such Successor Landlord as security for Tenant's performance of this Lease; however, in no event shall Tenant be required to replace such security deposit or post additional security with Successor landlord except by reason of an Event of Default under this Lease. Landlord shall make reasonable efforts to obtain a Subordination, Non-Disturbance and Attornment Agreement from the holder of any existing mortgage within thirty (30) days after the execution and delivery of this Lease; provided that (a) Tenant shall pay when due any and all fees requested by the party who will grant such non-disturbance agreement and/or by said party's counsel or representatives (which amount shall in no event exceed \$2,000) and (b) Tenant understands that such granting of a non-disturbance agreement is in the sole discretion of any of such parties and Landlord shall not be deemed to be in default under this Lease in the event any such party shall refuse to grant a non-disturbance agreement to Tenant.

Notwithstanding anything to the contrary contained herein, this Lease shall not be subordinate to any mortgages or ground or underlying leases entered into by Landlord at any time after the date hereof unless an agreement is executed containing a provision which provides that so long as Tenant is not in default under this Lease beyond any applicable notice and cure period, this Lease shall be recognized and Tenant's occupancy shall not be disturbed; provided that Tenant shall pay upon demand any and all fees requested by the party who will grant such agreement and/or by said party's attorneys or counsel and further provided that such agreement shall be otherwise in substance and form reasonably required by the mortgagee, ground lessor or other secured party.

**Estoppe Certificate** : 26. Tenant, at any time and from time to time, upon at least ten (10) days prior notice by Landlord, shall execute, acknowledge and deliver to Landlord, and/or to any other person, firm or corporation specified by Landlord, a statement certifying (i) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), (ii) the dates to which the rent and additional rent have been paid, (iii) whether or not there exists a default by Landlord or Tenant under this Lease, and, if so, specifying each such default, and (iv) any other matters reasonably requested.

**Bankruptcy** : 27. Anything elsewhere in this Lease to the contrary notwithstanding, this Lease may be cancelled by Landlord by sending a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant or a guarantor of Tenant's obligations under this Lease or any other party who is primarily liable for Tenant's obligations under this Lease, as the debtor unless such Bankruptcy is discharged within thirty (30) days from the date of filing; or (2) the making by Tenant or a guarantor of Tenant's obligations under this Lease or any other party who is primarily liable for Tenant's obligations under this



Lease of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised, but shall forthwith quit and surrender the demised premises. If this Lease shall be assigned in accordance with its terms, the provisions of this Article shall be applicable to the party then owning Tenant's interest in this Lease. It is stipulated and agreed that if this Lease is terminated pursuant to this Article, Landlord shall, notwithstanding any other provisions of this Lease to the contrary, be entitled to recover from Tenant, as and for liquidated damages, an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If the demised premises or any part thereof be relet by Landlord for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value of the part or the whole of the demised premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Landlord to prove and/or obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when such damages are to be proved; whether or not such amount be greater, equal to, or less than the amount of the difference referred to above. Without limiting any of the provisions hereof, if pursuant to the U.S. Bankruptcy Code, as the same may be amended, Tenant is permitted to assign this Lease in disregard of the restrictions contained in **Article 24** or any other provisions of this Lease, Tenant agrees that adequate assurance of future performance by the assignee permitted under such code shall mean, in addition to all of the other requirements of the code, the payment to Landlord of all rent, additional rent and other amounts then due and payable under this Lease, the curing of all defaults by Tenant under this Lease and the deposit of cash security with Landlord in an amount equal to the sum of one (1) year's annual base rent payable hereunder at the then current rate plus an amount equal to all additional rent payable under the provisions of this Lease for the calendar year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Landlord, without interest, for the balance of the term of this Lease as security for the full and faithful performance of all of the obligations under this Lease on the part of Tenant yet to be performed. If Tenant receives or is to receive any valuable consideration for such an assignment of this Lease, such consideration, after deducting therefrom (A) the brokerage commissions, if any, and other expenses reasonably incurred by Tenant for such assignment including improvements made to the demised premises in connection with such assignment and (B) any portion of such consideration reasonably designated by the assignee as paid for the purchase of Tenant's property in the demised premises, shall be and become the sole and exclusive property of Landlord and shall be paid over to Landlord directly by such assignee. In addition, adequate assurance shall mean that any such assignee of this Lease shall have a net worth, exclusive of good will, equal to at least fifteen (15) times the

aggregate of all of the annual base rent payable hereunder during the term of this Lease, plus all additional rent for the preceding calendar year as aforesaid.

#### **Default, Remedies of Landlord, Fees and Waiver of**

**Redemption :** 28. If (a) Tenant shall default in the observance of any of the provisions, covenants and conditions of this Lease (other than a default for the payment of rent or additional rent); or if Tenant shall fail to occupy the demised premises and open for business within sixty (60) days of the Commencement Date; or if the demised premises shall be abandoned, deserted or vacated during the last six (6) months of the Lease Term; or if Tenant shall sublet the demised premises or assign this Lease, except as herein provided; or if Tenant shall be in default under any other obligations of Tenant to Landlord of any nature whatsoever, including in connection with any other lease between Tenant and any of the Landlords or between Tenant and any entity in which any partner of Landlord holds an interest; or if this Lease be rejected under §365 of Title 11 of the U.S. Bankruptcy Code); or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if Tenant shall have failed, after five (5) days written notice, to redeposit with Landlord any portion of the security deposited hereunder which Landlord has applied to the payment of any rent and additional rent due and payable hereunder; THEN, in any of the foregoing events, if such default shall continue for more than twenty (20) days after written notice of such default with respect to monetary defaults or if said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within the twenty (20) day cure period, and if Tenant shall not have diligently commenced to cure such default within the twenty (20) day cure period, and shall not thereafter with reasonable diligence and in good faith, proceed to remedy or cure such default; or (b) if Tenant shall default in the payment of annual base rent or any item(s) of additional rent or other monies due hereunder, or any part of same, and any such default shall continue for more than ten (10) days after written notice of such default; or (c) if twice in any twelve (12) month period Tenant shall have defaulted under its lease obligations, monetary or otherwise, and Landlord shall have commenced a summary proceeding to dispossess Tenant in each such instance (notwithstanding that such defaults may have been cured after the commencement of such summary proceeding, and then Tenant defaults a third time within such twelve (12) month period; THEN , in the event of (a), (b) or (c) above, Landlord may give Tenant a written five (5) day notice of termination of this Lease and, upon the expiration of said five (5) days, this Lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this Lease and the term hereof, and Tenant shall immediately quit and surrender the demised premises to Landlord, but Tenant shall remain liable as hereinafter provided. If said five (5) day notice of termination shall have been given, and the term shall have expired as aforesaid, then Landlord may, without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant and all occupants of the demised premises by summary proceedings or otherwise and remove their effects and property and hold the demised premises as if this Lease had not been made; Tenant hereby waiving the service of notice of intention to re-enter or to institute legal proceedings to that end. A default hereunder beyond any applicable cure period shall also be referred to as an "Event of Default".



In case of any default, event, re-entry, expiration, termination and/or dispossession by summary proceedings, or otherwise, Tenant shall, nevertheless, remain and continue to be liable to Landlord in a sum equal to all annual base rent and additional rent herein reserved for the balance of the term of this Lease as the same may become due and payable pursuant to the provisions of this Lease as if it were not terminated. Landlord may repair or alter the demised premises in such manner as to Landlord may seem necessary or advisable, and/or let or re-let the demised premises and any and all parts thereof for the whole or any part of the remainder of the original term hereof or for a longer period, in Landlord's name, or as the agent of Tenant, and, out of any rent so collected or received, Landlord shall, first, pay to itself, the expense and cost of retaking, repossessing, repairing and/or altering the demised premises, and the expense of removing all persons and property therefrom, second, pay to itself, any cost or expense sustained in securing any new tenant or tenants, and third, pay to itself, any balance remaining on account of the liability of Tenant to Landlord for the sum equal to the annual base rent and additional rent reserved herein and unpaid by Tenant for the remainder of the term herein demised. The failure of Landlord to re-let the demised premises or any part or parts thereof shall not release or affect Tenant's liability for damages. Any entry or re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall not absolve or discharge Tenant from liability hereunder. Should any rent so collected by Landlord after the payment aforesaid be insufficient fully to pay to Landlord a sum equal to all annual base rent and additional rent herein reserved, the balance or deficiency shall be paid by Tenant on the rent days herein specified; that is, upon each of such rent days Tenant shall pay to Landlord the amount of the deficiency then existing and Tenant shall be and remain liable for any such deficiency, and the right of Landlord to recover from Tenant the amount thereof, or a sum equal to the amount of all annual base rent and additional rent herein reserved if there shall be no re-leasing, shall survive the issuance of any dispossessory warrant or other termination hereof. Tenant hereby expressly waives service of any notice of intention to re-enter subsequent to the giving of the aforesaid notices. Tenant hereby expressly waives any and all right to recover or regain possession of the demised premises or to reinstate or to redeem this tenancy or this Lease as is permitted or provided by or under any statute, law, or decision now or hereafter in force and effect. Tenant also waives the provisions of any law now or hereafter in effect relating to notice and delay in levy of execution in case of an eviction or dispossess of a tenant for non-payment of rent. Tenant shall reimburse Landlord, within five (5) days following written demand, for any counsel fees or collection charges incurred or expended by Landlord by reason of Tenant's default in the performance of any provision, covenant, or condition of this Lease and any such amounts, at the option of Landlord, may be recovered in the same action or proceeding forming the basis of the default or in another action or proceeding.

If either Landlord or Tenant shall commence an action or other proceeding against the other arising out of, or relating to, this Lease or the demised premises, then the prevailing party shall be entitled to recover from the losing party, its actual reasonable attorneys' fees and expenses incurred in such action, proceeding.

Notwithstanding any other remedy provided for hereunder and without the requirement of notice, except as provided in this article, if Tenant shall not comply with any of its obligations hereunder, Landlord shall have the right, at Landlord's sole

option, at any time in the event of an emergency and otherwise after three (3) days notice to Tenant, to cure such breach at Tenant's expense. Tenant shall reimburse Landlord, within three (3) days following demand, as additional rent, for all costs and expenses incurred by Landlord in curing such breach, together with interest computed thereon at the maximum rate permitted by law. Notwithstanding anything contained in this Lease, if Tenant fails to pay any monetary items due hereunder on the date the same are due and payable, a late charge of four (\$.04) cents for each ONE (\$1.00) DOLLAR so overdue shall become immediately due and payable to the Landlord as damages in compensation for the additional administrative, bookkeeping and collection expenses incurred by Landlord by reason of such failure to make prompt payment and the same shall be considered as additional rent hereunder payable together with the next installment of monthly rent. In addition, all such unpaid monetary items shall bear interest at the maximum rate permitted by law from the date such monies were due and payable until the date on which Landlord shall receive payment. Notwithstanding anything contained in this Lease, if Tenant fails to pay any monetary items due hereunder on the date the same are due and payable and a default notice is sent by Landlord, Tenant shall pay Landlord \$500.00 as additional rent to compensate Landlord for charges incurred by Landlord relating to issuing a default notice and the same shall be payable together with the next installment of monthly base rent.

The rights and remedies whether herein or elsewhere provided in this Lease shall be cumulative and the exercise of any one right or remedy shall not preclude the exercise of or act as a waiver of any other right or remedy of Landlord hereunder, or which may be existing at law, or in equity, by statute or otherwise. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

**No Waiver :** 29. The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or of any of the rules and regulations, set forth or hereafter adopted by Landlord, shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach, and no provision of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord. No payment by Tenant, or receipt by Landlord, of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided. All checks tendered to Landlord as and for the rent of the demised premises shall be deemed payments for the account of Tenant. Landlord may apply such payment to any sums then due and payable by Tenant to Landlord as Landlord shall determine in its sole discretion. Acceptance by Landlord of rent from anyone other than Tenant shall not be deemed to operate as an attornment to Landlord by the payor of such rent, or as a consent by Landlord to an assignment or subletting by Tenant of the demised premises to such payor, or as a modification of the provisions of this Lease. No act or thing done by Landlord or Landlord's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises, and no

Please initial  
Landlord: \_\_\_\_\_ Tenant MCT

agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employee of Landlord or Landlord's agent shall have any power to accept the keys of said premises prior to the termination of this Lease, and the delivery of keys to any such agent or employee shall not operate as a termination of this Lease or a surrender of the demised premises.

**Landlord's Defaults :** 30. If Landlord defaults in any of its obligations under this Lease, Tenant shall give Landlord written notice of such default and Landlord shall have thirty (30) days following receipt of such notice to cure such default or, if such default cannot reasonably be cured within a thirty (30) day period, Landlord shall commence the cure of such default within thirty (30) days following receipt of such notice and thereafter shall proceed diligently to cure such alleged default. Tenant shall send a duplicate notice to any holder of a mortgage or other superior lien on the Building or this Lease of which Tenant has been notified in writing, and any such holder shall have the right to cure such alleged default within the same time period. Notwithstanding anything to the contrary contained herein, in no event shall Landlord be liable to Tenant for any consequential, indirect, special, exemplary or punitive damages.

**Consents and Approvals :** 31. Except as otherwise provided in Article 10 with respect to Minor Alterations and Article 24 with respect to certain assignments and/or subleases, if Tenant shall request Landlord's consent or approval and Landlord shall fail or refuse to give such consent or approval, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent or approval, it being agreed that Tenant's sole remedy shall be an action for a declaratory judgment, injunction or specific performance and that such remedy shall be available only in those cases where Landlord has expressly agreed in writing not to unreasonably withhold its consent or approval or where as a matter of law Landlord may not unreasonably withhold its consent or approval.

**Inability to Perform :** 32. Except as otherwise provided herein and without limiting Landlord's obligations to maintain and repair the Building and demised premises as set forth herein, this Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on the part of Tenant to be performed shall in no wise be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures, if, in any such case, Landlord is prevented or delayed from so doing by reason of strike or labor troubles or any cause whatsoever beyond Landlord's reasonable control, including, but not limited to, government pre-emption in connection with a national emergency or by reason of any Legal Requirements or by reason of the conditions of supply and demand which have been or are affected by war or other emergency. If there shall be a delay in the construction, repair or restoration of the demised premises or the Building or any portion thereof caused by strike, riots, acts of God, shortages of labor or materials, national emergency, governmental restrictions, laws or regulations, the act of, or failure to act by, Tenant, or for any other cause or causes beyond Landlord's control, at Landlord's option such delay shall not be a violation of this Lease, and the time periods set forth in this Lease for any such work shall at Landlord's option be extended for a period of time equal to the period of delay.

**Waiver of Trial by Jury :** 33. It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of the parties as landlord and tenant, Tenant's use of or occupancy of the demised premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that if Landlord commences any proceeding or action for possession, including a summary proceeding for possession of the demised premises, Tenant will not interpose any counterclaim, of whatever nature or description, in any such proceeding, except for statutory mandatory counterclaims.

**End of Term :** 34. Upon the expiration or other termination of the term of this Lease, Tenant shall quit and surrender to Landlord the demised premises vacant, "broom-clean", in good order and condition, ordinary wear and damages which Tenant is not required to repair as provided elsewhere in this Lease excepted, and Tenant shall deliver to Landlord all keys required for access to the demised premises and the Building (including, without limitation, all keys provided to Tenant for access to the entrance, elevator, bathrooms and other Building common areas), disable and remove all security systems covering the demised premises and remove all of its property from the demised premises as required and as permitted by this Lease. Tenant shall assign to Landlord all warranties that are in effect at the end of the term of this Lease for all alterations, property and equipment which remain in the demised premises, with Landlord's consent, after Tenant has surrendered possession thereof to Landlord. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease. Tenant acknowledges that it must surrender possession of the demised premises to Landlord at the expiration or sooner termination of the term of this Lease; time being of the essence with respect to Tenant's obligation to do so. If, however, Tenant remains in possession of the demised premises at the expiration or earlier termination of the term hereof, Tenant, at Landlord's option, shall be deemed to be occupying the demised premises as a tenant from month to month, at a monthly rental equal to twice the sum of (a) the monthly installment of the annual base rent payable during the last month of the term (the "Holdover Rent") hereof plus (b) all additional rent due hereunder.

Acceptance by Landlord of rent after the expiration or earlier termination of the Term hereof shall not constitute a consent to a month-to-month tenancy or result in a renewal. In the event of such holdover, Tenant's occupancy of the demised premises, except as aforesaid, shall be subject to all other conditions, provisions and obligations of this Lease, but only insofar as the same are applicable to a month to month tenancy. Such month to month tenancy shall be terminable by Landlord upon one (1) month's notice to Tenant, and if Landlord shall give such notice, Tenant shall quit and surrender the demised premises to Landlord as provided in this article. In the event that (a) Tenant shall remain in possession of the demised premises at the expiration or earlier termination of the Term hereof and Landlord shall not have elected to deem Tenant to be occupying the demised premises as a tenant from month-to-month or (b) Landlord shall terminate any month-to-month tenancy of the demised premises and Tenant shall fail to quit and surrender the demised premises to Landlord upon the termination date as provided in this article, then, in either such event, Tenant shall

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Landlord:  Tenant MCF

be liable to Landlord for all losses, damages, claims, costs and/or expenses incurred by Landlord by reason of Tenant's failure to deliver timely possession of the demised premises to Landlord including, without limitation, any consequential and incidental damages so incurred by Landlord, including without limitation, all legal fees and court costs incurred by Landlord and/or expenses incurred in connection with or arising from the inability of Landlord to lease and deliver possession of the demised premises, or any portion thereof, to any third party and/or the termination or cancellation of any lease of the demised premises, or any portion thereof to any third party; provided that Landlord shall use reasonable efforts to mitigate any such consequential damages; it being understood that Landlord shall use its in-house broker and shall not be required to retain the services of an outside third party broker and Landlord shall not be deemed to have failed to use reasonable efforts to mitigate damages if Landlord shall not retain the services of an outside third party broker.

**Quiet Enjoyment** : 35. So long as Tenant timely pays all annual base rent and additional rent due hereunder and performs all of Tenant's other obligations hereunder within the time periods permitted under this Lease, Tenant shall peacefully and quietly hold and enjoy the demised premises during the term without hindrance or ejection by Landlord or any person lawfully claiming through or under Landlord, subject, nevertheless, to the provisions of this Lease.

**Notices** : 36. Except as otherwise in this Lease provided, all notices to be given pursuant to this Lease shall be in writing and sent by prepaid certified or registered U.S. mail, return receipt requested, or by a recognized overnight courier service which requires acknowledgment of receipt of delivery from addressee, to the address of the parties below specified or at such other address as may be given by written notice in the manner prescribed in this paragraph or, if to Tenant, by personal delivery to the demised premises. Notice shall be deemed to be given upon delivery to the U.S. Postal Service or recognized overnight courier service or if personal delivery, to the demised premises. Landlord's address for notice shall be the address first set forth above for Landlord. Tenant's address for notices given prior to the Commencement Date shall be the address first set forth above for Tenant. Tenant's address for notices given on or subsequent to the Commencement Date shall be the address of the demised premises. Provided Landlord has provided notice disclosing the identity and address of any mortgagee or ground lessor, Tenant covenants and agrees to give any mortgagee and/or ground lessor of the Building and/or Real Property notice of any default of Landlord under this Lease and the right to cure any default of Landlord within the time period set forth in this Lease. Notwithstanding the foregoing, rent bills, invoices and statements may be sent by ordinary mail or personal delivery. Landlord's leasing and/or managing agent and/or counsel of either party may each give statements, invoices, notices and/or other communication on behalf of Landlord or Tenant, as the case may be, and any such statements, invoices, notices and/or communications shall be deemed to have been given by Landlord or Tenant as the case may be.

**Captions & Counterparts** : 37. The Captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof. This Lease may be executed in any number of counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

**Definitions, Successors & Assigns** : 38. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning. The term "rent" includes the annual base rent, the annual rental rate whether so expressed or expressed in monthly installments, and additional rent payable hereunder. All provisions herein contained shall bind and inure to the benefit of the respective parties hereto, their heirs, personal representatives, successors and assigns, as the case may be. In the event Landlord or any successor-lessor (owner) of the demised premises shall convey or otherwise dispose of the demised premises and/or the Building and/or the Real Property, all liabilities and obligations of Landlord or such successor-lessor (owner), as Landlord under this Lease shall terminate upon such conveyance or disposal and written notice thereof to Tenant. If Landlord, or any successor in interest to Landlord, shall be an individual, joint venture, executor, estate, personal representative, conservator, tenancy-in-common, trustee, trust, limited liability company, limited liability partnership, partnership, general or limited, firm or corporation, there shall be no personal liability on the part of such individual or on the part of any members of such joint venture, tenancy-in-common, trustee, trust, company, partnership, firm or corporation, or its shareholders, members, managers, officers or directors, or on the part of such joint venture, estate, tenancy-in-common, trustee, trust, company, partnership, firm or corporation as to any of the provisions, covenants or conditions of this Lease. Tenant hereby acknowledges that it shall look solely to the real property interest of Landlord in the Building for the satisfaction or assertion of any claims, rights and remedies of Tenant against Landlord, in the event of breach by Landlord of any of the provisions, covenants or conditions of this Lease.

**Entire Agreement** : 39. This Lease contains the entire and only agreement between the parties concerning the demised premises. No prior oral or written statements or representation, if any, of any party hereto or any representative of a party hereto, not contained in this instrument, shall have any force or effect. This Lease shall not be modified in any way, except by a writing executed by Landlord and Tenant. No oral agreement or representations shall be deemed to constitute a lease other than this agreement. This agreement shall not be binding unless and until it shall have been executed and delivered by Landlord and Tenant. The submission of this Lease to Tenant prior to its execution by Landlord shall not be an offer to lease. Any person executing this Lease on behalf of Tenant hereby covenants, represents and warrants to Landlord that (i) Tenant is a duly incorporated or duly qualified (if foreign) corporation and/or limited liability company, as the case may be, and is authorized to do business in the State of New York (a copy of evidence thereof to be supplied to Landlord upon request); and (ii) each person executing this Lease on behalf of Tenant is duly authorized to execute, acknowledge and deliver this Lease to Landlord.

**Memorandum of Lease** : 40. Tenant shall not record this Lease or any memorandum of this Lease without Landlord's prior written consent. The parties hereto agree that if a memorandum shall be recorded with respect to this Lease, then (i) such memorandum shall contain those provisions of this Lease as shall be mutually desired in the reasonable discretion of counsel for the parties hereto, provided that in no event shall such memorandum contain any provisions relevant to the base rent and/or additional rent payable under this Lease, and (ii) Tenant shall, upon Landlord's request, execute and deliver to Landlord any and all documentation necessary to release such

Please initial  
Landlord:  Tenant MCT

memorandum from record upon the expiration or sooner termination of the term of this Lease (and Tenant's obligation to execute and deliver such a release shall survive the expiration or sooner termination of this Lease).

**Federal Tax Identification Number :** 41. Tenant hereby agrees that it shall provide to Landlord Tenant's social security number or, if Tenant is or becomes an entity, Tenant's federal employer identification number, within three (3) days following Landlord's request therefor. Tenant hereby represents and warrants to Landlord that Tenant's federal employer tax identification number is 20-4898921.

**Directory :** 42. Landlord shall upon Tenant's request, post on the Building's directory (the "Directory") Tenant's name and a maximum of eight (8) individuals' names who are officers or employees of Tenant. If Landlord shall list any individual or entity name other than that of Tenant, such listing shall neither grant such party any right or interest in this Lease and/or the demised premises, nor constitute Landlord's consent to an assignment or sublease to, or occupancy by, such party. Such listing may be terminated by Landlord at any time in Landlord's reasonable judgment, without prior notice, and Landlord may charge Tenant a reasonable charge for any changes in listings requested by Tenant.

*See rider and exhibits attached hereto and hereby made a part hereof.*

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Please initial  
Landlord:  Tenant MCT

**In Witness Whereof**, Landlord and Tenant have respectively executed this Lease as of the day and year first above written.

**55 WASHINGTON STREET LLC**  
By: DW Associates, L.P., as managing member



By: \_\_\_\_\_  
(Landlord)

**ETSY, INC.**

  
By: \_\_\_\_\_  
(Tenant)

**ACKNOWLEDGEMENT**

STATE OF NEW YORK                    SS.:  
COUNTY OF Kings

On the 14<sup>th</sup> day of April in the year 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Maria Thomas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

SARAH M. FEINGOLD  
Notary Public, State of New York  
No. 02FE6153435  
Qualified in Monroe County  
Commission Expires October 02, 2010



NOTARY PUBLIC

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Please initial  
Landlord: \_\_\_\_\_ Tenant MCT

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Please Initial: Landlord  Tenant MG

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**RIDER ATTACHED TO AND FORMING A PART OF LEASE DATED AS OF APRIL 14, 2009 BY AND BETWEEN 55  
WASHINGTON STREET LLC (“LANDLORD”) AND ETSY, INC. (“TENANT”) FOR PREMISES KNOWN AS SUITE 512 IN THE  
BUILDING KNOWN AS 55 WASHINGTON STREET, BROOKLYN, NY**

In the event of any inconsistency between the provisions of this rider and the provisions of the Lease to which this rider is attached, the provisions of this rider shall control.

**43. Water Charges**: If Tenant requires, uses or consumes water for any purpose in the demised premises other than ordinary lavatory purposes (of which fact Landlord shall be the sole judge), Landlord may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Landlord for the cost of the meter and the cost of the installation. Throughout the duration of Tenant's occupancy, Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. In the event Tenant fails to maintain the meter and installation equipment in good working order and repair (of which fact Landlord shall be the sole judge) Landlord may cause such meter and equipment to be replaced or repaired, and collect the cost thereof from Tenant as additional rent. Tenant agrees to pay for water consumed as shown on said meter as and when bills are rendered, and in the event Tenant defaults in the making of such payment, Landlord may pay such charges and collect the same from Tenant as additional rent. To the extent not included in the payment of Real Estate Taxes, Tenant covenants and agrees to pay, as additional rent, Tenant's Percentage of the sewer rent, charge or any other tax, rent or levy above such amounts charged in the Base Tax Year which now or hereafter is assessed, imposed or a lien upon the demised premises, or the realty of which they are a part, pursuant to any law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, the water system or sewage or sewage connection or system. If the demised premises is supplied with water through a meter which measures the water consumption of other tenants as well as the demised premises, Tenant shall pay to Landlord, as additional rent, on the first day of each month, that portion of the meter charges that relate to Tenant's use. Independently of, and in addition to, any of the remedies reserved to Landlord hereinabove or elsewhere in this Lease, Landlord may sue for and collect any monies to be paid by Tenant, or paid by Landlord, for any of the reasons or purposes hereinabove set forth.

**44. Electric Current**:

A. Supplementing Article 5 hereof, electricity shall be furnished to Tenant on a “submetering” basis. Tenant shall pay Landlord (or at Landlord's option, Landlord's agent) as additional rent within ten (10) days following demand made therefor for all electricity furnished to and/or consumed in the demised premises on a submetering basis from and after the date possession of the demised premises is delivered to Tenant at charges, terms and rates, including, without limitation, fuel adjustments and taxes, equal to the SC-4 rate for Consolidated Edison plus five percent (5%) for transmission line loss and other redistribution costs. If, in Landlord's reasonable judgment, Tenant's use shall require more than one (1) submeter in the demised premises, Landlord shall install additional submeter(s) in the demised premises at Tenant's sole cost and expense. If there is more than one submeter in the demised premises, each meter may be computed and billed separately in accordance with the rates and terms set forth herein. If any tax is imposed upon Landlord's receipt from the sale or resale of electrical energy or gas or telephone service to Tenant by any federal, state or municipal authority, Tenant covenants and

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agrees that where permitted by law, Tenant's pro-rata share of such taxes shall be passed on to and included in the amount charged to, and paid by Tenant to Landlord as additional rent. If the demised premises' submeters and/or the submeters are not functional, then for the period such meters are not functioning, the parties agree that, at Landlord's option, Tenant's annual actual cost for electricity shall be deemed to be a sum equal to \$2.50 times the agreed rentable square foot area of the demised premises, changed in the same percentage as any increases in the cost to Landlord for electricity for the entire Building subsequent to January 1, 2009 because of electric rate, time of day charges, service classification or market price changes. Tenant, shall not, without Landlord's prior written consent in each instance, connect any fixtures, appliances or equipment (other than a reasonable number of table and floor lamps, typewriters, personal computers, copy machines and similar small office machines used in modern day offices) to the Building's electric distribution system nor make any alteration or addition to the electrical system of the demised premises. Should Landlord grant such consent, all additional risers or other equipment required therefor shall be provided by Landlord upon notice to Tenant, and all reasonable and out-of-pocket cost and expenses of Landlord in connection therewith shall be paid by Tenant as additional rent upon demand by Landlord.

B. Landlord reserves the right to discontinue furnishing electric current to Tenant on a submetering basis at any time upon not less than sixty (60) days' notice to Tenant. If Landlord elects not to furnish electric current to Tenant on a submetering basis, Tenant shall arrange to obtain electric current directly from the public utility company supplying electric current to the Building; and in that event, all risers, equipment and other facilities which may be required for Tenant to obtain electric current directly from such public utility corporation and may already be in the Building, may be used by Tenant at no additional charge to Tenant. If Landlord exercises its right to discontinue furnishing electric current to Tenant, this Lease shall continue in full force and effect and shall be unaffected thereby, except only that, from and after the effective date of such discontinuance, Landlord shall not be obligated to furnish electric current to Tenant on a submetering basis; however, if Tenant is unable to obtain direct electric service by the effective date of such discontinuance, so long as Tenant continues to make reasonable efforts to obtain direct electric service, Landlord shall continue to provide electric service until Tenant has obtained direct electric service. If Landlord has discontinued electric service and, in Landlord's reasonable judgment, additional risers are required in order to supply electricity to the demised premises, such risers shall be installed by Landlord at Landlord's reasonable expense, and in any event, any such installation shall be maintained by Landlord, at its expense and shall be subject to such reasonable conditions as the utility company may require. Landlord's election to not furnish electric current to Tenant shall not be deemed a lessening or diminution of services within the meaning of any law, rule or regulation now or hereafter enacted, promulgated or issued.

45. **Initial Work**: Notwithstanding anything to the contrary contained herein, Landlord shall, at its expense, perform, or cause to be performed, the work set forth on Exhibit B attached hereto and hereby made a part hereof, except that Tenant acknowledges that Landlord shall not install the wooden floors or the acoustical treatment described in Exhibit B (such work is herein collectively referred to as "Landlord's Work"). Landlord's Work shall be performed in accordance with Legal Requirements using Building standard materials in a workmanlike manner. Tenant shall perform all other work ("Tenant's Work") necessary for it to use the demised premises as contemplated in this Lease and such work shall be performed in accordance with the Legal Requirements, at its sole expense, pursuant to plans, drawings and specifications therefor prepared by Tenant and submitted to, and approved by Landlord and subject to the terms of this Lease, including, without limitation, Article 10 hereof. If the substantial completion of

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the Landlord's Work is delayed by reason of: (i) any act or omission of Tenant or any of its employees, agents or contractors; or (ii) any failure (not due to any act or omission of Landlord or any of its employees, agents or contractors) caused solely by Tenant or its agents to plan or execute Tenant's Work (as hereafter defined) with reasonable speed and diligence, or (iii) any material changes by Tenant in the plans or specifications or any material changes or substitutions requested by Tenant; or (iv) Tenant's failure to furnish plans, information, details and specifications Landlord requests from Tenant, or subsequent changes thereto; or (v) Tenant's request for materials, finishes or installations other than Landlord's standard as identified in Exhibit B hereto; or (vi) the performance or incompletion of work by a party employed or retained by Tenant; then Landlord's Work shall be deemed substantially completed on the date when the same would have been substantially completed but for such delay and, in addition, Tenant shall pay to Landlord all costs and damages which Landlord may sustain by reason of such delay.

Landlord agrees that it will use commercially reasonable efforts to complete the Landlord's Work on or before the Commencement Date, provided that Tenant has satisfied the Documentary Requirements on or before April 15, 2009 and in such event, for each day after the Commencement Date that Landlord's work has not been substantially completed, the Free Rent Period shall be extended by one day. If Tenant claims that some or all of Landlord's Work have not been completed by Landlord upon the date Landlord notifies Tenant that Landlord has substantially completed Landlord's Work, Tenant shall, within ten (10) days of said date (or ten (10) days following the date Tenant opens for the transaction of business, whichever date shall be sooner), submit to Landlord a written list of the Landlord's Work that Tenant claims remains to be performed by Landlord, and Landlord shall have forty five (45) days thereafter to complete such work. If Landlord fails to complete such work, the sole remedy of Tenant shall be to complete such work and Tenant shall have the right to set off the reasonable cost thereof from the rent due Landlord in order to reimburse Tenant for the cost and expense of completion of the work. Upon written request of Landlord, Tenant will, within five (5) days following request, furnish to Landlord a written statement that Tenant is in occupancy of the demised premises, that Landlord's Work has been completed in accordance with Landlord's obligations or in lieu thereof, a list of the work Tenant claims to be incomplete.

**46. Air Conditioning:** Tenant shall, at its own cost and expense operate, maintain, clean, repair and replace the air conditioning system, equipment and facilities (hereinafter called the "AC System") now or hereafter located in or servicing solely the demised premises (including, but not limited to, the periodic cleaning and/or replacements of filters, replacement of fuses and belts, the calibration of thermostats and all startup and shut down maintenance of the system, equipment and facilities) and provide a repair and maintenance contract in form reasonably satisfactory to Landlord with an air conditioning contractor or servicing organization approved by Landlord; provided, however, that Landlord may elect at any time to enter into a contract with an air conditioning contractor or servicing organization to provide repair and maintenance to the AC System (provided such contract or charges are commercially reasonable) in which event, Tenant shall pay Landlord for the cost of such contract as additional rent hereunder within ten (10) days following demand made therefor. At Landlord's sole option, such contract may include other air conditioning systems, equipment and facilities, in which event, Tenant shall pay Landlord within ten (10) days following demand therefor for the cost of such contract to the extent that it relates to the AC System, as additional rent hereunder. If any permit or license is required for the operation of the AC System, such license or permit shall be in place as of the Commencement Date and Tenant shall, at Tenant's expense, thereafter obtain and maintain any such permit or license unless Landlord elects to obtain the same on Tenant's behalf and at Tenant's expense. Any additions or other alterations to the AC System shall require Landlord's

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prior written consent pursuant to **Article 10** hereof and the consent of the contractor with a contract covering maintenance of the AC System. The electricity furnished to and/or consumed by the AC System shall be paid for by Tenant in accordance with **Article 44** hereof.

**47. Cleaning/Trash Services :** Tenant shall obtain and pay for cleaning services for the demised premises at Tenant's sole cost and expense. Tenant shall pay Landlord \$245.30 per month as additional rent hereunder on or before the first (1<sup>st</sup>) day of each month during the Term hereof and during all additional periods Tenant is in possession of the demised premises and/or in occupancy of the demised premises for ordinary office trash collection from a location designated by Landlord, subject to reasonable adjustment from time to time, to reflect Landlord's standard trash collection charges based upon the relative size of the space occupied by a tenant.

**48. Adjacent Unit Option :** "Adjacent Unit" means Suite 508 in the Building, which premises is in the approximate location shown on **Exhibit C** attached hereto and hereby made a part hereof. Provided that Tenant is not in default beyond applicable notice and cure periods (the "Option Requirement"), then Tenant shall have the option to add the Adjacent Unit to the demised premises for the remainder of the term of this Lease commencing on February 1, 2011, upon the same terms and conditions provided herein, except that (a) the term "Tenant's Percentage" shall be amended to be 6.312%, (b) the monthly additional rent charge for ordinary office trash collection pursuant to Article 47 of the Lease shall be amended so that it shall be \$354.57 per month and (c) the annual base rent payable under Article 2 of the Lease shall be amended so that commencing on February 1, 2011 and thereafter during the balance of the term of the Lease it shall be as follows (dates inclusive):

February 1, 2011 to July 31, 2011:	\$513,767.10/year — \$42,813.93/month
August 1, 2011 to July 31, 2012:	\$529,180.11/year — \$44,098.34/month
August 1, 2012 to July 31, 2013:	\$545,055.52/year — \$45,421.29/month
August 1, 2013 to July 31, 2014:	\$561,407.18/year — \$46,738.93/month
August 1, 2014 to July 31, 2015:	\$620,775.32/year — \$51,731.28/month
August 1, 2015 to July 31, 2016:	\$637,846.64/year — \$53,153.89/month

If the Option Requirement is not met, then the option to add the Adjacent Unit to the demised premises shall be deemed waived. Tenant shall give written notice to Landlord on or before **September 1, 2010** to elect to add the Adjacent Unit to the demised premises, or such option shall be deemed waived. Tenant's offer to add the Adjacent Unit to the demised premises shall be for the premises in "as is" condition for a term corresponding to the balance of the term of this Lease except that the Adjacent Unit shall be delivered free and clear of all occupants. Additional Rent as it relates to the Adjacent Unit with respect to the increase in Real Estate Taxes shall not be due for the period prior to July 1, 2011. If the option to add the Adjacent Unit to the demised premises shall be duly and timely exercised, the parties will, at the request of either, execute an agreement in form for recording, evidencing such addition to the demised premises and modifying the Lease as described in (a), (b) and (c) above.

**49. Option to Renew :**

A. Tenant shall have the option to extend the term of this Lease for an additional term of FIVE (5) years (such five (5) year period commencing August 1, 2016 and ending on July 31, 2021 (dates inclusive) being the "Renewal Period"), upon the same terms and conditions as provided herein except that (i) Tenant shall not have an option to add the Adjacent Unit to the demised premises and (ii) the annual base rent payable during the Renewal Period shall be as set forth in this Agreement, and except that Tenant shall have no further extension options; provided

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that the Option Requirement is met. If all of the aforesaid conditions are not met, then the option to extend the term of this Lease shall be deemed waived. Tenant shall give written notice to Landlord on or before **November 1, 2015** of its election to extend the term of this Lease, or such option shall be deemed waived. If the extension option shall be duly and timely exercised, the parties will, at the request of either, execute an agreement in form for recording, evidencing such extension and all references in this Lease to the term hereof shall be deemed to mean the term as so extended, except where expressly otherwise provided. If the term of this Lease is duly extended as herein provided and Tenant failed to timely exercise Tenant's option for the Adjacent Unit (i.e., the demised premises consists of Suite 512 only), then the annual base rent payable by Tenant under the Lease shall be amended so that during the Renewal Period it shall be as follows:

the greater of (i) the Fair Market Rental (hereinafter defined) for the demised premises for the Renewal Period or (ii) \$37,551.86 for the first year of the Renewal Period, \$38,678.42 for the second year of the Renewal Period, \$39,838.77 for the third year of the Renewal Period, \$41,033.94 for the fourth year of the Renewal Period and \$42,264.95 for the last year of the Renewal Period.

If, however, the term of this Lease is duly extended as herein provided and Tenant timely exercise Tenant's option for the Adjacent Unit (i.e., the demised premises consists of Suite 512 and Suite 508), then the annual base rent payable by Tenant under the Lease shall be amended so that during the Renewal Period it shall be as follows:

the greater of (i) the Fair Market Rental (hereinafter defined) for the demised premises for the Renewal Period or (ii) \$54,748.51 for the first year of the Renewal Period, \$56,390.96 for the second year of the Renewal Period, \$58,082.69 for the third year of the Renewal Period, \$59,825.17 for the fourth year of the Renewal Period and \$61,619.93 for the last year of the Renewal Period.

"Fair Market Rental" means the highest annual base rent which Landlord could reasonably expect to obtain from a third party for the demised premises as of November 1, 2015 if Landlord put the demised premises on the market for lease in its "as is" condition for a term corresponding to the applicable extension term including annual increases in base rent of 3% per annum in the annual base rent and taking into account the fact that the Base Tax Year will not be modified during the Renewal Period. If Tenant duly elects to extend the term of this Lease and Landlord and Tenant are unable to reach a written agreement as to the Fair Market Rental on or before January 1, 2016, such dispute shall be resolved exclusively by resort to the "Arbitration" (as defined below). If Tenant duly elects to extend the term of this Lease and the Fair Market Rental is not determined by Arbitration or by written agreement of Landlord and Tenant on or before July 31, 2016, then the annual base rent payable under the Lease shall be (i) \$450,314.48 payable in equal monthly installments of \$37,526.21 in the event Tenant failed to timely exercise its option to add the Adjacent Unit to the demised premises or (ii) 656,982.08 payable in equal monthly installments of 54,748.51 in the event Tenant timely exercised its option to add the Adjacent Unit to the demised premises, during the period commencing on August 1, 2016 and ending on the earlier of: that date a written agreement is signed and delivered by Landlord and Tenant as to the annual base rent for the Renewal Period or that date upon which the annual base rent is finally determined by Arbitration as set forth in the following paragraph; provided, however, that when the annual base rent for the Renewal Period is finally determined by written agreement or by Arbitration, then the Lease shall be retroactively amended so that the annual

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base rent during the Renewal Period shall be as determined in accordance with the first sentence of this paragraph and Tenant shall pay within ten (10) days following the date the annual base rent is finally determined pursuant to the first sentence of this paragraph any amounts owed as annual base rent.

B. The "Arbitration" shall operate as described in this paragraph. If by January 1, 2016 Landlord and Tenant have failed to reach a written agreement on the Fair Market Rental, then on or before January 15, 2016: Landlord shall choose (and pay the costs of) a person who is then (and for the previous ten years has been) a licensed real estate broker engaged in leasing offices located in downtown Brooklyn and D.U.M.B.O. (and obtain the acceptance of the person chosen) to act as one of the arbitrators, Tenant shall choose (and pay the costs of) a person who is then (and for the previous ten years has been) a licensed real estate broker engaged in leasing offices located in downtown Brooklyn and D.U.M.B.O. (and obtain the acceptance of the person chosen) to act as one of the arbitrators, and each party shall notify the other of the name, address and telephone number of the person who has been selected by it and has agreed with it to act as an arbitrator. If either Landlord or Tenant does not obtain the acceptance of a person satisfying the aforesaid qualifications to act as an arbitrator on its behalf and notify the other party of the contact information for such a person on or before January 15, 2016, then the other party may have the American Arbitration Association appoint an arbitrator, at the party lacking an arbitrator's expense. The two arbitrators shall endeavor to reach an agreement as to what the Fair Market Rental should be; and if the two arbitrators cannot agree in writing on what the Fair Market Rental should be on or prior to February 28, 2016, they shall choose a third person (who is a licensed commercial real estate broker for at least ten years engaged in leasing office space in downtown Brooklyn and D.U.M.B.O.) mutually acceptable to them (and obtain the acceptance of such selection from the person they have selected) to act as the third arbitrator. If the two arbitrators cannot agree as to whom the third arbitrator shall be or if they are unable to obtain the acceptance of a third arbitrator prior to March 30, 2016, then Landlord or Tenant may have the American Arbitration Association appoint a third arbitrator. Landlord and Tenant shall split equally the costs of the third arbitrator. The arbitrators selected by Landlord and Tenant shall each prepare their own determination of the figure (the "Proposed Determination") that should be the Fair Market Rental and submit their respective Proposed Determinations in writing to the third arbitrator within ten (10) days after the third arbitrator is chosen. If a determination is not submitted to the third arbitrator by Landlord or Tenant within said ten (10) days, then the Proposed Determination for such arbitrator shall be deemed to be (i) \$460,000.00 for the first year of the Renewal Period in the event Tenant failed to timely exercise Tenant's option to add the Adjacent Unit to the demised premises or (ii) \$665,000.00 for the first year of the Renewal Period in the event Tenant timely exercised Tenant's option to add the Adjacent Unit to the demised premises, with 3% compounded annual increases thereafter for the annual base rent and the other business terms shall be as they were in the last year of the term of this Lease. The third arbitrator shall meet with the first two arbitrators to review and discuss the Proposed Determination submitted by each of them or deemed to have been submitted by each of them, and promptly thereafter issue his or her own determination in writing to Landlord and Tenant. The determination of the third arbitrator shall be made on the basis of which Proposed Determination is closest to what the third arbitrator believes the Fair Market Rental should be, and such determination of the third arbitrator must be made only by his or her selecting one of the Proposed Determinations submitted or deemed to have been submitted by the other arbitrators. The determination of the third arbitrator (or the determination mutually agreed to by the first two arbitrators, if such written agreement is reached by them before the selection of a third arbitrator is required) shall be binding and conclusive on Landlord and Tenant subject to the final determination reached by Arbitration or mutual agreement of the first two arbitrators not being less than that described in the last sentence of the previous paragraph of this Article.

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50. **Broker** : Tenant warrants and represents to Landlord that Tenant has not had any conversations, correspondence or dealings with any real estate broker, agent or finder in connection with this Lease and/or concerning the renting or leasing of premises located in the Building other than Cushman & Wakefield, having an office at 51 West 52<sup>nd</sup> Street, New York, New York 10019 ("Broker") and Tenant covenants and agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any broker, agent or finder other than Broker in connection with this Lease and/or concerning the renting or leasing of premises located in the Building due to conversations, correspondence or dealings of Tenant with the claimant. Landlord shall pay Broker any commission which may be payable with respect to this Lease pursuant to a separate agreement.

51. **ICIP/CEP/ECSP** :

A. Tenant's percentage share of the Building is: 4.367%. Landlord and Tenant acknowledge that Landlord may apply for or has already applied for a certificate of eligibility from the Department of Finance of the City of New York determining that Landlord is eligible to apply for exemption from tax payments for the Building pursuant to the provisions of Section 11-256 through 11-267 (the "ICIP Program") of the Administrative Code of the City of New York and the regulations promulgated pursuant to the ICIP Program. Any such tax exemption for the Building is referred to as "Tax Exemption" and the period of such Tax Exemption is referred to as the "Tax Exemption Period". Landlord agrees that Tenant shall not be required to (a) pay Taxes or charges which become due because of the willful neglect or fraud by Landlord in connection with the ICIP Program or (b) otherwise relieve or indemnify Landlord from any personal liability arising under the ICIP Program, except where imposition of such Taxes, charges or liability is occasioned by actions of Tenant in violation of this Lease. Tenant agrees (i) to report to Landlord, as often as is necessary under such regulations, the number of workers engaged in employment in the demised premises, the nature of each worker's employment and the residency of each worker and to provide access to the demised premises by employees and agents of the Department of Finance of the City of New York at all reasonable times at the request of Landlord, (ii) that any work performed by Tenant or any person or entity claiming through or under Tenant shall be subject to the requirements of Executive Order No. 50 (April 25, 1980) and the Rules and Regulations promulgated thereunder (collectively, "EO 50") and the ICIP Program and (iii) that Tenant will comply with and cause its general contractor, construction manager, and all other subcontractors (collectively, the "Contractors") to comply with EO 50 and the ICIP Program. Tenant represents to the Landlord that, within the seven (7) years immediately preceding the date of this Lease, Tenant has not been adjudged by a court of competent jurisdiction to have been guilty of (x) an act, with respect to a building, which is made a crime under the provisions of Article 150 of the Penal Law of the State of New York or any similar law of another state, or (y) any act made a crime or violation by the provisions of Section 235 of the Real Property Law of the State of New York, nor is any charge for a violation of such laws presently pending against Tenant. Upon request of Landlord, from time to time, Tenant agrees to update said representation when required because of the ICIP Program and regulations thereunder. Tenant further agrees to cooperate with Landlord in compliance with such ICIP Program and regulations to aid Landlord in obtaining and maintaining the Tax Exemption and, if requested by Landlord, to post a notice in a conspicuous place in the demised premises and to publish a notice in a newspaper of general circulation in the City of New York, in such form as

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shall be prescribed by the Department of Finance stating that persons having information concerning any violation by Tenant of Section 235 of the Real Property Law or any Section of Article 150 of the Penal Law or any similar law of another jurisdiction may submit such information to the Department of Finance to be considered in determining Landlord's eligibility for benefits. Tenant acknowledges that its obligations may be greater if Landlord fails to obtain a Tax Exemption, and agrees that Landlord shall have no liability to Tenant nor shall Tenant be entitled to any abatement or diminution of rent if Landlord fails to obtain a Tax Exemption.

B. Landlord has applied or may hereafter apply to make the demised premises eligible for the New York City Commercial Enhancement Program ("CEP"). If Tenant is deemed eligible for CEP, any reduction in real property taxes on the Tenant's Percentage thereof will be passed through to the Tenant after deducting the fee payable in connection with the CEP application. Tenant understands that the minimum required expenditure for any given space to be eligible for CEP is \$2.50 per square foot or \$25 per square foot, depending on the length and nature of this Lease. Tenant also understands that all abatements granted under CEP are contingent upon Landlord's payment of real estate taxes, water or sewer charges, and/or other lienable charges during the benefit period. Benefits will be revoked if such charges are not paid as provided in the relevant law.

C. Tenant agrees to submit a complete Energy Cost Savings Program ("ECSP") application to the New York City Department of Business Services ("DBS") as directed by Landlord or Landlord's representative. Tenant agrees to comply with ECSP and DBS rules and regulations regarding same. This includes the submission of all appropriate documentation required for the ECSP approval including, but not limited to, one week of payroll information current at the time of application submittal, disclosing the identity of all company principals, and the like. Landlord will cooperate with Tenant's application process as it may pertain to the supplying of Landlord requisite information. If Tenant has an existing lease at the time of ECSP building approval, it must submit the completed ECSP application to DBS within ninety (90) days of such approval and notification by Landlord.

D. In no event shall Landlord have any liability to Tenant if Landlord fails to obtain the benefits, in whole or in part, of any tax abatement, credit or exemption described in this Article or otherwise.

## 52. Green Clause

A. Tenant, recognizing that the Landlord has made efforts and is continuing to make efforts to cause the Building to be "green" and/or environmentally friendly, and as a special inducement to Landlord to enter into this Lease, covenants and agrees to comply with the following:

- a. Landlord shall initially install in connection with Landlord's Work and thereafter Tenant shall cause all light bulbs in the demised premises to be replaced with Energy Star qualified light bulbs and agrees to dispose of all light bulbs in accordance with Legal Requirements;
- b. In the event Tenant is permitted to install light fixtures, bulbs and other lighting equipment pursuant to this Lease (a) Tenant shall be required to install infrared/sensor energy saver light switches; (b) all such lighting equipment will be Energy Star qualified and (c) all such lighting equipment shall be disposed of in accordance with Legal Requirements;

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- c. Tenant shall make reasonable efforts to turn off any lights in the demised premises when such lights are not in use;
  - d. Tenant shall make reasonable efforts to clean the filter in the air conditioning unit(s) located in the demised premises at least four (4) times per calendar year;
  - e. Tenant shall use and cause Tenant's cleaning contractor, if any, to use "green" or eco-friendly, non-toxic cleaning products to clean the demised premises;
  - f. Tenant acknowledges that smoking within the demised premises or the Building is expressly prohibited by Landlord and by Legal Requirements and hereby agrees that neither Tenant, nor its agents, contractors, employees or invitees shall be permitted to smoke in the demised premises or the Building; and
  - g. Tenant shall make reasonable efforts to reduce the need for air conditioning which efforts may include the use of fans in the demised premises and/or the installation of blinds on the windows of the demised premises; provided however, that Tenant obtains Landlord's approval for such installation, to the extent required in this Lease.
- B. Tenant acknowledges that any failure by Tenant to comply with the provisions of this **Article 52** shall constitute a default which shall be subject to the provisions of **Article 28** of this Lease. Additionally, Tenant shall pay all costs, expenses, fines, penalties, or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this **Article 52**, and, at Tenant's sole cost and expense, shall indemnify, defend and hold Landlord harmless (including reasonable legal fees and expenses) from and against any actions, claims and suits arising from such noncompliance, utilizing counsel reasonably satisfactory to Landlord.

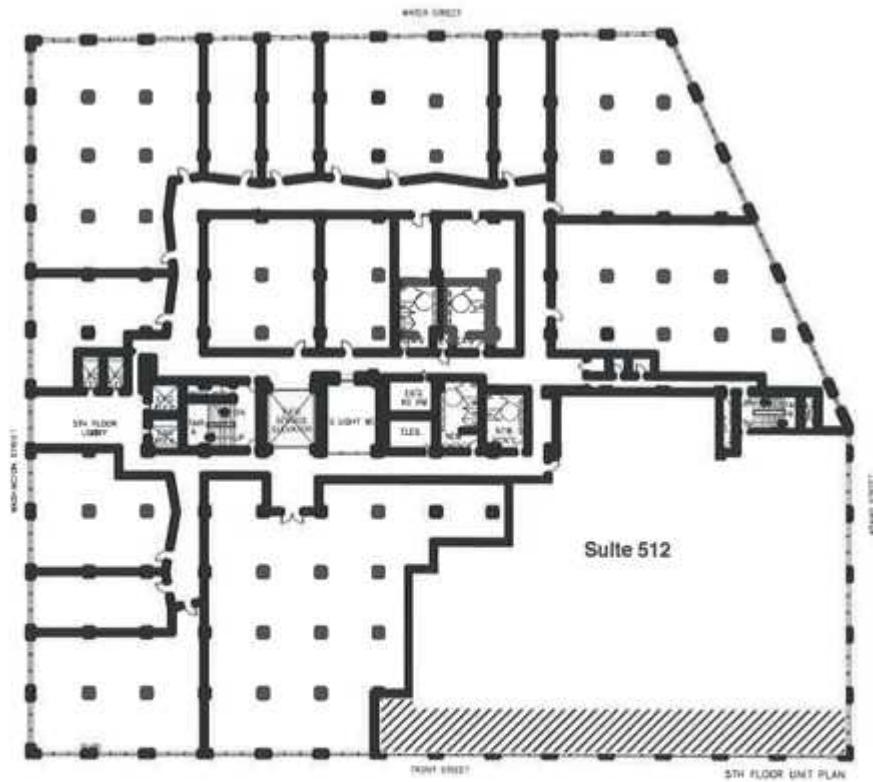
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**Exhibit "A"**  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

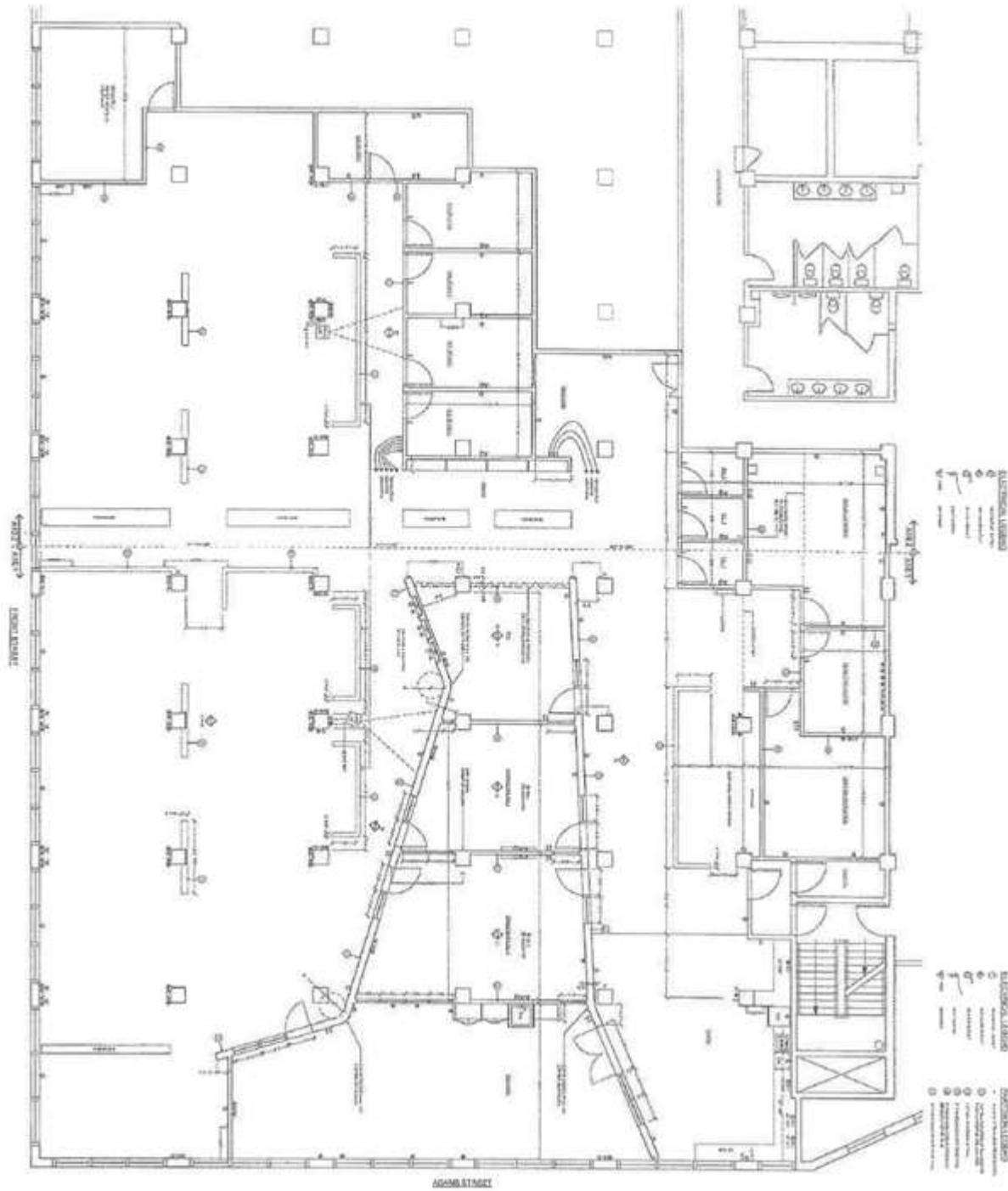
55 WASHINGTON STREET, 5TH FLOOR



INDICATES DEMISED PREMISES

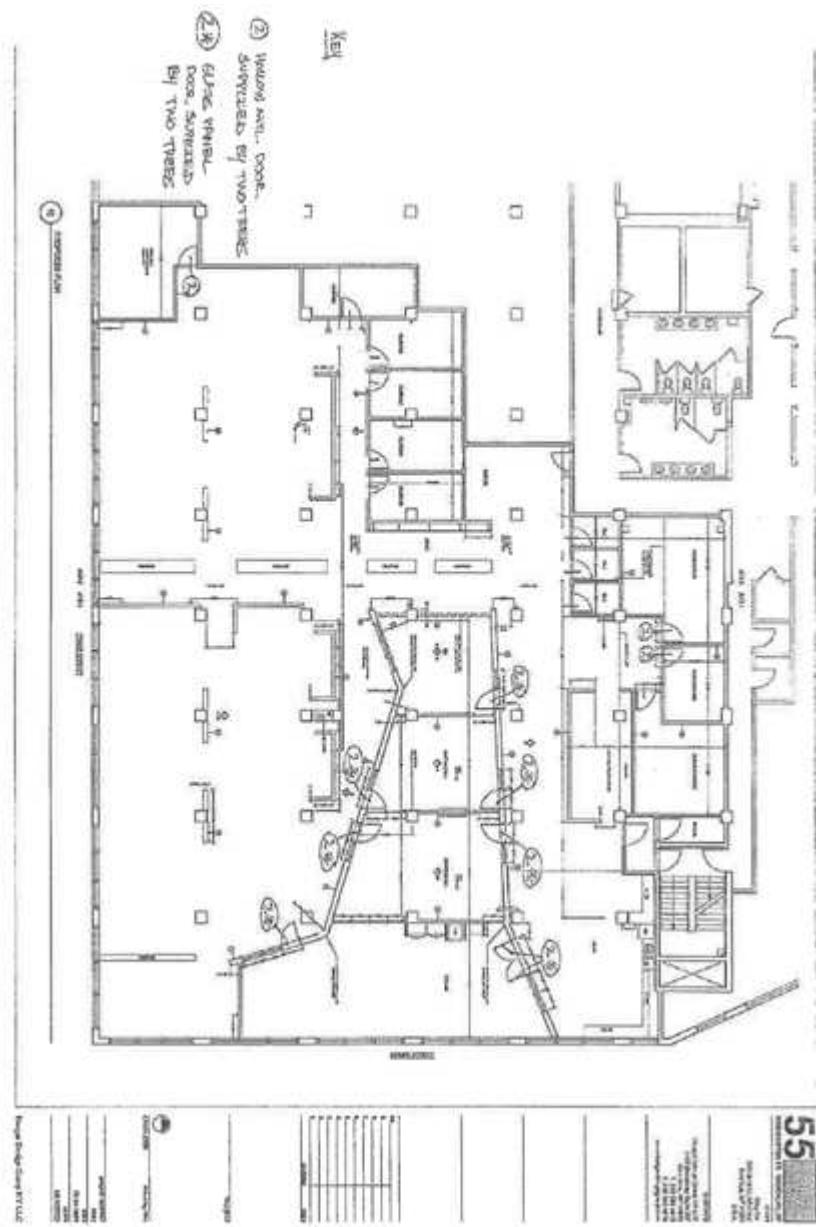
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Exhibit "B"  
Landlord's Work



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L.B.                  M.C.T.

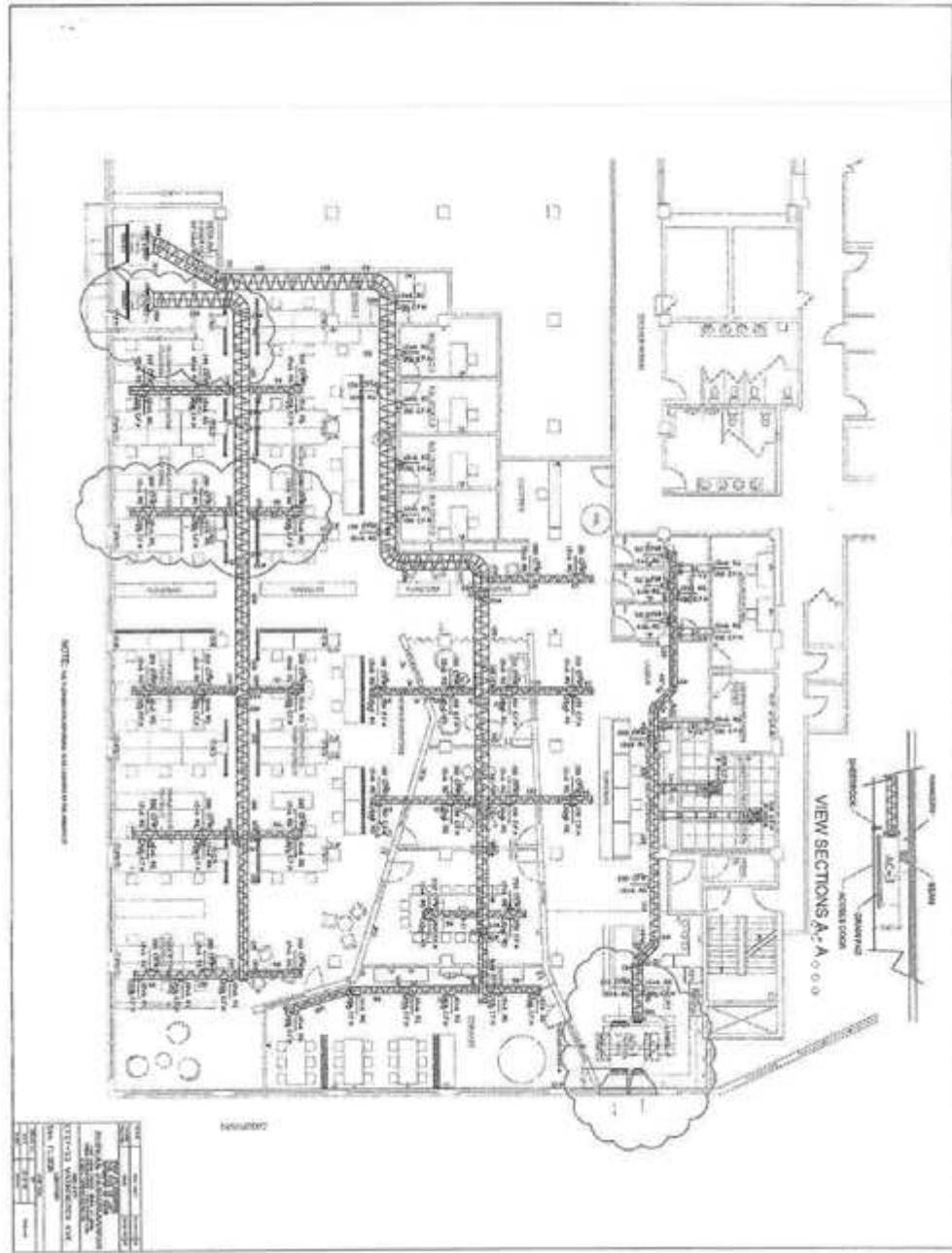
Exhibit "B" cont'd.



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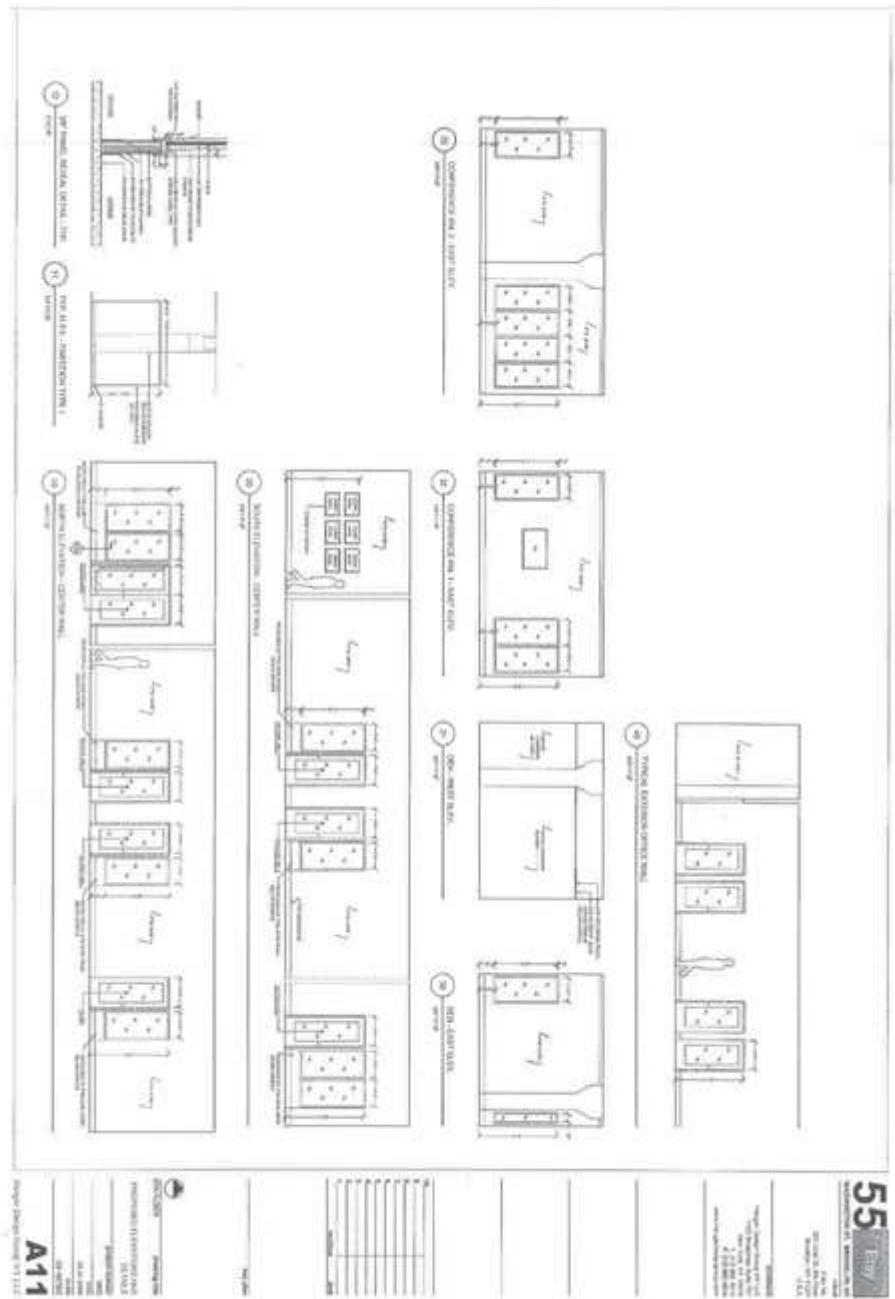
Please initial:  
LL T MET

**Exhibit “B” cont’d.**



Please Initial:  
EL \_\_\_\_\_ TML \_\_\_\_\_

Exhibit "B" cont'd.

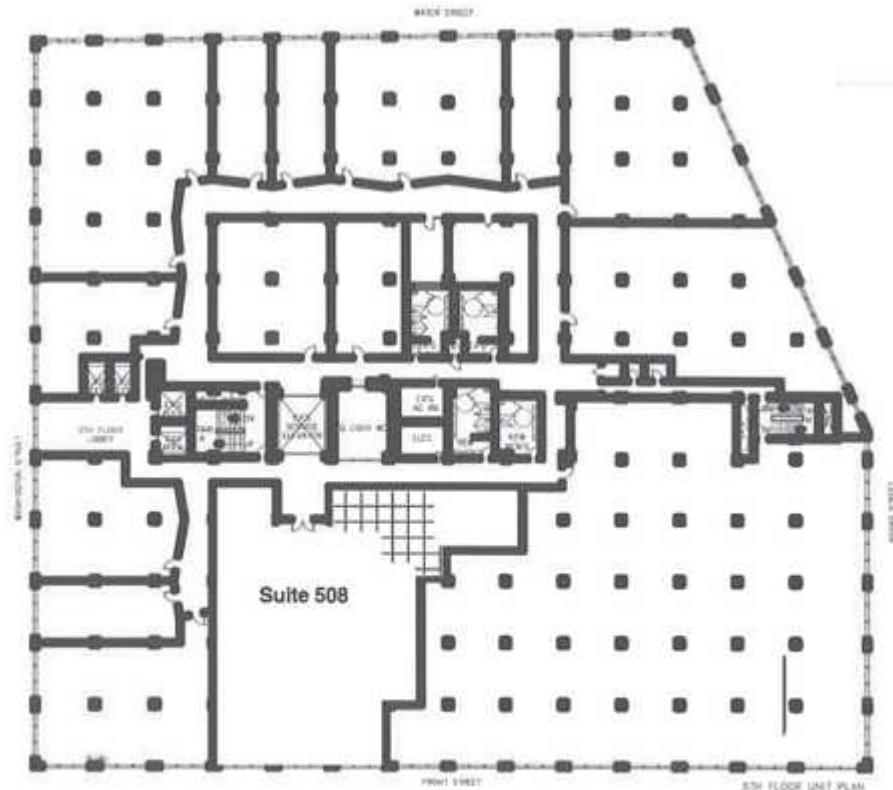


**55**

Please Initial:  
*[Signature]*

**Exhibit "C"**  
Diagram of the Adjacent Unit  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 5TH FLOOR



INDICATES ADJACENT UNIT

Please Initial: Landlord  Tenant NYC

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## **LEASE AMENDMENT**

**AGREEMENT**, made as of the 1<sup>st</sup> day of December, 2009, between **55 WASHINGTON STREET, LLC**, a limited liability company, having an office c/o Two Trees Management Co. LLC, 45 Main Street, Suite 602, New York, New York 11201 (hereinafter "Landlord"), and **ETSY, INC.**, a Delaware corporation, qualified to do business in the state of New York, having an office at 55 Washington Street, Suite 512, Brooklyn, New York 11201 (hereinafter "Tenant").

### **W I T N E S S E T H :**

WHEREAS Landlord and Tenant entered into that certain lease dated as of April 14, 2009 with respect to certain premises known as Suite 512 located in the building (the "Building") known as 55 Washington Street, Brooklyn, New York (with such lease being hereinafter referred to as the "Lease"), and

WHEREAS the parties now desire to modify the Lease in certain respects, as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed as follows:

**FIRST**: Unless the context otherwise clearly indicates a contrary intent or unless specifically provided herein, each term used in this Agreement which is defined in the Lease shall be deemed to have the meaning ascribed to such term in the Lease.

**SECOND**: Effective as of December 1, 2009, Article 48 of the Lease shall be amended so that the term "Adjacent Unit" shall mean Suite 501 in the Building and all references throughout the Lease to the Adjacent Unit shall mean Suite 501 in the Building, Further, Exhibit C attached to the Lease shall hereby be deleted and the **Exhibit C** attached hereto shall be substituted in lieu thereof.

**THIRD**: Tenant warrants and represents to Landlord that it has not dealt with any real estate broker, agent or finder in connection with the transactions described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any broker, agent or finder with respect to this Agreement or the negotiation of the terms thereof due to the dealings of Tenant with the claimant.

**FOURTH**: This Agreement may not be changed, modified or cancelled orally, Except as hereinabove modified and amended, and as so modified and amended, the Lease is hereby ratified and confirmed in all respects and shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**55 WASHINGTON STREET LLC**  
By: DW Associates, L.P.

By: \_\_\_\_\_

("Landlord")

SARAH M. FEINGOLD  
Notary Public, State of New York  
No. 02FE6153435  
Qualified in Monroe County  
Commission Expires October 02, 2010

ETSY, INC.

By: \_\_\_\_\_

(“Tenant”)

A handwritten signature in blue ink, appearing to read "Sarah M. Feingold".

State of New York

} SS:

County of Kings

On the 1<sup>st</sup> day of December in the year 2009 before me, the undersigned, a Notary Public in and for said State, personally appeared Chad Dickerson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SARAH M. FEINGOLD  
Notary Public, State of New York  
No. 02FE6153435  
Qualified in Monroe County  
Commission Expires October 02, 2010

2

Landlord \_\_\_\_\_  
Tenant

**Exhibit "C"**

Diagram of the Adjacent Unit  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 5TH FLOOR



INDICATES ADJACENT UNIT

Please Initial: Landlord *[Signature]* Tenant *[Signature]*

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## DEAL SHEET – Additional Space and extension

<b>Current Premises:</b>	55 Washington Street, Brooklyn, Suite 512 (approx. 14,718rsf) and Suite 500 (approx. 1,686rsf) - TOTAL rsf of 16,404rsf.												
<b>Additional Premises:</b>	Suite 501 (approx. 6,556rsf) for a NEW TOTAL of 22,960rsf												
<b>Tenant:</b>	Etsy, Inc.												
<b>Guarantor:</b>	None												
<b>Rent for Suite 501:</b>	\$158,382.59/yr — \$13,198.55/mo. (\$24.16/rsf)												
<b>New Rent:</b>	<table><tr><td>8/15/10 – 7/31/11:</td><td>\$552,167.10/yr — \$46,013.93/mo.</td></tr><tr><td>8/1/11 – 7/31/12:</td><td>\$568,732.11/yr — \$47,344.34/mo.</td></tr><tr><td>8/1/12 – 7/31/13:</td><td>\$585,794.07/yr — \$48,816.17/mo.</td></tr><tr><td>8/1/13 – 7/31/14:</td><td>\$603,367.89/yr — \$50,280.66/mo.</td></tr><tr><td>8/1/14 – 7/31/15:</td><td>\$667,447.20/yr — \$55,620.60/mo.</td></tr><tr><td>8/1/15 – 7/31/16:</td><td>\$687,470.62/yr — \$57,289.22/mo.</td></tr></table>	8/15/10 – 7/31/11:	\$552,167.10/yr — \$46,013.93/mo.	8/1/11 – 7/31/12:	\$568,732.11/yr — \$47,344.34/mo.	8/1/12 – 7/31/13:	\$585,794.07/yr — \$48,816.17/mo.	8/1/13 – 7/31/14:	\$603,367.89/yr — \$50,280.66/mo.	8/1/14 – 7/31/15:	\$667,447.20/yr — \$55,620.60/mo.	8/1/15 – 7/31/16:	\$687,470.62/yr — \$57,289.22/mo.
8/15/10 – 7/31/11:	\$552,167.10/yr — \$46,013.93/mo.												
8/1/11 – 7/31/12:	\$568,732.11/yr — \$47,344.34/mo.												
8/1/12 – 7/31/13:	\$585,794.07/yr — \$48,816.17/mo.												
8/1/13 – 7/31/14:	\$603,367.89/yr — \$50,280.66/mo.												
8/1/14 – 7/31/15:	\$667,447.20/yr — \$55,620.60/mo.												
8/1/15 – 7/31/16:	\$687,470.62/yr — \$57,289.22/mo.												
<b>Rent Credit:</b>	Tenant to receive a rent credit in the amount of \$22,198.55 to be applied in two installments; one in the amount of \$13,198.55 towards August 2010 and the second in the amount of \$9,000.00 towards September 2010.												
<b>Real Estate Taxes:</b>	As of 8/15/10 new % is 6.813%												
<b>trash charge:</b>	As of 8/15/10 new is \$382.67												
<b>Heat:</b>	included												
<b>Electric:</b>	same as current												
<b>Security Deposit:</b>	We currently have \$320,000.00 that is to be reduced on 12/31/10 so we will change the amount of which the security will be reduced to; \$303,601.45 on 12/1/10, \$286,686.91 on 12/1/11 and \$269,137.36 on 12/1/12.												
<b>Landlord's Work:</b>	See attached exhibit B												
<b>Lease:</b>	E-mail the lease to ***** <a href="mailto:@etsy.com">@etsy.com</a>												

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Exhibit "B"

Landlord's Work

Landlord will do the following work once at Landlord's expense promptly after the date hereof and shall substantially complete the same by the Commencement Date subject only to force majeure:

1. Paint all interior walls of the demised premises with two (2) coats of Building standard white paint
2. Supply and install separate Building standard electrical meter and Building standard: circuit breaker box, electrical outlets, voice and data outlets and light fixtures within the demised premises.
3. Supply and install Building standard perimeter baseboard heating and thermostatic valve(s).
4. Supply and install a Building standard ceiling mounted air-conditioning system in the demised premises and do the ductwork and distribution.

The foregoing work will be performed by contractors selected by Landlord, using materials, methods and procedures standard to the Building. Any work not expressly specified herein and any work necessary to have the demised premises comply with codes attributable to Tenant's particular manner of use of the demised premises shall be furnished and installed at Tenant's cost and expense. The cost of any Tenant extras shall be payable simultaneously with the authorization by Tenant of such extra work. Any existing construction shall be accepted by Tenant in "as is" condition.

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## **LEASE AMENDMENT**

AGREEMENT, made as of the 1<sup>st</sup> day of March, 2010, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office c/o Two Trees Management Co. LLC, 45 Main Street, Suite 602, Brooklyn, New York 11201, ("Landlord"), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an address of 55 Washington Street, Suite 512, Brooklyn, New York 11201 ("Tenant").

### **W I T N E S S E T H :**

WHEREAS Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the "Original Lease") covering certain premises known as Suite 512 ("Original Premises") more particularly described in the Original Lease and located on the fifth (5<sup>th</sup>) floor in the building known as 55 Washington Street, Brooklyn, New York; and

WHEREAS by that certain lease amendment dated as of December 1, 2009 (the "First Amendment") by and between Landlord and Tenant, Landlord modified the lease in certain respects (the Original Lease and the First Amendment are hereinafter collectively referred to as the "Lease"); and

WHEREAS Tenant is desirous of leasing from Landlord, on a temporary basis, certain additional premises known as Suite 500 located in the Building and whereas Landlord is desirous of leasing Suite 500 to Tenant, on a temporary basis, subject to the provisions, conditions, covenants and agreements set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

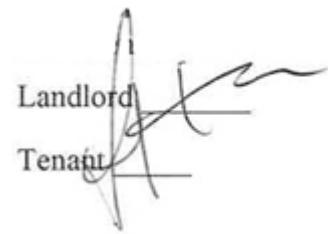
**FIRST** : Each term used in this Agreement shall have the meaning ascribed to such term in the Lease, except as expressly amended herein.

**SECOND** : From April 1, 2010 to March 31, 2011 (the "Temporary Period"), Landlord leases to Tenant and Tenant leases from Landlord certain premises known as Suite 500 located on the fifth (5<sup>th</sup>) floor of the Building (hereinafter referred to as the "Temporary Premises") which premises are located substantially in the location shown hatched on the plan attached hereto as "**Exhibit A**" and hereby made a part hereof. Landlord has not made and does not make any representation as to the physical condition or any other matter affecting or relating to the Temporary Premises except as is herein specifically set forth, and Tenant specifically acknowledges that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Temporary Premises and Tenant agrees to accept the Temporary Premises "as is" (it being understood that the parties agree that Exhibit B attached to the Original Lease shall not apply to the Temporary Premises). Notwithstanding anything to the contrary contained herein, Landlord shall, at its expense, perform, or cause to be performed all work necessary to (i) install two (2) window air-conditioning units, (ii) build one (1) conference room with sheetrock walls in the location shown on **Exhibit D** which is attached hereto and made a part hereof, and (iii) install one (1) door in the location shown on **Exhibit D** (such work is herein collectively referred to as "Landlord's Temporary Premises Work").

**THIRD** : Prior to April 1, 2010, Tenant shall deliver to Landlord insurance satisfying the provisions of the Lease covering the Temporary Premises.

**FOURTH** : During the Temporary Period and all additional days the Temporary Premises is in Tenant's possession (i) the term "demised premises" shall be deemed to refer to the Original Premises and the Temporary Premises and the plan attached to the Lease as Exhibit A is deleted therefrom and the plan attached hereto as **Exhibit A** is substituted in lieu thereof; (ii) the term "Tenant's Percentage" as defined in Article 4 and Article 51 of the Lease shall be amended to be 4.868%; and (iii) the monthly additional rent charge for ordinary office trash collection payable pursuant to Article 47 of the Lease shall be \$273.40.

FIFTH: During the balance of the term of the Lease after the Temporary Period and after the Temporary Premises is no longer in tenant's possession (i) the term "demised premises" shall be deemed to refer to the Original Premises and the plan then attached to the Lease as Exhibit A shall be deleted therefrom and the plan attached hereto as **Exhibit E** is substituted in lieu thereof; (ii) the term "Tenant's Percentage" as defined in Article 4 and Article 51 of the Lease shall be amended to be 4.367%; and (iii) the monthly additional rent charge for ordinary office trash collection payable pursuant to Article 47 of the Lease shall be \$245.30.



A handwritten signature block consisting of two signatures. The top signature is labeled "Landlord" and the bottom one is labeled "Tenant". Both signatures are written in black ink on a white background.

SIXTH: As of the date hereof, the annual base rent payable under Article 2 of the Lease is hereby amended so that commencing on April 1, 2010 and thereafter during the balance of the term of the Lease it shall be as follows (dates inclusive):

April 1, 2010 to July 31, 2010: \$384,273.00/year — \$32,022.75/month  
August 1, 2010 to March 31, 2011: \$393,784.51/year — \$32,815.38/month  
April 1, 2011 to July 31, 2011: \$355,384.51/year — \$29,615.38/month  
August 1, 2011 to July 31, 2012: \$365,157.58/year — \$30,429.80/month  
August 1, 2012 to July 31, 2013: \$375,199.41/year — \$31,266.62/month  
August 1, 2013 to July 31, 2014: \$385,517.39/year — \$32,126.45/month  
August 1, 2014 to July 31, 2015: \$425,497.38/year — \$35,458.12/month  
August 1, 2015 to July 31, 2016: \$437,198.56/year — \$36,433.21/month

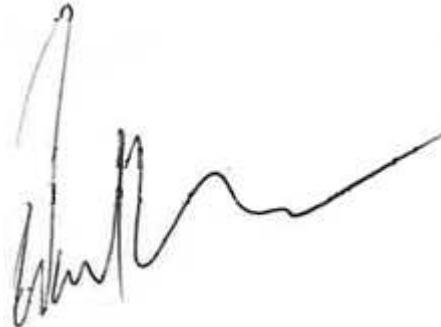
SEVENTH: Tenant warrants and represents to Landlord that it has not dealt with any real estate broker, agent or finder in connection with the leasing of the Temporary Premises and the other transactions described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any broker, agent or finder with respect to this Agreement, the Temporary Premises or the negotiation of the terms hereof due to the dealings of Tenant with the claimant.

EIGHTH: Except as expressly modified and amended herein, and as so modified and amended, the Lease is hereby ratified and confirmed in all respects and shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

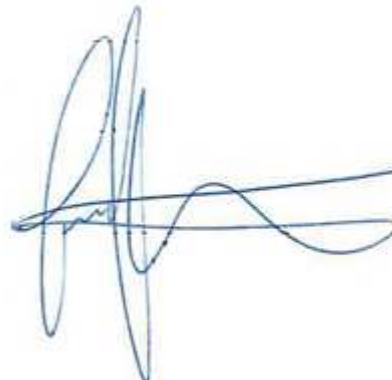
**55 WASHINGTON STREET LLC**  
By: DW Associates, L.P., as managing member

By: \_\_\_\_\_  
(Landlord)



**ETSY INC.**

By: \_\_\_\_\_  
(Tenant)



State of New York

} SS:

County of Kings

On the 17<sup>th</sup> day of March in the year 2010 before me, the undersigned, a Notary Public in and for said State, personally appeared Jesse H Hertzberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



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Notary Public

ELIZABETH J. COTTRILL  
Notary Public - State of New York  
No. 01CO6181901  
Qualified in New York County  
My Commission Expires February 11, 2012

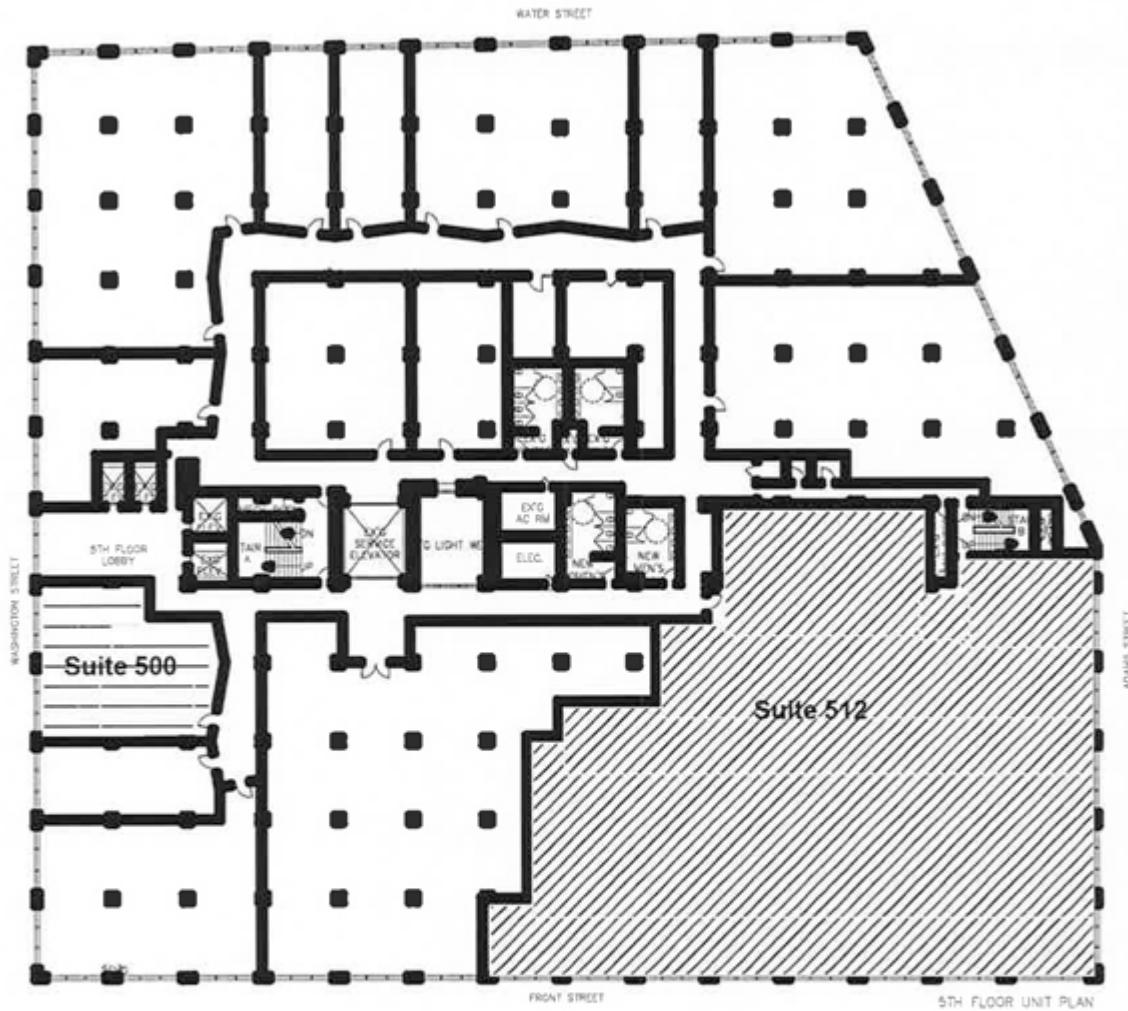
2



Landlord  
Tenant

Exhibit "A"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 5TH FLOOR



INDICATES ORIGINAL PREMISES



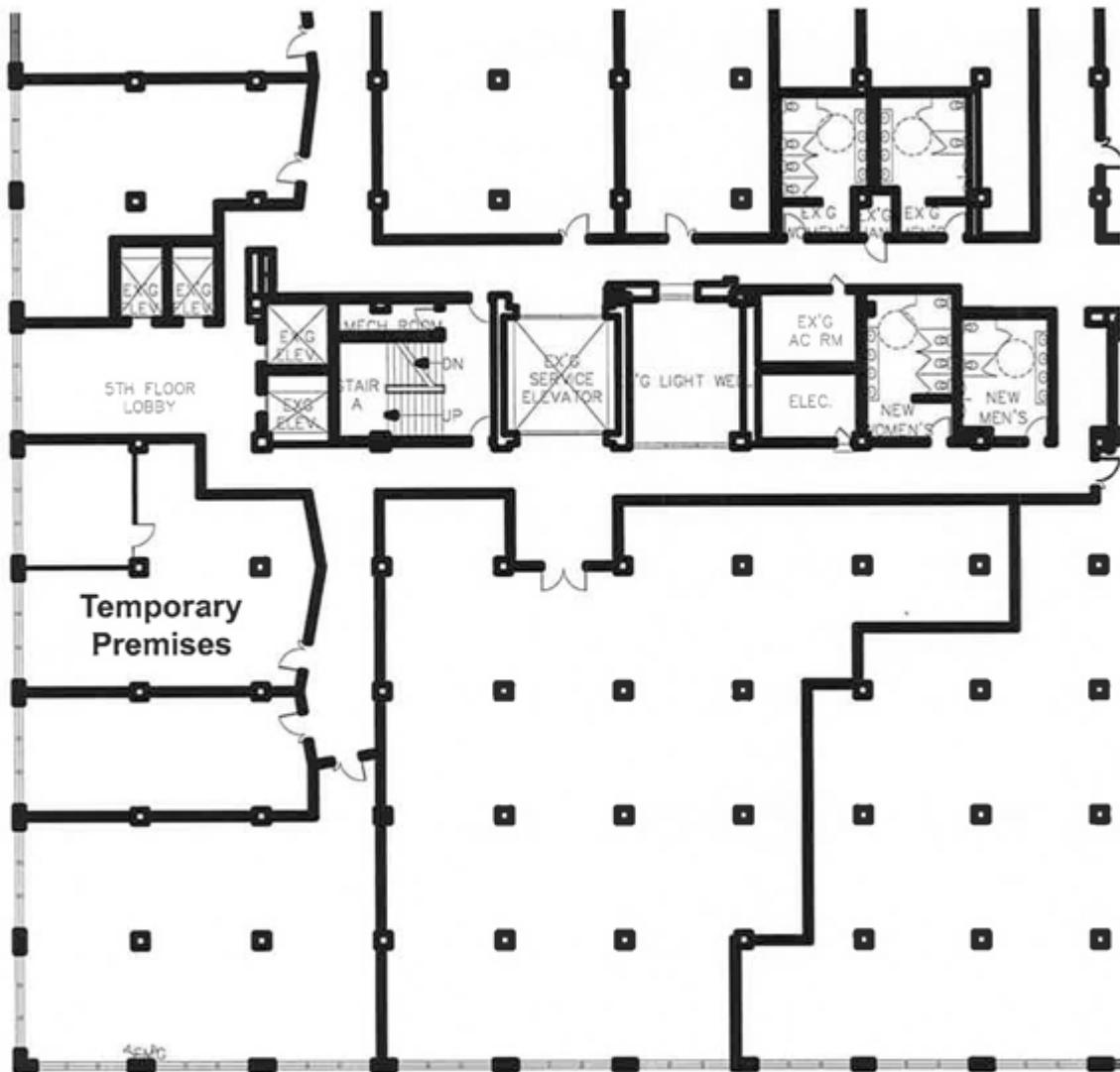
INDICATES TEMPORARY PREMISES

Please Initial: Landlord \_\_\_\_\_ Tenant \_\_\_\_\_



Exhibit "D"  
Landlord's Temporary Premises Work  
[Not to scale; all dimensions approximate; subject to actual conditions.]

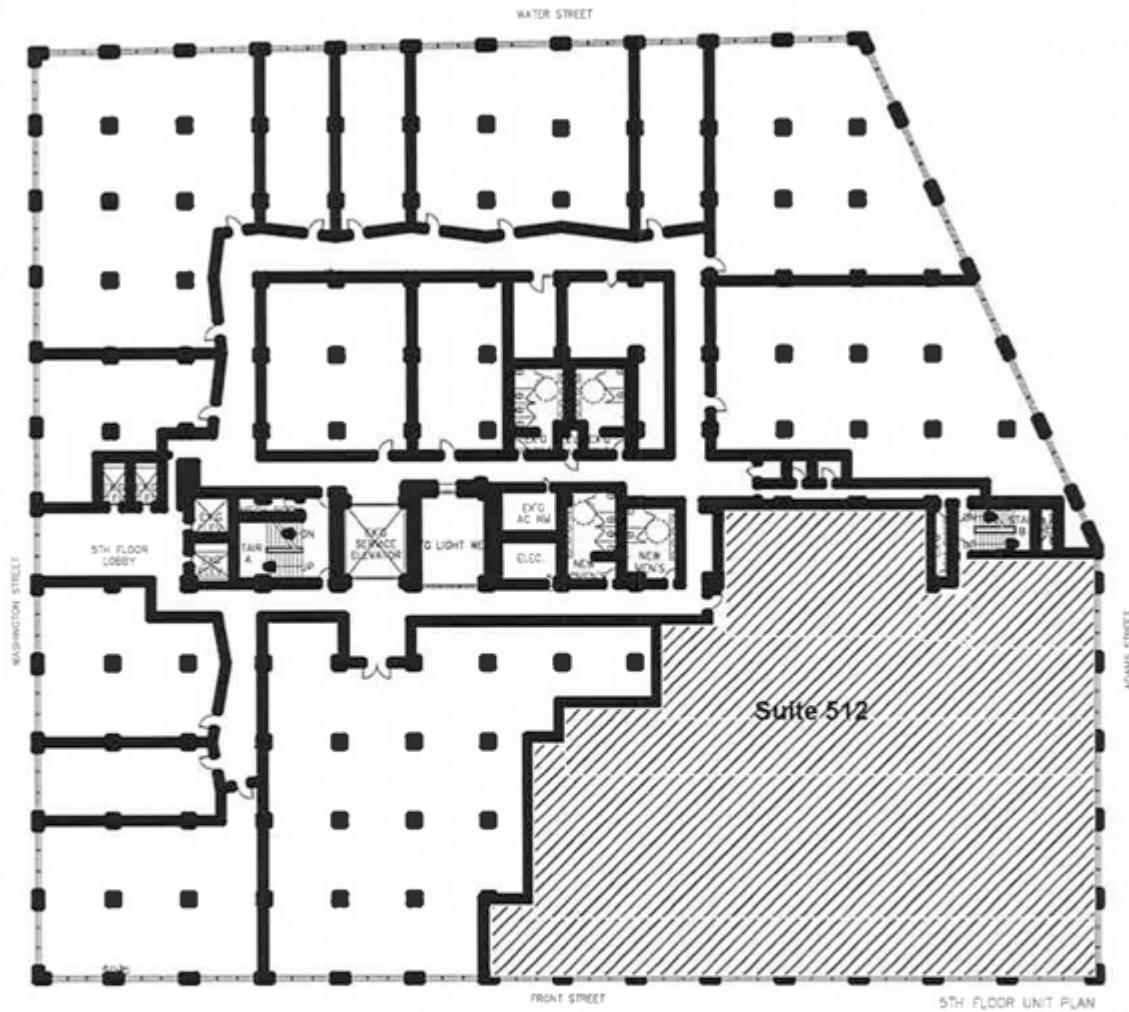
55 WASHINGTON STREET, 5TH FLOOR



Please Initial: Landlord John Tenant

Exhibit "E"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 5TH FLOOR



Please Initial: Landlord \_\_\_\_\_ Tenant \_\_\_\_\_

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## **LEASE AMENDMENT**

AGREEMENT, made as of the 1<sup>st</sup> day of April, 2010, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office c/o Two Trees Management Co. LLC, 45 Main Street, Suite 602, Brooklyn, New York 11201, ("Landlord"), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an address of 55 Washington Street, Suite 512, Brooklyn, New York 11201 ("Tenant").

### **W I T N E S S E T H :**

WHEREAS Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the "Original Lease") covering certain premises known as Suite 512 ("Original Premises") more particularly described in the Original Lease and located on the fifth (5<sup>th</sup>) floor in the building known as 55 Washington Street, Brooklyn, New York; and

WHEREAS by that certain lease amendment dated as of December 1, 2009 (the "First Amendment") by and between Landlord and Tenant, Landlord modified the lease in certain respects; and

WHEREAS by that certain lease amendment dated as of March 1, 2010 (the "Second Amendment") by and between Landlord and Tenant, Tenant added certain temporary additional space to the demised premises ((the Original Lease, the First Amendment and the Second Amendment are hereinafter collectively referred to as the "Lease"); and

WHEREAS Tenant is desirous of modifying the Lease to permit Tenant's use of a stove in the demised premises subject to the terms and conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**FIRST :** Each term used in this Agreement shall have the meaning ascribed to such term in the Lease, except as expressly amended herein.

**SECOND :** The Lease shall hereby be amended by added the following **Article 53** thereto:

53. **Use of Stove:** Notwithstanding anything to the contrary contained herein, Tenant shall, at Tenant's sole cost and expense, be permitted to install an electric induction range with a convection oven (the "Stove") within Suite 512; provided however, that (i) the Stove shall only be used by Tenant's caterer to heat meals for Tenant's employees not more than ten (10) times each month, (ii) Tenant must comply with all Legal Requirements, including without limitation, any requirements of the Fire Department and/or Department of Buildings with respect to the installation and use of the Stove, which may include, without limitation, Tenant's installation of a fan or other ventilation system as may be necessary in order to comply with Legal Requirements, (iii) Tenant shall be solely responsible for obtaining any licenses or permits required for the installation and/or use of the Stove and (iv) Landlord has the right, at Tenant's sole cost and expense, to remove, or cause Tenant to remove, the Stove at any time Landlord believes such removal is necessary for any reason.

**THIRD :** Tenant warrants and represents to Landlord that it has not dealt with any real estate broker, agent or finder in connection with the terms described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any broker, agent or finder with respect to this Agreement or the negotiation of the terms hereof due to the dealings of Tenant with the claimant.

**FOURTH :** Except as expressly modified and amended herein, and as so modified and amended, the Lease is hereby ratified and confirmed in all respects and shall be binding upon the parties hereto and their respective successors and assigns.



A handwritten signature in black ink, appearing to be "John Doe". Below the signature, the word "Landlord" is written in blue ink. To the right of the main signature, there is another smaller, illegible handwritten signature in blue ink, with the word "Tenant" written below it in blue ink.

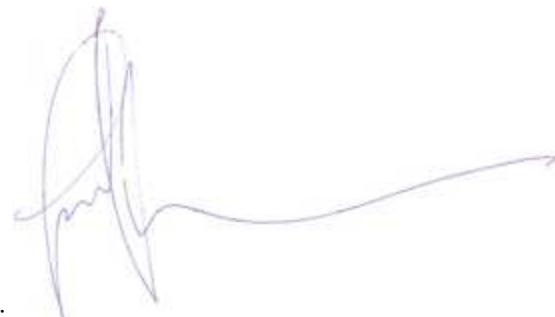
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**55 WASHINGTON STREET LLC**  
By: DW Associates, L.P., as managing member



By: \_\_\_\_\_  
(Landlord)

**ETSY INC.**



By: \_\_\_\_\_  
(Tenant)

State of New York

} SS:

County of Kings

On the 7<sup>th</sup> day of April in the year 2010 before me, the undersigned, a Notary Public in and for said State, personally appeared Jesse Hertzberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Natalie Ungari  
Attorney & Counselor at Law  
State of New York  
No. 02UN6193020  
Qualified in Kings County  
Term Expires September 8, 2012

Notary Public



Landlord \_\_\_\_\_  
Tenant \_\_\_\_\_

## **LEASE AMENDMENT**

AGREEMENT, made as of the 15<sup>th</sup> day of July, 2010, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office c/o Two Trees Management Co. LLC, 45 Main Street, Suite 602, Brooklyn, New York 11201, ("Landlord"), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an address of 55 Washington Street, Suite 512, Brooklyn, New York 11201 ("Tenant").

### **W I T N E S S E T H :**

WHEREAS Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the "Original Lease") covering certain premises known as Suite 512 ("Original Premises") more particularly described in the Original Lease and located on the fifth (5<sup>th</sup>) floor in the building known as 55 Washington Street, Brooklyn, New York; and

WHEREAS by that certain lease amendment dated as of December 1, 2009 (the "First Amendment") by and between Landlord and Tenant, Landlord modified the lease in certain respects; and

WHEREAS by that certain lease amendment dated as of March 1, 2010 (the "Second Amendment") by and between Landlord and Tenant, Tenant temporarily leased certain additional premises in the Building known as Suite 500 (the "Temporary Premises") (the Original Lease, the First Amendment and the Second Amendment are hereinafter collectively referred to as the "Lease"); and

WHEREAS Tenant is desirous of extending the term of the Lease for the Temporary Premises and leasing from Landlord certain additional premises known as Suite 501 located in the Building and whereas Landlord is desirous of leasing Suite 500 to Tenant, subject to the provisions, conditions, covenants and agreements set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**FIRST** : Each term used in this Agreement shall have the meaning ascribed to such term in the Lease, except as expressly amended herein.

**SECOND** : The term of the Lease is hereby extended, for the Temporary Premises only, upon the same terms, covenants and conditions set forth in the Lease, except as expressly amended herein, for approximately five (5) years and four (4) months so that it shall expire on July 31, 2016, unless sooner terminated, upon the terms set forth herein. Tenant hereby acknowledges that it has no right to extend the term of the Lease beyond July 31, 2016.

**SECOND** : From and after September 15, 2010, Landlord leases to Tenant and Tenant leases from Landlord certain premises known as Suite 501 located on the fifth (5<sup>th</sup>) floor of the Building (hereinafter referred to as the "Additional Premises") which premises are located substantially in the location shown hatched on the plan attached hereto as "**Exhibit A**" and hereby made a part hereof. Landlord has not made and does not make any representation as to the physical condition or any other matter affecting or relating to the Additional Premises except as is herein specifically set forth, and Tenant specifically acknowledges that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Additional Premises and Tenant agrees to accept the Additional Premises "as is". Notwithstanding anything to the contrary contained herein, Landlord shall, at its expense, perform, or cause to be performed all work necessary to complete all work as shown on **Exhibit B** which is attached hereto and made a part hereof (such work is herein referred to as "Landlord's Additional Premises Work").

**THIRD** : Prior to September 15, 2010, Tenant shall deliver to Landlord insurance satisfying the provisions of the Lease covering the Additional Premises.

**FOURTH** : From September 15, 2010 to July 31, 2016 (i) the term "demised premises" shall be deemed to refer to the Original Premises, the Temporary Premises and the Additional Premises and the plan attached to the Lease as Exhibit A is deleted therefrom and the plan attached hereto as **Exhibit A** is substituted in lieu thereof; (ii) the term "Tenant's Percentage" as defined in Article 4 and Article 51 of the Lease shall be amended to be 6.813%; and (iii) the monthly additional rent charge for ordinary office trash collection payable pursuant to Article 47 of the Lease shall be \$382.67.

  
Landlord \_\_\_\_\_  
  
Tenant ST

**FIFTH:** As of the date hereof, the annual base rent payable under Article 2 of the Lease is hereby amended so that commencing on September 15, 2010 and thereafter during the balance of the term of the Lease it shall be as follows (dates inclusive):

September 15, 2010 to July 31, 2011: \$552,167.10/year — \$46,013.93/month  
August 1, 2011 to July 31, 2012: \$568,732.11/year — \$47,344.34/month  
August 1, 2012 to July 31, 2013: \$585,794.07/year — \$48,816.17/month  
August 1, 2013 to July 31, 2014: \$603,367.89/year — \$50,280.66/month  
August 1, 2014 to July 31, 2015: \$667,447.20/year — \$55,620.60/month  
August 1, 2015 to July 31, 2016: \$687,470.62/year — \$57,289.22/month

**SIXTH:** Provided Tenant is not in default under its obligations under this Lease on September 1, 2010, October 1, 2010 and November 1, 2010, Tenant shall be entitled to a rent credit in the sum of \$34,000.00 which shall be applied by Landlord in three (3) installments; two (2) installments of \$12,500.00 against the monthly installments of the annual base rent payable under this Lease with respect to September 2010 and October 2010 and one (1) installment of \$9,000.00 against the annual base rent payable under this Lease with respect to November 2010. In no event shall the rent credit payable under this paragraph exceed \$34,000.00. Notwithstanding the foregoing, if, prior to the Expiration Date (as the same may be amended from time to time), the demised premises are surrendered by Tenant or if Landlord obtains possession of the demised premises prior to the Expiration Date due to default(s) by Tenant under this Lease, then, in either case, Tenant shall immediately pay Landlord \$34,000.00 as additional rent hereunder and such payment obligation shall expressly survive the expiration or termination of this Lease.

**SEVENTH:** Article 3 of the Lease is hereby amended from and after the date hereof, so that if (i) Tenant is not then in default hereunder and has not been in default beyond applicable notice and cure periods from the Commencement Date and their shall not have occurred an event which, with the giving of notice or passage of time, shall constitute a default by Tenant under this Lease, Tenant shall be permitted to reduce the security deposit to \$303,601.45 as of December 1, 2010, (ii) Tenant is not then in default hereunder and has not been in default beyond applicable notice and cure periods and their shall not have occurred an event which, with the giving of notice or passage of time, shall constitute a default by Tenant under this Lease, Tenant shall be permitted to further reduce the security deposit to \$286,686.91 as of December 1, 2011 and (iii) Tenant is not then in default hereunder and has not been in default beyond any applicable notice and cure periods and their shall not have occurred an event which, with the giving of notice or passage of time, shall constitute a default by Tenant under this Lease, Tenant shall be permitted to reduce the security deposit to \$269,137.36 as of December 1, 2012.

**EIGHTH:** Tenant warrants and represents to Landlord that it has not dealt with any real estate broker, agent or finder in connection with the leasing of the Additional Premises and the other transactions described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any broker, agent or finder with respect to this Agreement, the Additional Premises or the negotiation of the terms hereof due to the dealings of Tenant with the claimant.

**NINTH:** Except as expressly modified and amended herein, and as so modified and amended, the Lease is hereby ratified and confirmed in all respects and shall be binding upon the parties hereto and their respective successors and assigns.

  
Landlord \_\_\_\_\_  
  
Tenant ST

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**55 WASHINGTON STREET LLC**  
By: DW Associates, L.P., as managing member



By: \_\_\_\_\_  
(Landlord)

**ETSY INC.**

  
By: \_\_\_\_\_  
(Tenant)

State of New York  
} SS:  
County of Kings

On the 10<sup>th</sup> day of August in the year 2010 before me, the undersigned, a Notary Public in and for said State, personally appeared Sinohe Terrero, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



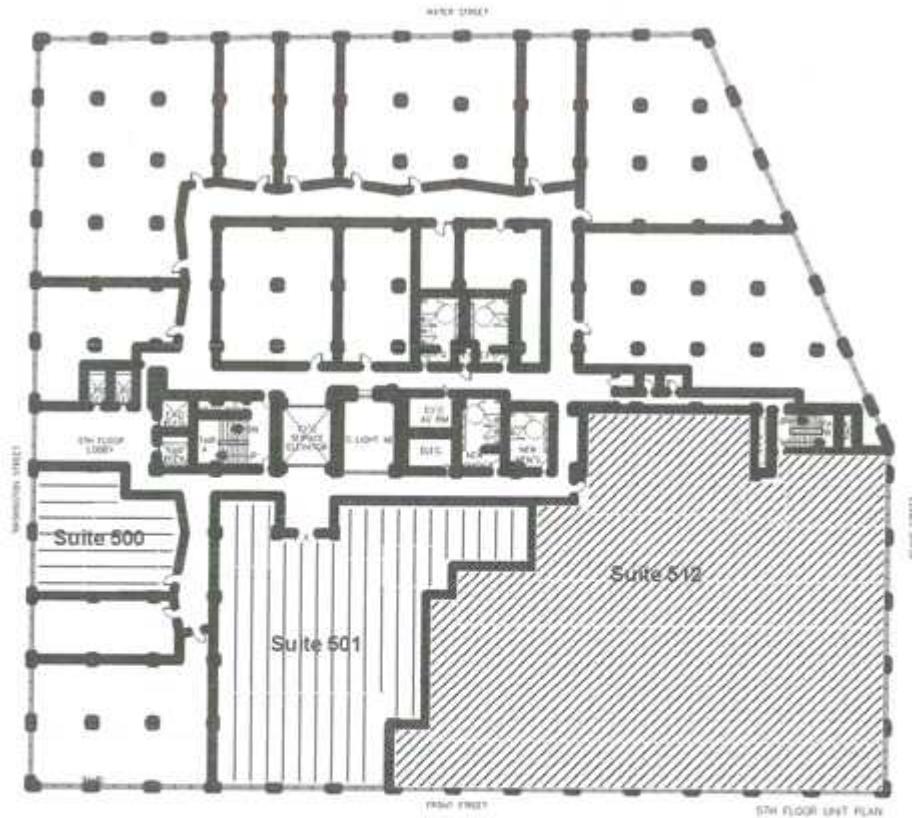
Notary Public

SARAH M. FEINGOLD  
Notary Public, State of New York  
No. 02FE6153435  
Qualified in Monroe County  
Commission Expires October 02, 2010

  
Landlord \_\_\_\_\_  
  
Tenant ST

Exhibit "A"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 5TH FLOOR



INDICATES ORIGINAL PREMISES



INDICATES TEMPORARY PREMISES



INDICATES ADDITIONAL PREMISES

Please Initial Landlord  Tenant ST

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## Exhibit B

### Landlord's Work

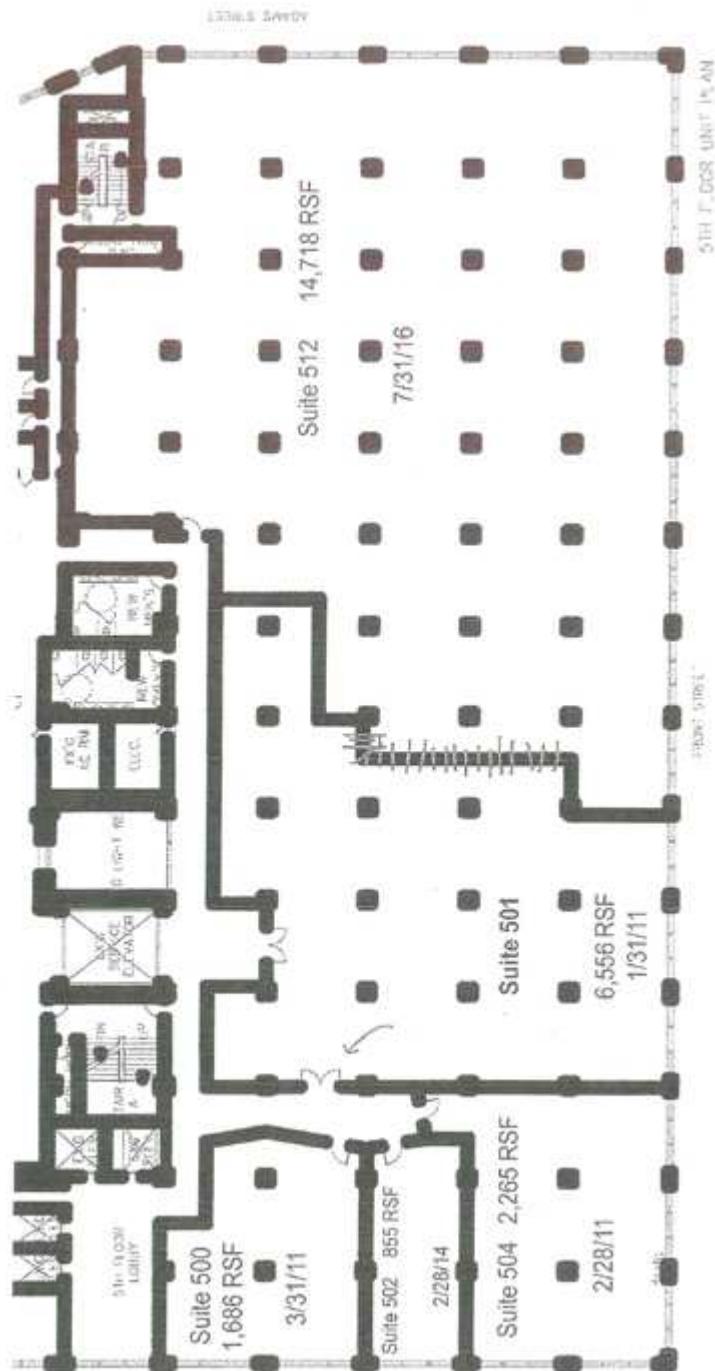
Landlord will do the following work once at Landlord's expense promptly after the date hereof and shall substantially complete the same by the Commencement Date subject only to force majeure:

1. Paint all interior walls and ceiling of the demised premises with two (2) coats of Building standard white paint.
2. Supply and install separate Building standard electrical meter and Building standard: circuit breaker box, electrical outlets, voice and data outlets and light fixtures within the demised premises.
3. Supply and install Building standard perimeter baseboard heating and thermostatic valve(s).
4. Supply and install an A/C unit and Building standard ceiling ductwork and distribution.
5. Supply and install a Building standard office door at the location shown on the attached Exhibit C.
6. Remove the wall dividing Suite 512 and Suite 501 at the location shown on the attached Exhibit C.

The foregoing work will be performed by contractors selected by Landlord, using materials, methods and procedures standard to the Building. Any work not expressly specified herein and any work necessary to have the demised premises comply with codes attributable to Tenant's particular manner of use of the demised premises shall be furnished and installed at Tenant's cost and expense. The cost of any Tenant extras shall be payable simultaneously with the authorization by Tenant of such extra work. Any existing construction shall be accepted by Tenant in "as is" condition.

Landlord   
Tenant 

Exhibit C



  
Landlord  
  
Tenant ST

## **LEASE AMENDMENT**

AGREEMENT, made as of the 1<sup>st</sup> day of October, 2010, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office c/o Two Trees Management Co. LLC, 45 Main Street, Suite 602, Brooklyn, New York 11201, ("Landlord"), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an address of 55 Washington Street, Suite 512, Brooklyn, New York 11201 ("Tenant").

### **W I T N E S S E T H :**

WHEREAS Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the "Original Lease") covering certain premises known as Suite 512 ("Original Premises") more particularly described in the Original Lease and located on the fifth (5<sup>th</sup>) floor in the building (the "Building") known as 55 Washington Street, Brooklyn, New York; and

WHEREAS by that certain lease amendment dated as of December 1, 2009 (the "First Amendment") by and between Landlord and Tenant, Landlord modified the lease in certain respects; and

WHEREAS by that certain lease amendment dated as of March 1, 2010 (the "Second Amendment") by and between Landlord and Tenant, Tenant temporarily leased certain additional premises in the Building known as Suite 500 (hereinafter referred to as "Suite 500" or the "Temporary Premises")

WHEREAS, by that certain lease amendment dated as of April 1, 2010 (the "Third Amendment") by and between Landlord and Tenant, Landlord modified the lease in certain respects; and

WHEREAS by that certain lease amendment dated as of July 15, 2010 (the "Fourth Amendment") by and between Landlord and Tenant, Tenant extended its lease of Suite 500 and leased certain additional premises in the Building known as Suite 501 (hereinafter referred to as the "Additional Premises" or "Suite 501") (the Original Lease, the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment are hereinafter collectively referred to as the "Lease"); and

WHEREAS Tenant is desirous of leasing from Landlord certain additional premises known as Suite 712 in the Building and whereas Landlord is desirous of leasing Suite 712 to Tenant, subject to the provisions, conditions, covenants and agreements set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**FIRST** : Each term used in this Agreement shall have the meaning ascribed to such term in the Lease, except as expressly amended herein.

**SECOND** : From and after November 1, 2010, Landlord leases to Tenant and Tenant leases from Landlord certain premises known as Suite 712 located on the seventh (7<sup>th</sup>) floor of the Building (hereinafter referred to as "Suite 712") which premises are located substantially in the location shown hatched on the plan attached hereto as "**Exhibit A**" and hereby made a part hereof. Landlord has not made and does not make any representation as to the physical condition or any other matter affecting or relating to Suite 712 except as is herein specifically set forth, and Tenant specifically acknowledges that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of Suite 712 and Tenant agrees to accept Suite 712 "as is".

**THIRD** : Prior to November 1, 2010, Tenant shall deliver to Landlord insurance satisfying the provisions of the Lease covering Suite 712.

**FOURTH** : From November 1, 2010 to July 31, 2016 (i) the term "demised premises" shall be deemed to refer to the Original Premises, Suite 500, Suite 501 and Suite 712 and the plan attached to the Lease as Exhibit A is deleted therefrom and the plan attached hereto as **Exhibit A** is substituted in lieu thereof; (ii) the term "Tenant's Percentage" as defined in Article 4 and Article 51 of the Lease shall be amended to be 7.706%; and (iii) the monthly additional rent charge for ordinary office trash collection payable pursuant to Article 47 of the Lease shall be \$432.80.

Landlord   
Tenant 

**FIFTH:** As of the date hereof, the annual base rent payable under Article 2 of the Lease is hereby amended so that commencing on November 1, 2010 and thereafter during the balance of the term of the Lease it shall be as follows (dates inclusive):

November 1, 2010 to July 31, 2011: \$624,840.38/year — \$52,070.03/month  
August 1, 2011 to July 31, 2012: \$643,585.59/year — \$53,632.13/month  
August 1, 2012 to July 31, 2013: \$662,893.16/year — \$55,241.10/month  
August 1, 2013 to July 31, 2014: \$682,779.95/year — \$56,898.33/month  
August 1, 2014 to July 31, 2015: \$755,149.44/year — \$62,929.12/month  
August 1, 2015 to July 31, 2016: \$777,803.92/year — \$64,816.99/month

**SIXTH:** The Lease is hereby amended by adding the following Article 53:

### **53. Adjacent Units**

A. “Adjacent Units” means all of the storage and office spaces located on the seventh (7<sup>th</sup>) floor of the Building. “New Lease” means a new lease agreement or a modification or amendment of an existing lease, license or occupancy agreement which extends the term of said agreement beyond all options and renewal periods provided in said agreement for one of the Adjacent Units signed and delivered by Landlord and a third party or the then current tenant; other than a ground lease for the Building. If Tenant is not in default under this Lease and this Lease remains in effect at that time, Landlord shall not, during the term of this Lease, enter into a New Lease for one of the Adjacent Units without first offering the Adjacent Unit to Tenant under this Article at Fair Market Value (hereinafter defined). Landlord’s offer of the Adjacent Unit shall be in writing sent by certified mail, overnight delivery service or personal delivery to Tenant at the demised premises specifying a date on which Landlord anticipates obtaining possession of the Adjacent Unit for delivery to Tenant in “as is” condition for a term corresponding to the balance of the term of this Lease (including any extension terms, as the case may be) as part of the demised premises leased to Tenant under this Lease. Tenant shall have ten (10) business days from its receipt of Landlord’s offer (time of the essence) to either accept it or reject it by giving written notice of its acceptance thereof to Landlord by certified mail or by reputable overnight delivery service requiring signature from the addressee. If Tenant timely gives its notice of acceptance to Landlord within said ten (10) days (time of the essence), in the manner and under the circumstances described above, then promptly following the determination of Fair Market Value, Landlord and Tenant shall enter into, sign and deliver to each other a modification of this Lease, in form and substance reasonably acceptable to Landlord and Tenant, memorializing the terms of the agreement for the Adjacent Unit leased to Tenant under this Article. If Tenant does not give notice of its acceptance to Landlord within the time (of the essence), in the manner and under the circumstances described above or if Tenant rejects such offer, Tenant shall cease to have any rights with respect to the Adjacent Unit and this paragraph shall have no further force or effect. In the event Tenant accepts Landlord’s offer of any Adjacent Unit, Landlord has the right to elect that the Adjacent Unit also include all or a portion of any hallway area (any such area shall be referred to as the “Hallway Premises”) used to access such Adjacent Unit. If Landlord elects such option (i) the rent for such Hallway Premises shall be determined by multiplying the rentable square footage of the Hallway Premises by the price per square foot value of the Adjacent Premises (as such price shall be determined in accordance with this Article 53) and adding the total to the rent for the Adjacent Premises and (ii) the other additional rent charges based on the rentable square footage of the demised premises (such as, by way of example only, the trash charge and air-conditioning charge) and Tenant’s Percentage shall be increased each to reflect the new rentable square footage of the demised premises (including the Adjacent Space and the Hallway Premises).

B. “Fair Market Value” means the highest annual base rent which Landlord could reasonably expect to obtain from a third party for the Adjacent Unit if Landlord put the Adjacent Unit on the market for lease in “as is” condition for a term corresponding to the balance of the term of this Lease and which may include annual compounded increases in the annual base rent and may include increases in other business terms of this Lease. If Tenant duly accepts Landlord’s offer to lease the Adjacent Unit and if Landlord and Tenant are unable to reach a written agreement as to the Fair Market Value within thirty (30) days after Landlord receives Tenant’s acceptance of Landlord’s offer, then such dispute shall be resolved exclusively by resort to “Adjacent Unit Arbitration” (as defined below). If Tenant duly accepts Landlord’s offer to lease the Adjacent Unit and the Fair Market Value is not determined within thirty (30) days after Landlord receives Tenant’s acceptance of Landlord’s offer, then the annual base rent rate payable under the Lease with respect to the Adjacent Unit shall be at the annual base rent rate and other business terms last offered by Landlord within said thirty (30) day period during the period commencing on the later of (i) the date the Adjacent Unit is vacant and (ii) the date Tenant accepts Landlord’s offer to lease the Adjacent Unit and ending on the earlier of: that date a written agreement is signed and delivered by Landlord and Tenant as to the annual base rent and other business terms for the Adjacent Unit or that date upon which

Landlord   
Tenant 

the annual base rent and other business terms are finally determined by Adjacent Unit Arbitration as set forth in the following paragraph; provided, however, that when the annual base rent and other business terms for the Adjacent Unit Renewal Period are finally determined by written agreement or by Arbitration, then the Lease shall be retroactively amended so that the annual base rent and other business terms for the Adjacent Unit shall be as so finally determined and Tenant shall pay within ten (10) business days following the date the annual base rent and other business terms are finally determined any amounts owed under this Lease or receive a credit if the payments received by Landlord exceeded the annual base rent and other business terms as finally determined.

C. The "Adjacent Unit Arbitration" shall operate as described in this paragraph. If on or before that date ("Acceptance Date") which is thirty (30) days after Landlord receives Tenant's acceptance of Landlord's offer to lease the Adjacent Unit, Landlord and Tenant have failed to reach a written agreement on the Fair Market Value, then on or before that date which is fifteen (15) days after the Acceptance Date: Landlord shall choose (and pay the costs of) a person who is then (and for the previous ten years has been) a licensed real estate broker engaged in leasing offices located in downtown Brooklyn and/or D.U.M.B.O. (and obtain the acceptance of the person chosen) to act as one of the arbitrators, Tenant shall choose (and pay the costs of) a person who is then (and for the previous ten years has been) a licensed real estate broker engaged in leasing offices located in downtown Brooklyn and/or D.U.M.B.O. (and obtain the acceptance of the person chosen) to act as one of the arbitrators, and each party shall notify the other of the name, address and telephone number of the person who has been selected by it and has agreed with it to act as an arbitrator. If either Landlord or Tenant does not obtain the acceptance of a person satisfying the aforesaid qualifications to act as an arbitrator on its behalf and notify the other party of the contact information for such a person on or before that date which is fifteen (15) days after the Acceptance Date, then said other party may have the American Arbitration Association appoint an arbitrator at the party lacking an arbitrator's expense. The two arbitrators shall endeavor to reach an agreement as to what the Fair Market Value should be; and if the two arbitrators cannot agree in writing as to what the Fair Market Value should be on or prior to that date which is forty-five (45) days after the Acceptance Date, they shall choose a third person (who is a licensed commercial real estate broker for at least ten years engaged in leasing office space in downtown Brooklyn and/or D.U.M.B.O.) mutually acceptable to them (and obtain the acceptance of such person they have selected) to act as the third arbitrator. If the two arbitrators cannot agree on whom the third arbitrator shall be or if they are unable to obtain the acceptance of a third arbitrator prior to that date which is sixty (60) days after the Acceptance Date, then Landlord or Tenant may have the American Arbitration Association appoint a third arbitrator. Landlord and Tenant shall split equally the costs of the third arbitrator. The arbitrators representing Landlord and Tenant shall each prepare their own determination of the figure (the "Suggested Determination") that should be the Fair Market Value and submit their respective Suggested Determinations in writing to the third arbitrator within ten (10) days after the third arbitrator is chosen. If a determination is not submitted to the third arbitrator within said ten (10) days, then the Suggested Determination for such arbitrator shall be deemed to be that amount which was the last proposal submitted by the party for whom such arbitrator represents. The third arbitrator shall meet with the first two arbitrators to review and discuss the Suggested Determination submitted by each of them or deemed to have been submitted by each of them, and promptly thereafter issue his or her own determination in writing to Landlord and Tenant. The determination of the third arbitrator shall be made on the basis of which Suggested Determination is closest to what the third arbitrator believes the Fair Market Rental should be, and such determination of the third arbitrator must be made only by his or her selecting one of the Suggested Determinations submitted or deemed to have been submitted by the other arbitrators. The determination of the third arbitrator (or the determination mutually agreed to by the two arbitrators, if such written agreement is reached by them before the selection of a third arbitrator is required) shall be binding and conclusive on Landlord and Tenant as to the Fair Market Value.

SEVENTH : Tenant warrants and represents to Landlord that it has not dealt with any real estate broker, agent or finder in connection with the leasing of Suite 712 and the other transactions described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any broker, agent or finder with respect to this Agreement, Suite 712 or the negotiation of the terms hereof due to the dealings of Tenant with the claimant.

EIGHTH : Except as expressly modified and amended herein, and as so modified and amended, the Lease is hereby ratified and confirmed in all respects and shall be binding upon the parties hereto and their respective successors and assigns.

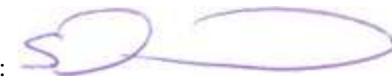
Landlord   
Tenant 

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**55 WASHINGTON STREET LLC**  
By: DW Associates, L.P., as managing member

By:   
(Landlord)

**ETSY INC.**

By:   
(Tenant)

State of New York  
} SS:  
County of Kings

On the 20<sup>th</sup> day of October in the year 2010 before me, the undersigned, a Notary Public in and for said State, personally appeared Sinohe K. Terrero, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

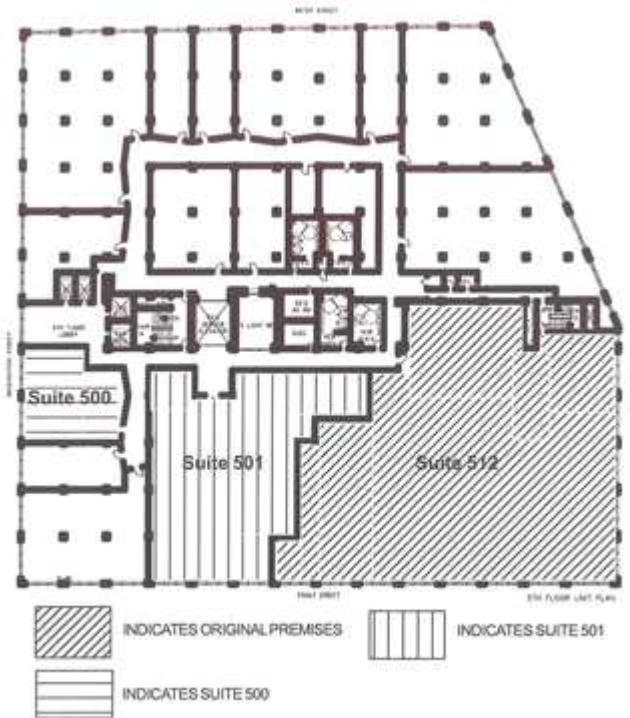


Notary Public

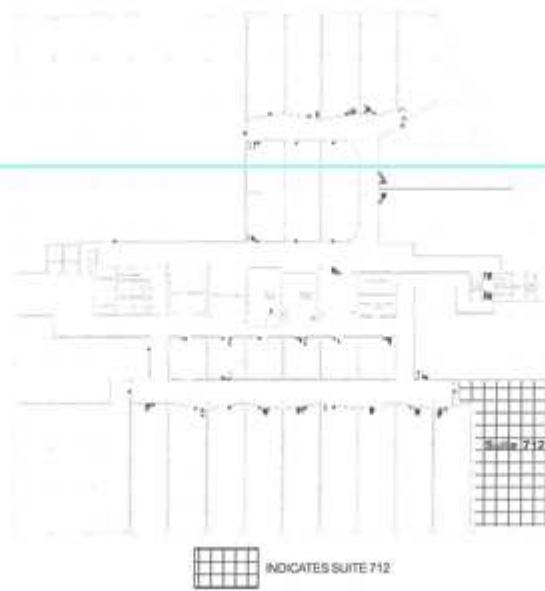
ELIZABETH J. COTTRILL  
Notary Public - State of New York  
No. 01CO6181901  
Qualified in New York County  
My Commissions Expires February 11, 2012

Landlord   
Tenant 

Exhibit "A"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]  
55 WASHINGTON STREET, 5TH FLOOR



55 WASHINGTON STREET, 7TH FLOOR



Please Initial: Landlord L Tenant S

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## **LEASE AMENDMENT**

AGREEMENT, made as of the 1<sup>st</sup> day of March, 2011, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office c/o Two Trees Management Co. LLC, 45 Main Street, Suite 602, Brooklyn, New York 11201, ("Landlord"), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an address of 55 Washington Street, Suite 512, Brooklyn, New York 11201 ("Tenant").

### **W I T N E S S E T H :**

WHEREAS Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the "Original Lease") covering certain premises known as Suite 512 ("Original Premises") more particularly described in the Original Lease and located on the fifth (5<sup>th</sup>) floor in the building (the "Building") known as 55 Washington Street, Brooklyn, New York; and

WHEREAS by that certain lease amendment dated as of December 1, 2009 (the "First Amendment") by and between Landlord and Tenant, Landlord modified the lease in certain respects; and

WHEREAS by that certain lease amendment dated as of March 1, 2010 (the "Second Amendment") by and between Landlord and Tenant, Tenant temporarily leased certain additional premises in the Building known as Suite 500 (hereinafter referred to as "Suite 500" or the "Temporary Premises")

WHEREAS, by that certain lease amendment dated as of April 1, 2010 (the "Third Amendment") by and between Landlord and Tenant, Landlord modified the lease in certain respects; and

WHEREAS by that certain lease amendment dated as of July 15, 2010 (the "Fourth Amendment") by and between Landlord and Tenant, Tenant extended its lease of Suite 500 and leased certain additional premises in the Building known as Suite 501 (hereinafter referred to as the "Additional Premises" or "Suite 501"); and

WHEREAS by that certain lease Amendment dated as of October 1, 2010 (the "Fifth Amendment") by and between Landlord and Tenant, Tenant leased certain additional premises in the Building known as Suite 712 ("Suite 712") (the Original Lease, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment are hereinafter collectively referred to as the "Lease"); and

WHEREAS Tenant is desirous of leasing from Landlord certain additional premises known as Suite 502, Suite 504, Suite 561, Suite 562, Suite 563, the men's and women's restrooms located across the hall from Suite 501 and additional hallway premises in the Building and whereas Landlord is desirous of leasing Suite 502, Suite 504, Suite 561, Suite 562, Suite 563, the men's and women's restrooms located across the hall from Suite 501 and additional hallway premises to Tenant, subject to the provisions, conditions, covenants and agreements set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**FIRST :** Each term used in this Agreement shall have the meaning ascribed to such term in the Lease, except as expressly amended herein.

**SECOND :** From and after July 1, 2011, Landlord leases to Tenant and Tenant leases from Landlord certain premises known as Suite 502 ("Suite 502"), Suite 504 ("Suite 504"), Suite 561 ("Suite 561"), Suite 562 ("Suite 562"), Suite 563 ("Suite 563"), certain hallway premises (the "Hallway Premises") and the men's and women's restrooms located across the hall from Suite 501 (collectively, the "Bathrooms") (Suite 502, Suite 504, Suite 561, Suite 562, Suite 563, the Hallway Premises and the Bathrooms are hereinafter collectively referred to as the "Fifth Floor Additional Premises") each located on the fifth (5<sup>th</sup>) floor of the Building which premises are located substantially in the location shown hatched on the plan attached hereto as "**Exhibit A**" and hereby made a part hereof. Landlord has not made and does not make any representation as to the physical condition or any other matter affecting or relating to the Fifth Floor Additional Premises except as is herein specifically set forth, and Tenant specifically acknowledges that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Fifth Floor Additional Premises and Tenant agrees to accept the Fifth Floor Additional Premises "as is".

  
Landlord

  
Tenant

except as otherwise set forth herein. Tenant shall perform all work ("Tenant's Fifth Floor Additional Premises Work") necessary for it to use the Fifth Floor Additional Premises as contemplated in this Lease and such work shall be performed in accordance with the Legal Requirements, at its sole expense, pursuant to plans, drawings and specifications therefor prepared by Tenant and submitted to, and approved by Landlord and subject to the terms of this Lease, including, without limitation, **Article 10** thereof; it being understood that none of Tenant's Fifth Floor Additional Premises Work shall be considered a Minor Alteration. Landlord and Tenant hereby agree that upon the expiration or earlier termination of this Lease, Tenant shall, at its sole cost and expense, be required to restore the following portions of Tenant's Fifth Floor Additional Premises Work: (i) Tenant shall erect a wall so that the hallway that exists adjacent to the Original Premises as of the date hereof is restored to the condition and layout that exists as of the date hereof and (ii) Tenant shall leave the area described as "Reception Area" on Exhibit B (attached hereto and made a part hereof) free from partitions by removing the interior walls of the following spaces as described on Exhibit B: (a) the "6-8 person conference room, (b) "coats", (c) "4-5 person conference room", (d) "receiving/mail", (e) "Adam designated conf.", (f) "Adam" (g) "2-4 person meeting room #1", (h) "2-4 person meeting room #2", (i) "Phone booth #1", (j) "Phone booth #2", (k) "Phone booth #3"; it being understood that Tenant shall repair any damage to the demised premises or the Building due to any such removal. Tenant hereby acknowledges that Exhibit B is only attached to this Agreement for purposes of illustrating Tenant's restoration obligation with respect to the reception area and that Landlord has not approved the work shown in Exhibit B. Tenant further specifically agrees that Tenant shall, at Tenant's sole cost and expense, (y) close out any new applications in connection with any work completed in the demised premises promptly upon the completion of such work and (z) promptly close out any existing applications in connection with any work Tenant has performed in the demised premises which remain open as of the date hereof: it being understood that Tenant shall be responsible for any costs or expenses incurred by Landlord in connection with Tenant's failure to close out any open permits or applications in connection therewith.

**THIRD:** Prior to July 1, 2011, Tenant shall deliver to Landlord insurance satisfying the provisions of the Lease covering the Fifth Floor Additional Premises.

**FOURTH:** From July 1, 2011 to July 31, 2016 (i) the term "demised premises" shall be deemed to refer to the Original Premises, Suite 500, Suite 501, Suite 712 and the Fifth Floor Additional Premises and the plan attached to the Lease as Exhibit A is deleted therefrom and the plan attached hereto as Exhibit A is substituted in lieu thereof; (ii) the term "Tenant's Percentage" as defined in Article 4 and Article 51 of the Lease shall be amended to be 11.136%; and (iii) the monthly additional rent charge for ordinary office trash collection payable pursuant to Article 47 of the Lease shall be \$625.48.

**FIFTH:** As of the date hereof, the annual base rent payable under Article 2 of the Lease is hereby amended so that commencing on July 1, 2011 and thereafter during the balance of the term of the Lease it shall be as follows (dates inclusive):

July 1, 2011 to July 31, 2011: \$865,515.66/year — \$72,126.31/month
August 1, 2011 to July 31, 2012: \$884,260.87/year — \$73,688.41/month
August 1, 2012 to July 31, 2013: \$910,788.70/year — \$75,899.06/month
August 1, 2013 to July 31, 2014: \$938,112.36/year — \$78,176.03/month
August 1, 2014 to July 31, 2015: \$1,041,429.75/year — \$86,785.81/month
August 1, 2015 to July 31, 2016: \$1,072,672.64/year — \$89,389.39/month

Provided Tenant is not in default under its obligations under this Lease on July 1, 2011 and August 1, 2011, Tenant shall be entitled to a rent credit in the sum of \$105,056.27.00 which shall be applied by Landlord in two (2) installments against the monthly installments of the annual base rent payable under this Lease as follows: \$72,126.31 applied with respect to July, 2011 and \$32,929.96 applied with respect to August, 2011. In no event shall the rent credit payable under this paragraph exceed \$105,056.27. Notwithstanding the foregoing, if, prior to the Expiration Date (as the same may be amended from time to time), the demised premises are surrendered by Tenant or if Landlord obtains possession of the demised premises prior to the Expiration Date due to default(s) by Tenant under this Lease, then, in either case, Tenant shall immediately pay Landlord as additional rent hereunder, the unamortized portion of \$105,056.27; which is to be amortized on a monthly basis over the five (5) year and one month period commencing July 1, 2011 and ending on July 31, 2016 and such payment obligation shall expressly survive the expiration or termination of this Lease.

**SIXTH:** Notwithstanding anything to the contrary contained in **Article 4** of the Lease with respect to Tenant's payment of business or building improvement district charges ("BID Charges"), as

Landlord   
Tenant 

of the date hereof Tenant agrees to pay Landlord Tenant's Percentage of the total amount of any BID Charges assessed on the Real Property in each year (or portion thereof) during the term of this Lease within ten (10) days after demand is made therefor as additional rent.

**SEVENTH** : Tenant expressly acknowledges and understands that no heating or air-conditioning shall be provided to Suite 561, Suite 562 or Suite 563 and that any installation of heating or air-conditioning equipment in Suite 561, Suite 562 or Suite 563 shall require Landlord's prior written consent which may be unreasonably withheld. If air-conditioning equipment is installed, Tenant shall, at its own cost and expense, operate, maintain, repair and replace said air-conditioning equipment (hereinafter called the "AC System"). The electricity furnished to and/or consumed by any AC System shall be paid for by Tenant in accordance with **Article 44** of the Lease.

**EIGHTH** : The Lease is hereby amended by deleting Paragraph Sixth of the Fifth Amendment and adding the following Article 53:

### **53. Adjacent Units**

A. "Adjacent Units" means all of the storage and office spaces located on the fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) floor of the Building. "New Lease" means a new lease agreement or a modification or amendment of an existing lease, license or occupancy agreement which extends the term of said agreement beyond all options and renewal periods provided in said agreement for one of the Adjacent Units signed and delivered by Landlord and a third party or the then current tenant; other than a ground lease for the Building. If Tenant is not in default under the Lease beyond any applicable notice and cure period and the Lease remains in effect at that time, Landlord shall not, during the term of this Lease, enter into a New Lease for one of the Adjacent Units without first offering the Adjacent Unit to Tenant under this Article at Fair Market Value (hereinafter defined). Landlord's offer of the Adjacent Unit shall be in writing sent by certified mail, overnight delivery service or personal delivery to Tenant at the demised premises specifying an estimate of the Fair Market Value and a date on which Landlord anticipates obtaining possession of the Adjacent Unit for delivery to Tenant in "as is" condition for a term corresponding to the balance of the term of the Lease (including any extension terms, as the case may be) as part of the demised premises leased to Tenant under the Lease. Tenant shall have fifteen (15) business days from its receipt of Landlord's offer (time of the essence) to either accept it or reject it by giving written notice of its acceptance thereof to Landlord by certified mail or by reputable overnight delivery service requiring signature from the addressee. If Tenant timely gives its notice of acceptance to Landlord within said fifteen (15) days (time of the essence), in the manner and under the circumstances described above, then promptly following the determination of Fair Market Value, Landlord and Tenant shall enter into, sign and deliver to each other a modification of the Lease, in form and substance reasonably acceptable to Landlord and Tenant, memorializing the terms of the agreement for the Adjacent Unit leased to Tenant under this Article. If Tenant does not give notice of its acceptance to Landlord within the time (of the essence), in the manner and under the circumstances described above or if Tenant rejects such offer, Landlord may enter into a New Lease for the Adjacent Unit within 180 days from the date Tenant rejected such offer (or failed to timely respond to such offer). If Landlord does not enter into a New Lease for the Adjacent Unit within such 180 day period, then Landlord must reoffer the Adjacent Unit to Tenant on the terms set forth in this Article 53 prior to entering into a New Lease with a third party. In the event Tenant again rejects such offer for the Adjacent Unit (or fails to timely respond to such offer), Tenant shall cease to have any rights with respect to the Adjacent Unit and this paragraph shall have no further force or effect. In the event Tenant accepts Landlord's offer of any Adjacent Unit, Landlord has the right to elect that the Adjacent Unit also include all or a portion of any hallway area (any such area shall be referred to as the "Hallway Premises") used to access such Adjacent Unit. If Landlord elects such option (i) the rent for such Hallway Premises shall be determined by multiplying the rentable square footage of the Hallway Premises by the price per square foot value of the Adjacent Premises (as such price shall be determined in accordance with this Article 53) and adding the total to the rent for the Adjacent Premises, (ii) the other additional rent charges based on the rentable square footage of the demised premises (such as, by way of example only, the trash charge and air-conditioning charge) and Tenant's Percentage shall be increased each to reflect the new rentable square footage of the demised premises (including the Adjacent Space and the Hallway Premises) and (iii) Landlord shall be required to remove the non-structural walls in the Adjacent Unit prior to the commencement date of the lease amendment for the Adjacent Unit(s) provided Tenant requests same upon notice delivered to Landlord at least thirty (30) days prior to the commencement date for the lease amendment.

B. "Fair Market Value" means the highest annual base rent which Landlord could reasonably expect to obtain from a third party for the Adjacent Unit if Landlord put the Adjacent Unit on the market for lease in "as is" condition for a term corresponding to the balance of the term of this Lease and which

Landlord   
Tenant 

may include annual compounded increases in the annual base rent and may include increases in other business terms of the Lease without any brokerage fee. If Tenant duly accepts Landlord's offer to lease the Adjacent Unit and if Landlord and Tenant are unable to reach a written agreement as to the Fair Market Value within thirty (30) days after Landlord receives Tenant's acceptance of Landlord's offer, then such dispute shall be resolved exclusively by resort to "Adjacent Unit Arbitration" (as defined below). If Tenant duly accepts Landlord's offer to lease the Adjacent Unit and the Fair Market Value is not determined within thirty (30) days after Landlord receives Tenant's acceptance of Landlord's offer, then the annual base rent rate payable under the Lease with respect to the Adjacent Unit shall be at the annual base rent rate and other business terms last offered by Landlord within said thirty (30) day period during the period commencing on the later of (i) the date the Adjacent Unit is vacant and (ii) the date Tenant accepts Landlord's offer to lease the Adjacent Unit and ending on the earlier of: that date a written agreement is signed and delivered by Landlord and Tenant as to the annual base rent and other business terms for the Adjacent Unit or that date upon which the annual base rent and other business terms are finally determined by Adjacent Unit Arbitration as set forth in the following paragraph; provided, however, that when the annual base rent and other business terms for the Adjacent Unit Renewal Period are finally determined by written agreement or by Arbitration, then the Lease shall be retroactively amended so that the annual base rent and other business terms for the Adjacent Unit shall be as so finally determined and Tenant shall pay within ten (10) business days following the date the annual base rent and other business terms are finally determined any amounts owed under this Lease or receive a credit if the payments received by Landlord exceeded the annual base rent and other business terms as finally determined.

C. The "Adjacent Unit Arbitration" shall operate as described in this paragraph. If on or before that date ("Acceptance Date") which is thirty (30) days after Landlord receives Tenant's acceptance of Landlord's offer to lease the Adjacent Unit, Landlord and Tenant have failed to reach a written agreement on the Fair Market Value, then on or before that date which is fifteen (15) days after the Acceptance Date: Landlord shall choose (and pay the costs of) a person who is then (and for the previous ten years has been) a licensed real estate broker engaged in leasing offices located in downtown Brooklyn and/or D.U.M.B.O. (and obtain the acceptance of the person chosen) to act as one of the arbitrators, Tenant shall choose (and pay the costs of) a person who is then (and for the previous ten years has been) a licensed real estate broker engaged in leasing offices located in downtown Brooklyn and/or D.U.M.B.O. (and obtain the acceptance of the person chosen) to act as one of the arbitrators, and each party shall notify the other of the name, address and telephone number of the person who has been selected by it and has agreed with it to act as an arbitrator. If either Landlord or Tenant does not obtain the acceptance of a person satisfying the aforesaid qualifications to act as an arbitrator on its behalf and notify the other party of the contact information for such a person on or before that date which is fifteen (15) days after the Acceptance Date, then said other party may have the American Arbitration Association appoint an arbitrator at the party lacking an arbitrator's expense. The two arbitrators shall endeavor to reach an agreement as to what the Fair Market Value should be; and if the two arbitrators cannot agree in writing as to what the Fair Market Value should be on or prior to that date which is forty-five (45) days after the Acceptance Date, they shall choose a third person (who is a licensed commercial real estate broker for at least ten years engaged in leasing office space in downtown Brooklyn and/or D.U.M.B.O.) mutually acceptable to them (and obtain the acceptance of such person they have selected) to act as the third arbitrator. If the two arbitrators cannot agree on whom the third arbitrator shall be or if they are unable to obtain the acceptance of a third arbitrator prior to that date which is sixty (60) days after the Acceptance Date, then Landlord or Tenant may have the American Arbitration Association appoint a third arbitrator. Landlord and Tenant shall split equally the costs of the third arbitrator. The arbitrators representing Landlord and Tenant shall each prepare their own determination of the figure (the "Suggested Determination") that should be the Fair Market Value and submit their respective Suggested Determinations in writing to the third arbitrator within ten (10) days after the third arbitrator is chosen. If a determination is not submitted to the third arbitrator within said ten (10) days, then the Suggested Determination for such arbitrator shall be deemed to be that amount which was the last proposal submitted by the party for whom such arbitrator represents. The third arbitrator shall meet with the first two arbitrators to review and discuss the Suggested Determination submitted by each of them or deemed to have been submitted by each of them, and promptly thereafter issue his or her own determination in writing to Landlord and Tenant. The determination of the third arbitrator shall be made on the basis of which Suggested Determination is closest to what the third arbitrator believes the Fair Market Rental should be, and such determination of the third arbitrator must be made only by his or her selecting one of the Suggested Determinations submitted or deemed to have been submitted by the other arbitrators. The determination of the third arbitrator (or the determination mutually agreed to by the two arbitrators, if such written agreement is reached by them before the selection of a third arbitrator is required) shall be binding and conclusive on Landlord and Tenant as to the Fair Market Value.

Landlord   
Tenant 

**NINTH:** Tenant acknowledges that during the term hereof, Tenant shall, at its sole cost and expense, take good care of, maintain, clean, replace and repair the Bathrooms and all fixtures located therein. Tenant shall not use the bathrooms, sinks, toilets and plumbing fixtures for any purposes other than those for which they were designed or constructed, and no sweepings, rubbish, rags, acids, liquids, chemicals or other substances shall be poured or deposited therein. If Tenant violates the foregoing, Tenant shall pay Landlord for all resulting repairs as additional rent hereunder and such obligation shall survive the expiration of the term of the Lease.

**TENTH:** Tenant warrants and represents to Landlord that it has not dealt with any real estate broker, agent or finder in connection with the leasing of the Fifth Floor Additional Premises and the other transactions described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any broker, agent or finder with respect to this Agreement, the Fifth Floor Additional Premises or the negotiation of the terms hereof due to the dealings of Tenant with the claimant.

**ELEVENTH:** Except as expressly modified and amended herein, and as so modified and amended, the Lease is hereby ratified and confirmed in all respects and shall be binding upon the parties hereto and their respective successors and assigns. In the event the provisions of this Agreement shall contradict or be inconsistent with the provisions of the Lease, then the provisions of this Agreement shall prevail and govern and the contradicted or inconsistent provisions of the Lease shall be deemed amended accordingly.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**55 WASHINGTON STREET LLC**  
By: DW Associates, L.P., as managing member

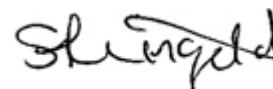
By:   
(Landlord)

**ETSY INC.**

By:   
(Tenant)

State of New York  
} SS:  
County of Kings

On the 16 day of June in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared Sinohe Terrero, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



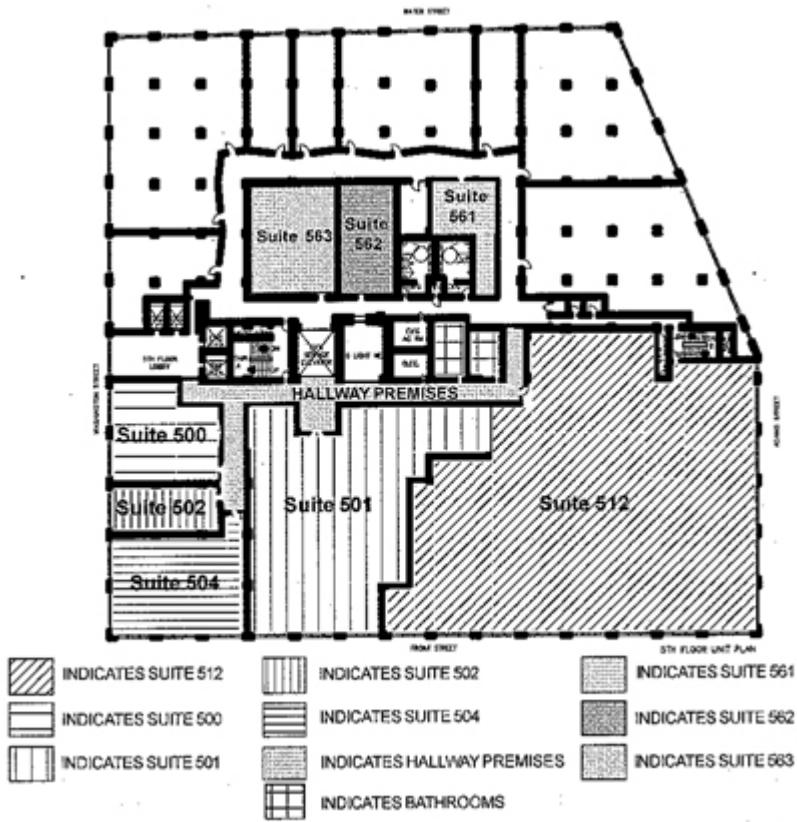
Notary Public

SARAH M. FEINGOLD  
Notary Public, State of New York  
No. 02FE6153435  
Qualified in Kings County  
Commission Expires October 02, 2014

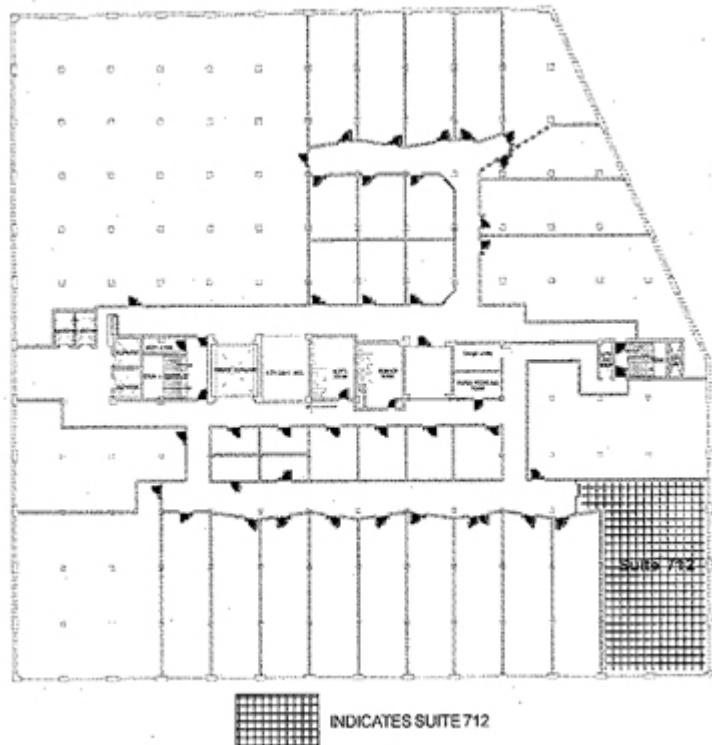
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Landlord   
Tenant 

Exhibit "A"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]  
55 WASHINGTON STREET, 5TH FLOOR

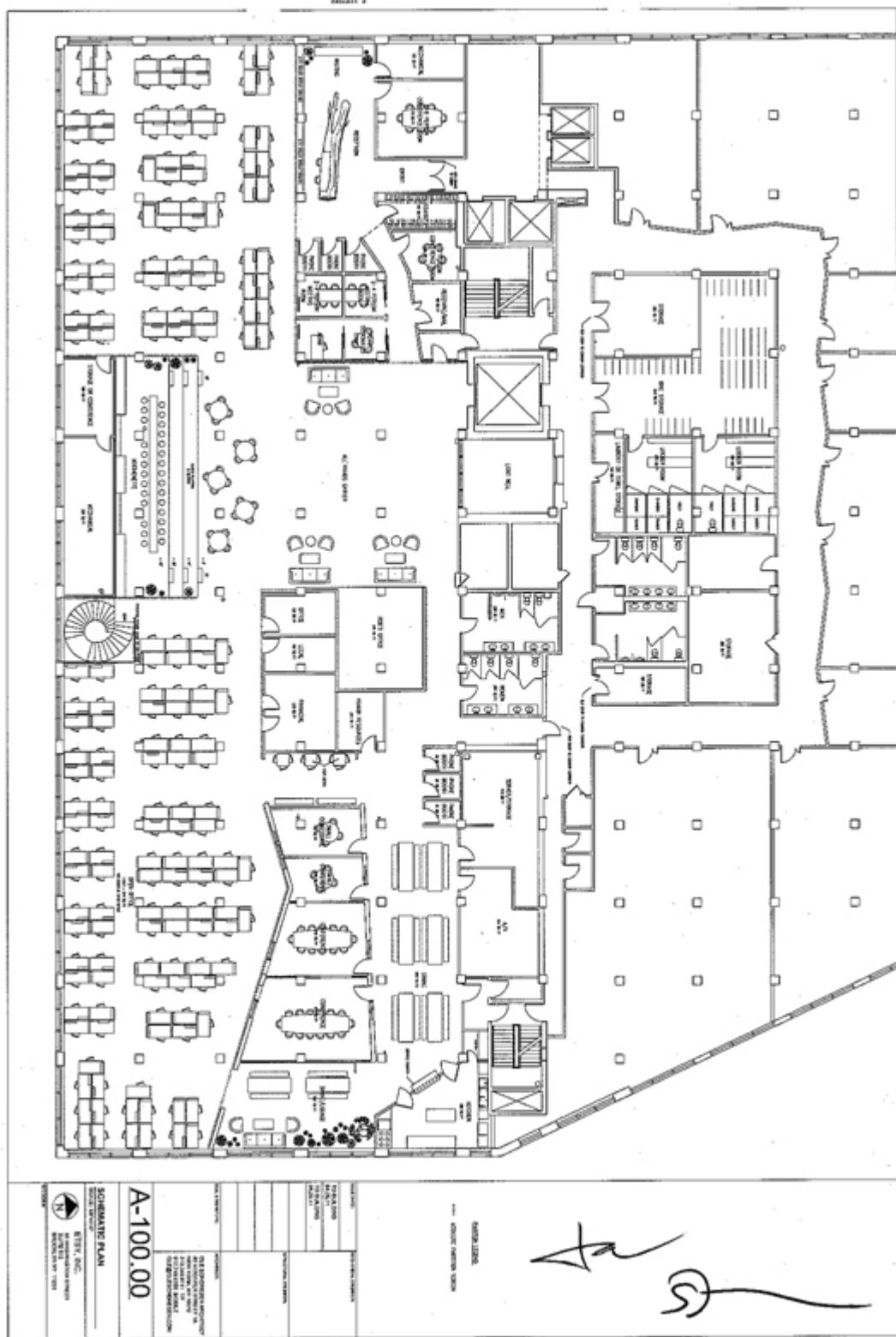


55 WASHINGTON STREET, 7TH FLOOR



INDICATES SUITE 712

Please Initial: Landlord        Tenant SJ



## **SEVENTH AMENDMENT**

AGREEMENT, made as of the 1<sup>st</sup> day of December, 2011, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office c/o Two Trees Management Co. LLC, 45 Main Street, Suite 602, Brooklyn, New York 11201, (“Landlord”), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an address of 55 Washington Street, Suite 512, Brooklyn, New York 11201 (“Tenant”).

### **W I T N E S S E T H :**

WHEREAS Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the “Original Lease”) covering certain premises known as Suite 512 (“Original Premises”) more particularly described in the Original Lease and located on the fifth (5<sup>th</sup>) floor in the building (the “Building”) known as 55 Washington Street, Brooklyn, New York; and

WHEREAS by that certain lease amendment dated as of December 1, 2009 (the “First Amendment”) by and between Landlord and Tenant, Landlord modified the lease in certain respects; and

WHEREAS by that certain lease amendment dated as of March 1, 2010 (the “Second Amendment”) by and between Landlord and Tenant, Tenant temporarily leased certain additional premises in the Building known as Suite 500 (hereinafter referred to as “Suite 500” or the “Temporary Premises”)

WHEREAS, by that certain lease amendment dated as of April 1, 2010 (the “Third Amendment”) by and between Landlord and Tenant, Landlord modified the lease in certain respects; and

WHEREAS by that certain lease amendment dated as of July 15, 2010 (the “Fourth Amendment”) by and between Landlord and Tenant, Tenant extended its lease of Suite 500 and leased certain additional premises in the Building known as Suite 501 (hereinafter referred to as the “Additional Premises” or “Suite 501”); and

WHEREAS by that certain lease Amendment dated as of October 1, 2010 (the “Fifth Amendment”) by and between Landlord and Tenant, Tenant leased certain additional premises in the Building known as Suite 712 (“Suite 712”); and

WHEREAS by that certain lease amendment dated as of March 1, 2011 (the “Sixth Amendment”) by and between Landlord and Tenant, Tenant leased certain additional premises in the Building known as Suite 502, Suite 504, Suite 561, Suite 562, Suite 563, the Bathrooms and the Hallway Premises in the Building (the Original Lease, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment are hereinafter collectively referred to as the “Lease”); and

WHEREAS Tenant is desirous of leasing from Landlord certain additional premises known as Suite 415, Suite 416, Suite 417, Suite 418, Suite 419, Suite 420, Suite 451, Suite 606 and certain hallway premises located on the fourth (4<sup>th</sup>) floor of the Building and whereas Landlord is desirous of leasing Suite 415, Suite 416, Suite 417, Suite 418, Suite 419, Suite 420, Suite 451, Suite 606 and certain hallway premises located on the fourth (4<sup>th</sup>) floor of the Building, subject to the provisions, conditions, covenants and agreements set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**FIRST** : Each term used in this agreement (the “Seventh Amendment” or this “Agreement”) shall have the meaning ascribed to such term in the Lease, except as expressly amended herein.

**SECOND** : From and after April 1, 2012 (the “Seventh Amendment Commencement Date”), Landlord leases to Tenant and Tenant leases from Landlord certain premises known as Suite 415 (“Suite 415”), Suite 416 (“Suite 416”), Suite 417 (“Suite 417”), Suite 418 (“Suite 418”), Suite 419 (“Suite 419”), Suite 420 (“Suite 420”), Suite 451 (“Suite 451”), Suite 606 (“Suite 606”) and certain hallway premises located on the fourth (4<sup>th</sup>) floor of the Building (the “4<sup>th</sup> Floor Hallway Premises”) (Suite 415, Suite 416, Suite 417, Suite 418, Suite 419, Suite 420 Suite 451, Suite 606 and the 4<sup>th</sup> Floor Hallway Premises are hereinafter collectively referred to as the “Fourth and Sixth Floor Additional Premises”) which premises are located substantially in the location shown hatched on the plan attached hereto as “**Exhibit C**” and hereby made a part hereof. Landlord has not

Landlord   
Tenant 

made and does not make any representation as to the physical condition or any other matter affecting or relating to the Fourth and Sixth Floor Additional Premises except as is herein specifically set forth, and Tenant specifically acknowledges that no such representation has been made; it being understood that Landlord shall give Tenant an ACP-5 form applicable to the Fourth and Sixth Floor Additional Premises. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Fourth and Sixth Floor Additional Premises and Tenant agrees to accept the Fourth and Sixth Floor Additional Premises "as is", except that Landlord shall substantially complete (hereinafter defined) such work as is necessary to (i) demolish the walls between Suites 415, Suite 416, Suite 417, Suite 418, Suite 419 and Suite 420 so that one open space is created as shown on **Exhibit D** attached hereto and made a part hereof, (ii) install one (1) Building standard air-conditioning unit and all ductwork and distribution in the location shown on **Exhibit D-1** attached hereto and made a part hereof, (iii) build a mechanical room for the air-conditioning unit in the location shown on **Exhibit D**, (iv) build three (3) Building standard conference rooms, three (3) small rooms and one (1) meeting room with Building standard sheetrock walls with one (1) Building standard hollow metal door to access each conference room, each small room and meeting room in the locations shown on **Exhibit D**; (v) install electrical outlets in the locations shown on **Exhibit D** (vi) install light switches in the locations shown on **Exhibit D** and (vii) rough the plumbing for a kitchenette in the location shown on **Exhibit D** (with such work being collectively referred to as "Landlord's Expansion Premises Work"). Landlord and Tenant hereby pre-approve Landlord's Expansion Premises Work shown on the Plans and Specifications attached hereto as **Exhibit D** and made a part hereof and the Mechanical Plan attached hereto as **Exhibit D-1** and made a part hereof. Landlord shall perform Landlord's Expansion Premises Work in accordance with the Plans and Specifications attached hereto as **Exhibit D** and the Mechanical Plans attached hereto as **Exhibit D-1**.

Landlord hereby agrees that notwithstanding anything to the contrary contained in Article 10 of the Lease, upon Tenant's surrender of the Fourth and Sixth Floor Additional Premises, Tenant shall not be required to restore or pay Landlord to restore any of Landlord's Expansion Premises Work. Tenant shall perform all other work ("Tenant's Fourth and Sixth Floor Additional Premises Work") necessary for it to use the Fourth and Sixth Floor Additional Premises as contemplated in this Lease, which work shall include the installation of phone and internet wiring and outlets ("Tenant's Communications Work") and may include the installation of an internal staircase between the 4<sup>th</sup> and 5<sup>th</sup> floors of the Building (the "Staircase Work") and all such work (including the Staircase Work) shall be performed in accordance with the Legal Requirements, at Tenant's sole expense, pursuant to plans, drawings and specifications therefor prepared by Tenant and submitted to, and approved by Landlord and subject to the terms of this Lease, including, without limitation, **Article 10** thereof; it being understood that such portion of Tenant's Fourth and Sixth Floor Additional Premises Work constituting structural changes to the Fourth and Sixth Floor Additional Premises shall not be considered a Minor Alteration as such term is defined in Article 10 of the Lease, and such portion of Tenant's Fourth and Sixth Floor Additional Premises Work constituting non-structural changes shall be considered a Minor Alteration as such term is defined in Article 10 of the Lease. Tenant specifically acknowledges that upon the expiration or earlier termination of the term of the Lease, the Staircase Work shall be removed and the floors and portions of the demised premises adjacent to the location of such staircase shall be restored to the condition that existed as of the date hereof. Landlord and Tenant agree that "Tenant's Communications Work" may be performed simultaneously with Landlord's Expansion Premises Work. Tenant shall coordinate with Landlord with respect to Tenant's Communications Work so that it does not unreasonably interfere with the performance of Landlord's Expansion Premises Work.

Notwithstanding anything to the contrary set forth in Article 10 of the Lease, Landlord agrees to waive its right to receive compensation for Landlord's review of Tenant's plans and specifications in connection with Landlord's Expansion Premises Work. For purposes of this Agreement, the phrase "substantial completion" shall mean that, with the exception of punch list items which will not materially interfere with Tenant's ability to conduct its business at the Fourth and Sixth Floor Additional Premises, Landlord's Expansion Premises Work shall have been completed in accordance with **Exhibits D and D-1** and all electrical, plumbing, HVAC and mechanical systems serving or affecting the Fourth and Sixth Floor Additional Premises shall then be in working order. Upon Landlord's request, Landlord and Tenant shall set a mutually convenient time for Tenant and Landlord to inspect the Fourth and Sixth Floor Additional Premises and Landlord's Expansion Premises Work, at which time Tenant shall prepare and submit to Landlord a punch list of items to be completed (the "Punch List"). Landlord shall complete the Punch List items within thirty (30) days thereafter, except for any items which have previously been identified by Landlord and Tenant as constituting special order or long lead items. In the event Tenant shall fail to confer with Landlord with respect to the substantial completion of the Landlord Expansion Premises Work within five (5) business days

Landlord   
Tenant 

of Landlord's request to inspect the Fourth and Sixth Floor Additional Premises, Landlord's Expansion Premises Work shall be deemed completed and satisfactory in all respects and the Seventh Amendment Commencement Date shall be deemed to have occurred on the date determined by Landlord. In the event that Landlord's Expansion Premises Work is not substantially completed on or before the Seventh Amendment Commencement Date (and such failure to substantially complete such work is not due to a "Tenant Delay" (as hereinafter defined), the Seventh Amendment Commencement Date shall be deemed extended one (1) day for each day that Landlord's Expansion Premises Work is not substantially completed. For purposes of this Agreement, the phrase "Tenant Delay" shall mean a delay resulting from any act, neglect, failure or omission of Tenant, its agents, employees, contractors or subcontractors (including, without limitation, any changes requested by Tenant to the pre-approved plans for Landlord's Expansion Premises Work attached hereto as Exhibits D and D-1).

**THIRD** : Prior to the Seventh Amendment Commencement Date (as such date may be extended pursuant to Paragraph Second above), Tenant shall deliver to Landlord insurance satisfying the provisions of the Lease covering the Fourth and Sixth Floor Additional Premises.

**FOURTH** : From the Seventh Amendment Commencement Date to July 31, 2016 (i) the term "demised premises" shall be deemed to refer to the Original Premises, Suite 500, Suite 501, Suite 712, the Fifth Floor Additional Premises and the Fourth and Sixth Floor Additional Premises and the plan attached to the Lease as Exhibit A is deleted therefrom and the plan attached hereto as **Exhibit F** is substituted in lieu thereof; (ii) the term "Tenant's Percentage" as defined in Article 4 and Article 51 of the Lease shall be amended to include the Fourth and Sixth Floor Additional Premises (4.950%) so that it shall be 16.086%; provided however that with respect to escalations for Real Estate Taxes as described in Article 4 of the Lease, Tenant's Proportionate Share with respect to (a) the Original Premises, Suite 500, Suite 501, Suite 712 and the Fifth Floor Additional Premises shall remain at 11.136% and (b) the Fourth and Sixth Floor Premises only shall be 4.950%; (iii) the term Base Tax Year shall mean (y) with respect to the Original Premises, Suite 500, Suite 501, Suite 712 and the Fifth Floor Additional Premises only, the Tax Year beginning July 1, 2009 and expiring June 30, 2010 and (z) with respect to the Fourth and Sixth Floor Additional Premises, the Tax Year beginning July 1, 2012 and expiring June 30, 2013; (iv) the monthly additional rent charge for ordinary office trash collection payable pursuant to Article 47 of the Lease shall be \$903.51.

**FIFTH** : Article 16, paragraph 5 of the Lease shall hereby be deleted and the following shall be substituted in lieu thereof:

"No vehicles, animals, fish or birds may be kept in or about the Building. A maximum of twenty (20) of Tenant's employees' bicycles may be stored in the loading dock area of the Building in locations designated by Landlord; it being understood that any such bicycle storage shall be at Tenant's own risk, all security, locks or hooks required for storage shall be at Tenant's sole cost and expense and Landlord, its officers, agents, employees, subsidiaries and affiliated entities and corporations shall not be liable to Tenant for any loss of, theft of, damage to or destruction of any such bicycles, caused by fire, theft, carelessness or any other cause whatsoever, including, without limitation, the negligence of any such parties, and Tenant hereby releases and waives any right of recovery against Landlord, its officers, agents, employees, subsidiaries and affiliated entities and corporations for any such loss. All other Bicycles shall only be stored and kept in locations designated by Landlord and in no event shall they be brought onto the passenger elevators or ridden in the Building. Landlord shall apply its rules regarding Bicycles in a non-discriminatory manner to tenants in the Building who are similarly situated in their actions or under the circumstances. Tenant covenants and agrees that there shall be no smoking in or on any portion of the Building."

**SIXTH** : As of the date hereof, the annual base rent payable under Article 2 of the Lease is hereby amended so that commencing on April 1, 2012 (subject to the provisions of paragraph Second above) and thereafter during the balance of the term of the Lease it shall be as follows (dates inclusive):

April 1, 2012 to July 31, 2012: \$1,276,287.87/year — \$106,357.32/month
August 1, 2012 to March 31, 2013: \$1,302,815.70/year — \$108,567.98/month
April 1, 2013 to July 31, 2013: \$1,312,616.38/year — \$109,384.70/month
August 1, 2013 to March 31, 2014: \$1,339,940.04/year — \$111,661.67/month
April 1, 2014 to July 31, 2014: \$1,349,985.73/year — \$112,498.81/month
August 1, 2014 to March 31, 2015: \$1,453,303.12/year — \$121,108.59/month
April 1, 2015 to July 31, 2015: \$1,463,599.95/year — \$121,966.66/month
August 1, 2015 to March 31, 2016: \$1,494,842.84/year — \$124,570.24/month
April 1, 2016 to July 31, 2016: \$1,530,420.10/year — \$127,535.01/mo

Landlord   
Tenant 

Provided Tenant is not in default under its obligations under this Lease beyond applicable notice and cure periods on the Seventh Amendment Commencement Date and the one (1) month anniversary of the Seventh Amendment Commencement Date, Tenant shall be entitled to a rent credit in the sum of \$65,337.84 which shall be applied by Landlord in two (2) installments against the monthly installments of the annual base rent payable under this Lease as follows: \$32,668.92 applied for the period from the Seventh Amendment Commencement Date through the day immediately preceding the one (1) month anniversary of the Seventh Amendment Commencement Date and \$32,668.92 applied for the period from one (1) month anniversary of the Seventh Amendment Commencement Date through the day immediately preceding the two (2) month anniversary of the Seventh Amendment Commencement Date. In no event shall the rent credit payable under this paragraph exceed \$65,337.84. Notwithstanding the foregoing, if, prior to the Expiration Date (as the same may be amended from time to time), the demised premises are surrendered by Tenant or if Landlord obtains possession of the demised premises prior to the Expiration Date due to defaults) by Tenant under this Lease, then, in either case, Tenant shall immediately pay Landlord as additional rent hereunder, the unamortized portion of \$65,337.84; which is to be amortized on a monthly basis over the period commencing on the Seventh Amendment Commencement Date and ending on July 31, 2016 and such payment obligation shall expressly survive the expiration or termination of this Lease.

SEVENTH: All references to Article "53" of the Lease in paragraph Second of the Third Amendment shall be deemed to mean Article "54".

EIGHTH: The first sentence of Article 53 of the Lease is hereby deleted and the following shall be substituted in lieu thereof:

"Adjacent Units" means collectively all of the storage and office spaces located on the fourth (4<sup>th</sup>), fifth (5<sup>th</sup>) sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) floors of the Building.

NINTH: If Landlord does not have a signed term sheet with respect to all or any portion of the office premises within thirty (30) days of the date of full execution of this Agreement with a bona fide third party located on the ground floor of the Building as such premises is more specifically described on **Exhibit E** attached hereto and made a part hereof ("Option Premises"), Tenant shall have the one-time option (the "Ground Floor Option") to lease all or the remaining portion of the Option Premises; it being understood that if Tenant exercises the Ground Floor Option, the base rent for the Option Premises will be at the same price per square foot Tenant is paying for the Fourth and Sixth Floor Additional Premises, Tenant's Percentage and the additional rent charge for ordinary office trash collection payable pursuant to Article 47 of the Lease shall increase in accordance with the increased rentable square footage leased by Tenant (it being understood that the trash charge is \$0.20 per rentable square foot). In the event Tenant exercises the Ground Floor Option, Tenant and Landlord agree to enter into a lease amendment memorializing the terms of the leasing of such additional space. Notwithstanding the foregoing, Tenant may only exercise the Ground Floor Option upon written notice to Landlord sent within thirty (30) days after Landlord notifies Tenant that a term sheet from a bona fide third party has not been signed in accordance herewith and Tenant hereby acknowledges that if Tenant does not timely exercise the Ground Floor Option, it shall be deemed waived and this Paragraph shall be of no further force or effect.

TENTH: Notwithstanding anything to the contrary set forth in paragraph Seventh of the Fourth Amendment or Article 3 of the Lease, Landlord is currently holding \$303,601.45 as the security deposit under the Lease which it shall continue to hold through the expiration of the Lease, and Tenant's right to reductions in the security deposit set forth in paragraph Seventh of the Fourth Amendment and Article 3 of the Lease shall be hereby void and of no further force or effect.

ELEVENTH: Notwithstanding anything to the contrary set forth in Article 49 of the Lease, (i) the option to renew set forth therein shall expressly include the Original Premises, Suite 500, Suite 501, Suite 712, the Fifth Floor Additional Premises and the Fourth and Sixth Floor Additional Premises (collectively, the "Renewal Premises") and (ii) if Tenant properly exercises the option to renew for all the Renewal Premises described above in accordance with the terms of Article 49, the annual base rent payable by Tenant under the Lease shall be as follows:

the greater of (a) the Fair Market Rental (as defined in Article 49 the Original Lease) for the demised premises for the Renewal Period or (b) \$131,361.63/month for the first year of the Renewal Period, \$135,302.48/month for the second year of the Renewal Period, \$139,361.55/month for the third year of the Renewal Period, \$143,542.40/month for the fourth year of the Renewal Period and \$147,848.67/month for the last year of the Renewal Period.

Landlord   
Tenant 

Further, notwithstanding anything to the contrary set forth in Article 49 of the Lease, if Tenant and Landlord are unable to reach a written agreement as to the Fair Market Rental by January 1, 2016 and the dispute is submitted to Arbitration as more particularly described in Article 49, and if Tenant elects to renew the Lease pursuant to Article 49 as modified by this paragraph Eleventh and the Fair Market Rental is not determined by Arbitration or written agreement of Landlord and Tenant on or before July 31, 2016, then the annual base rent payable under this Lease shall be \$131,361.63/month commencing on August 1, 2016 and ending on the earlier of: (x) the date a written agreement is signed and delivered by Landlord and Tenant as to the annual base rent for the Renewal Period, or (y) the date upon which the annual base rent is finally determined by Arbitration, provided, however, that when the annual base rent for the Renewal Period is finally determined by written agreement or Arbitration, the Lease shall retroactively be amended so that the annual base rent during the Renewal Period shall be based on the Fair Market Rental as set forth in Article 49 of the Lease.

**TWELFTH:** Tenant warrants and represents to Landlord that Tenant has not had any conversations, correspondence or dealings with any real estate broker, agent or finder in connection with the leasing of the Fourth and Sixth Floor Additional Premises and the other transactions described in this Agreement other than CB Richard Ellis Inc. having an office at 200 Park Avenue, New York, New York 10166 ("Broker") and Tenant covenants and agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any broker, agent or finder other than Broker in connection with this Lease and/or concerning the renting or leasing of premises located in the Building due to conversations, correspondence or dealings of Tenant with the claimant. Landlord shall pay Broker any commission which may be payable with respect to this Lease pursuant to a separate agreement.

**THIRTEENTH:** Except as expressly modified and amended herein, and as so modified and amended, the Lease is hereby ratified and confirmed in all respects and shall be binding upon the parties hereto and their respective successors and assigns. In the event the provisions of this Agreement shall contradict or be inconsistent with the provisions of the Lease, then the provisions of this Agreement shall prevail and govern and the contradicted or inconsistent provisions of the Lease shall be deemed amended accordingly.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**55 WASHINGTON STREET LLC**  
By: DW Associates, L.P., as managing member

By:   
(Landlord)

**ETSY INC.**

By:   
(Tenant)

State of New York  
} SS:  
County of Kings

On the 22<sup>nd</sup> day of December in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared Sinohe Terrero, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

SARAH M. FEINGOLD  
Notary Public, State of New York  
No. 02FE6153435  
Qualified in Kings County  
Commission Expires October 02, 2014

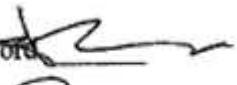
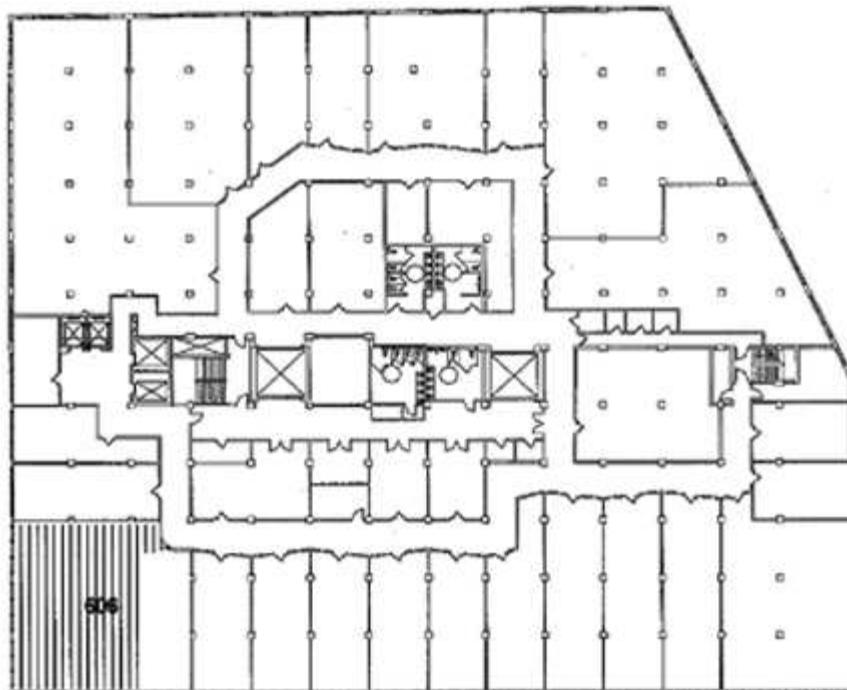
Landlord   
Tenant S 

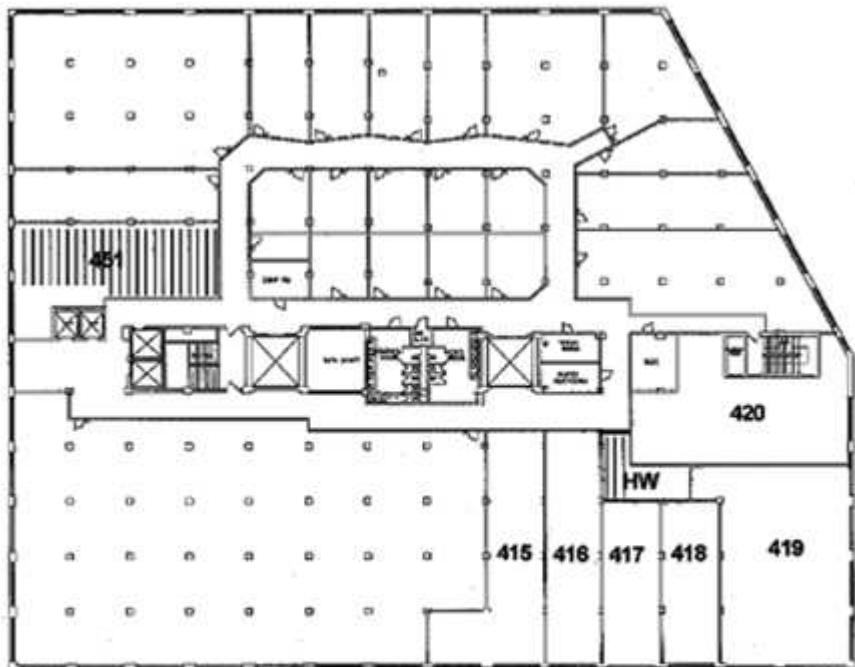
Exhibit "C"

Diagram of the 4th and 6th Floor Additional Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 6th Floor



55 Washington Street, 4th Floor



INDICATES FOURTH AND SIXTH  
FLOOR ADDITIONAL PREMISES

Please Initial: Landlord Tenant

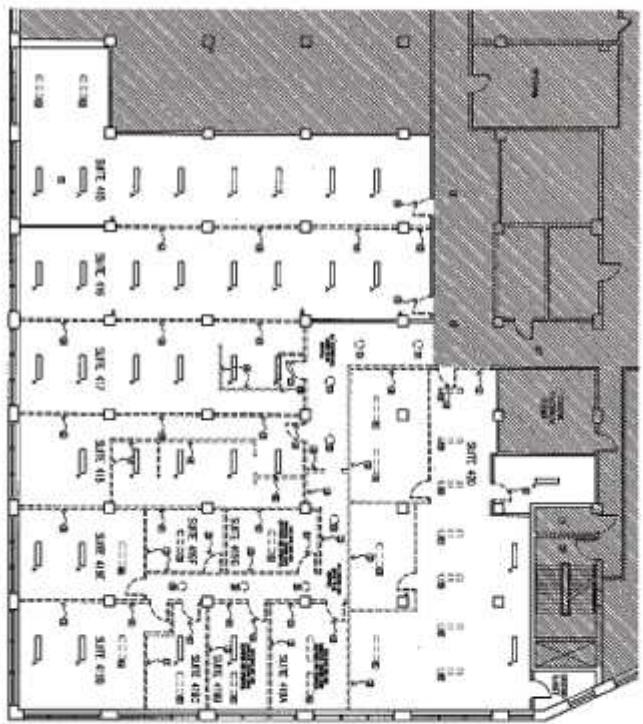
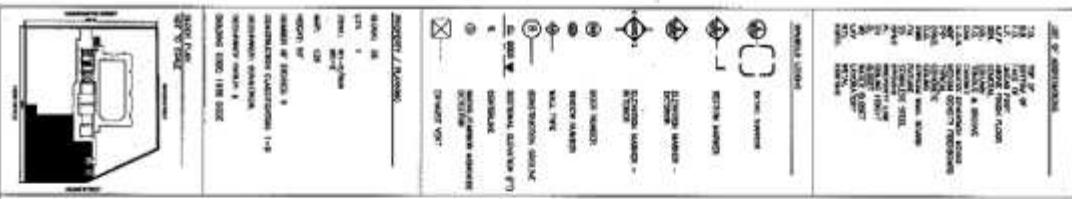
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**Exhibit D**

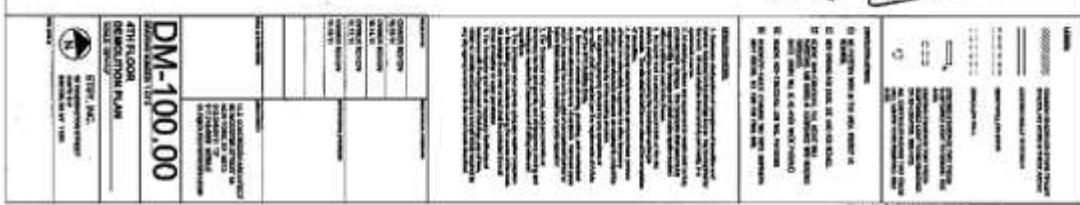
**Landlord's Expansion Premises Work  
Plans and Specifications**

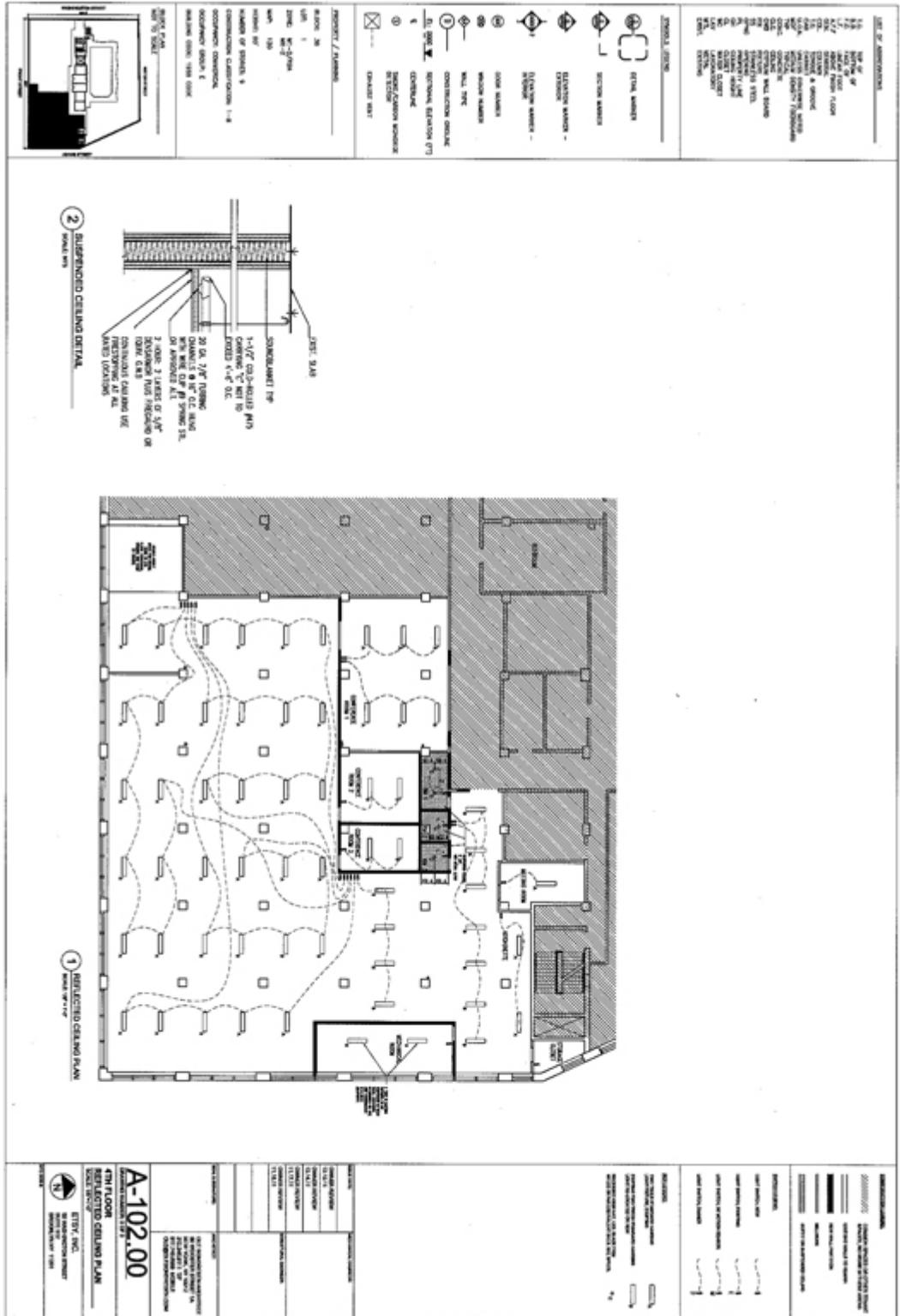
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Landlord   
Tenant 

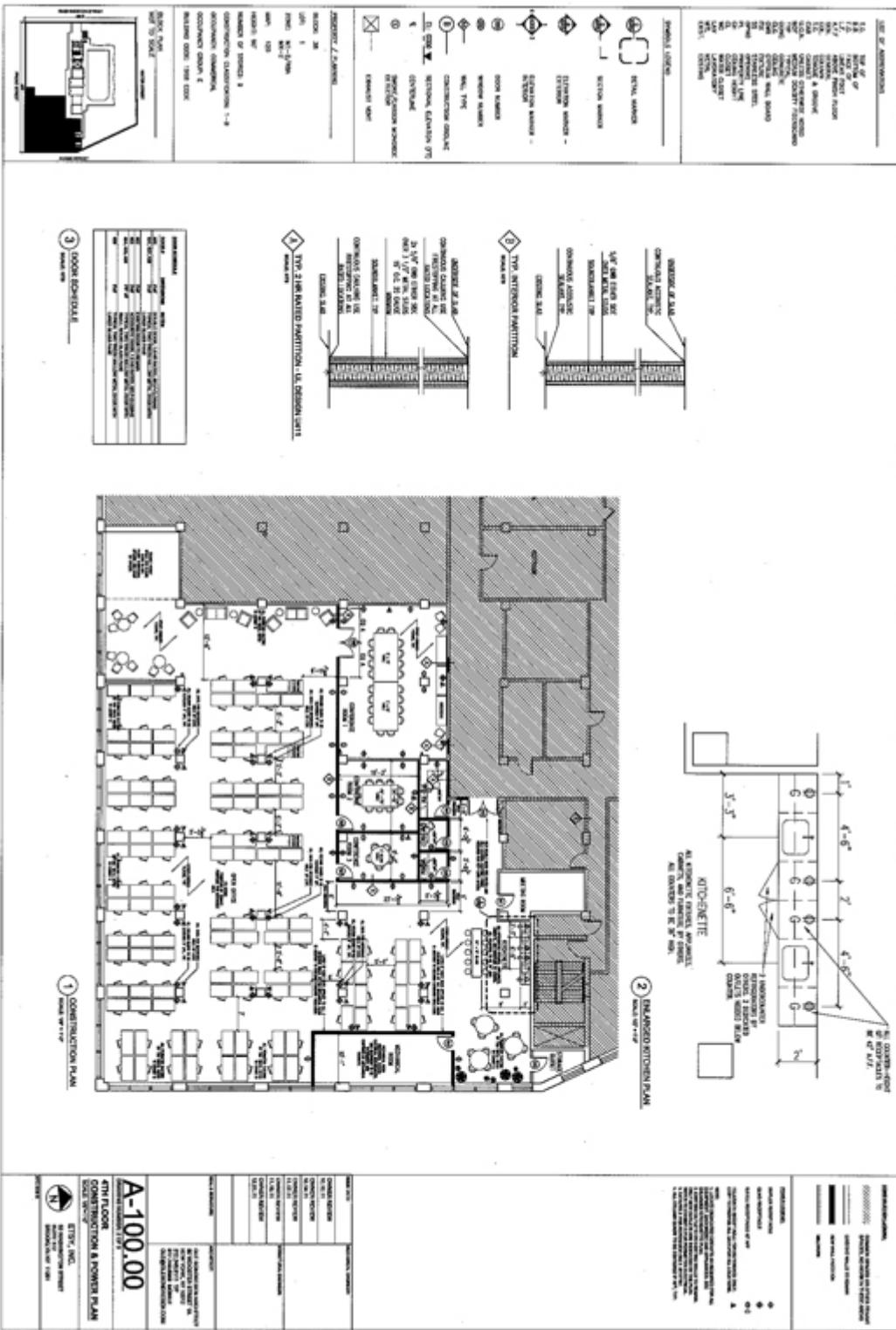


王海











**Exhibit D**  
**Landlord's Expansion Premises Work**  
**Tenant's Specifications**

Landlord shall modify the Fourth & Sixth Floor Additional Premises pursuant to Tenant's Plans annexed hereto as Exhibit D. Landlord shall also perform the following as part of Landlord's Expansion Premises Work using building standard materials pursuant to Tenant's Specifications as outlined below:

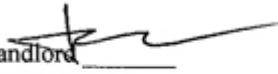
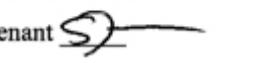
<u>PROJECT AREA</u>	<u>TENANT'S SPECIFICATIONS</u>	<u>REFERENCE</u>
<b>HVAC</b>	Install fresh air vents from HVAC ductwork in all spaces and ensure air is distributed throughout the premises. Landlord will ensure that the three (3) return ducts into the mechanical room are acoustically lined to dampen noise.	Refer to Exhibit D-1 mechanical drawing.
<b>Mechanical Room</b>	Mechanical room dimensions to be confirmed by Two Trees' engineer. Layer of "quiet rock" to be installed on all mechanical room walls in addition to building standard insulation to maximize noise control. Mechanical room return air plenum will be an acoustically lined duct.	Refer to A100 for Mechanical Room location.
<b>Sprinklers</b>	Two Trees will handle any necessary sprinkler modifications to meet building standards.	
<b>Rooms</b>	Install three (3) conference rooms and three (3) small rooms using building standard walls and building standard hollow metal doors with glass. Note, "Meeting Room" indicated on A100 requires a new building standard hollow metal door with a large glass pane as well.	Refer to A100 for new rooms, the Door Schedule, and door locations in plan.
<b>Lighting</b>	Install a building standard light switch, wiring and building standard lights in each conference room. Install building standard light switch, wiring and standard recessed lights ("high hats") in each small room. Install building standard lighting in Location A102 according to Exhibit D.	Refer to A102 for light switch locations and Open Office lighting zones.
<b>Electrical</b>	Install building standard perimeter electrical outlets along new perimeter (1 quad box per bay). Install outlets on new walls at Location A100 according to Exhibit D. All existing outlets are to remain on the walls not scheduled for demolition.	Refer to A100 for electrical outlet locations.
<b>Tele/Data</b>	Tele/Data receptacle for reference only in Exhibit D. Tenant to provide all data for all locations.	Refer to A100 for Tele/Data.



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**Exhibit D-1**

**Landlord's Expansion Premises Work  
Mechanical Plan**

Landlord   
Tenant 

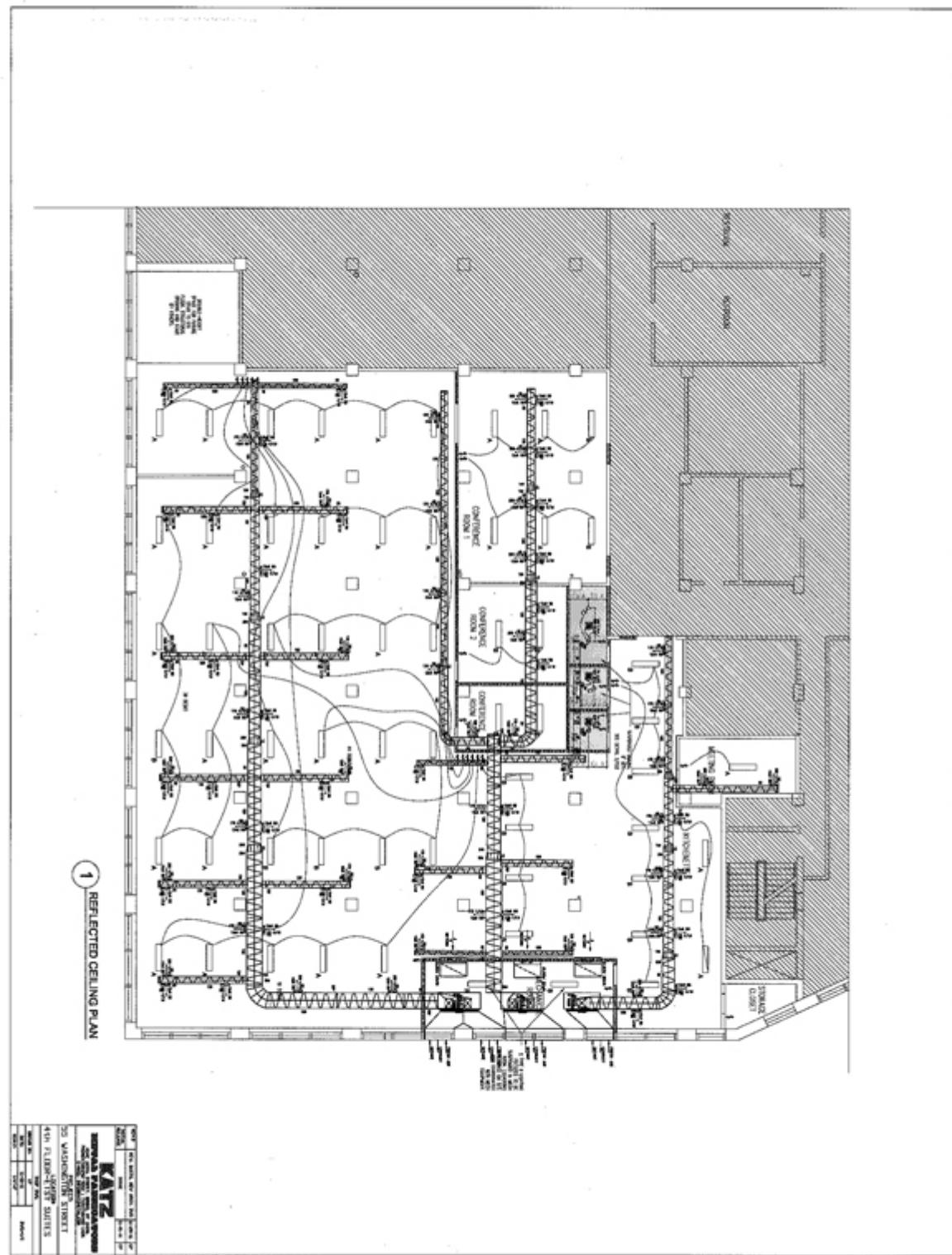
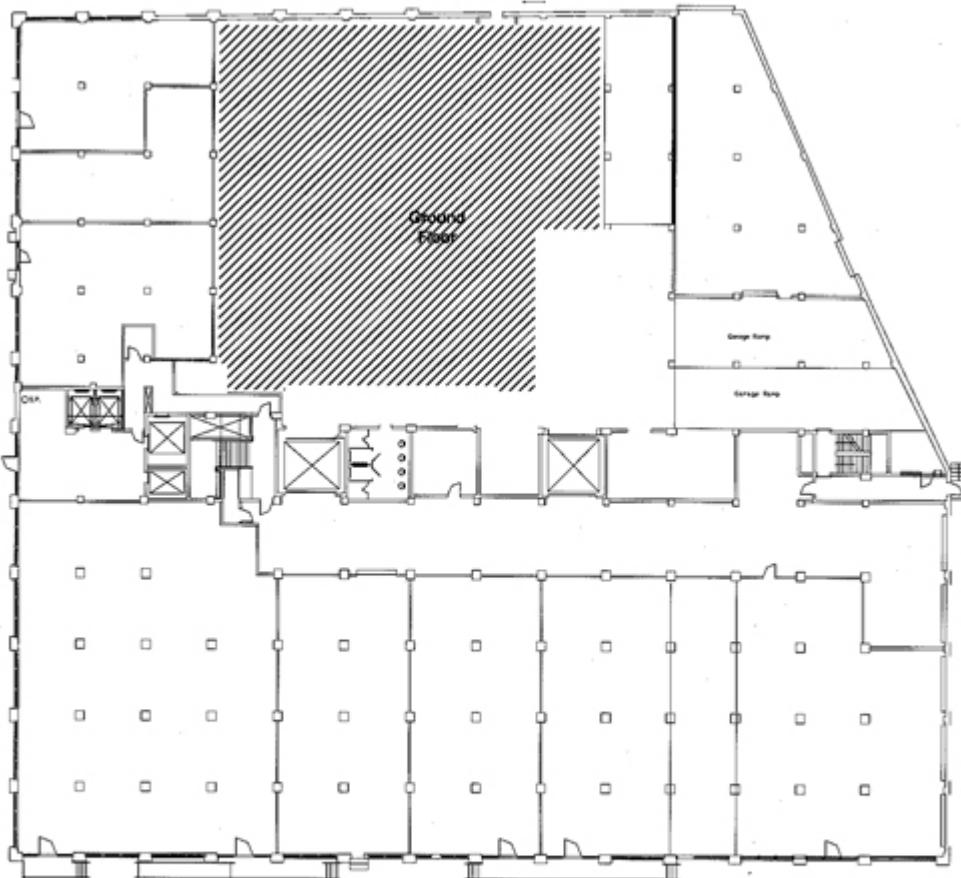




Exhibit "E"  
Diagram of the Option Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, Ground Floor

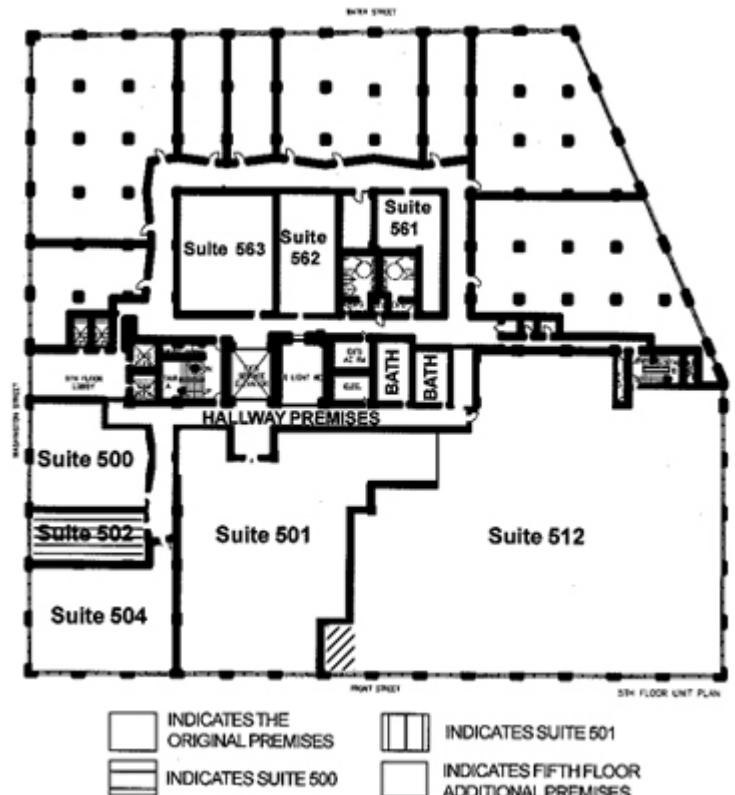


INDICATES OPTION PREMISES

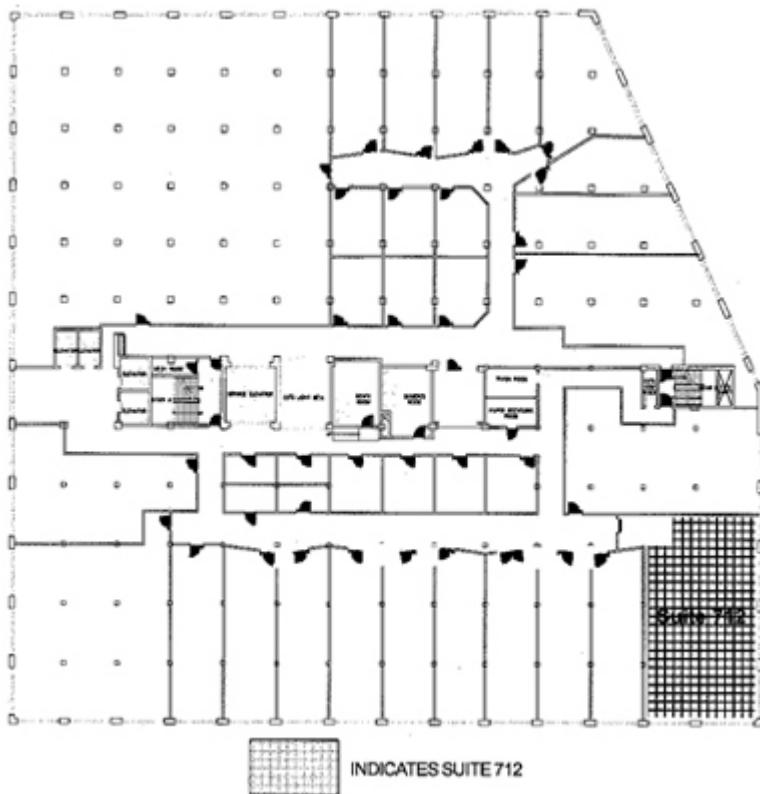
Please Initial: Landlord  Tenant 

Exhibit "F"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 5TH FLOOR



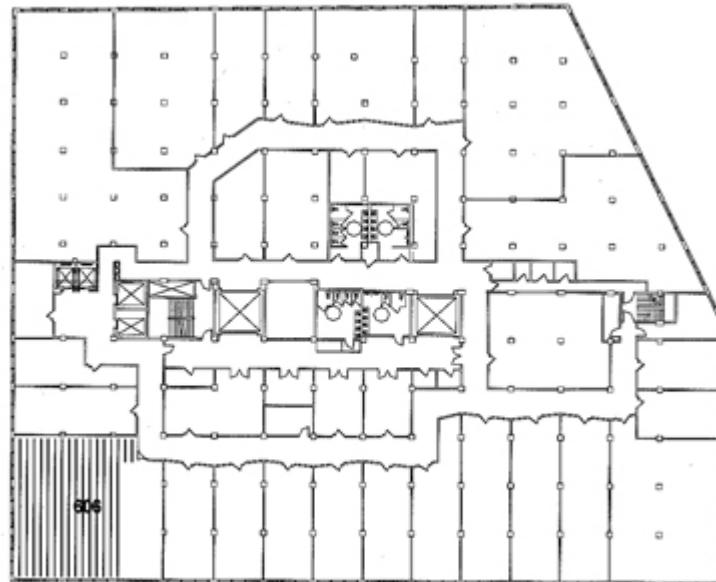
55 WASHINGTON STREET, 7TH FLOOR



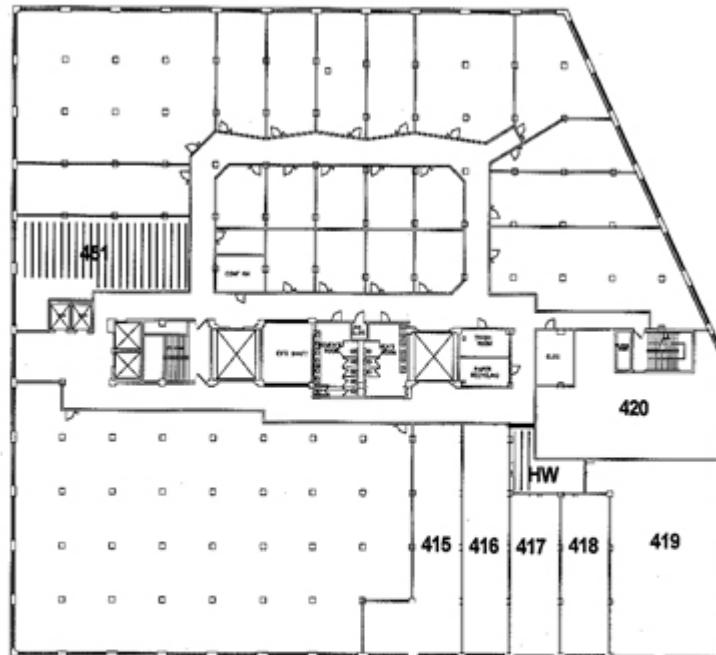
Please Initial: Landlord  Tenant

Exhibit "F" Cont'd  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 6th Floor



55 Washington Street, 4th Floor



INDICATES FOURTH AND SIXTH  
FLOOR ADDITIONAL PREMISES

Please Initial: Landlord  Tenant 

## EIGHTH AMENDMENT TO LEASE

THIS EIGHTH AMENDMENT TO LEASE (the "Agreement"), made as of the January 1, 2013, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office at c/o Two Trees Management Co., Inc., 45 Main Street, Suite 602, Brooklyn, New York 11201, (the "Landlord"), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an office at 55 Washington Street, Suite 512, Brooklyn, New York 11201 (the "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the "Lease") covering certain premises known as Suite 512, as more particularly described in the Lease and located on the fifth (5<sup>th</sup>) floor in the building (the "Building") known as 55 Washington Street, Brooklyn, New York; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of December 1, 2009 (the "First Amendment"), whereby Article 48 of the Lease was amended; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of March 1, 2010 (the "Second Amendment"), whereby Tenant temporarily leased Suite 500; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of April 1, 2010 (the "Third Amendment"), whereby Article 53 was added to the Lease; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of July 15, 2010 (the "Fourth Amendment"), whereby Tenant leased certain additional premises known as Suite 501 in the Building and extended the Term for Suite 500 through July 31, 2016; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of October 1, 2010 (the "Fifth Amendment"), whereby an additional Article 53 was added to the Lease; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of March 1, 2011 (the "Sixth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suite 502, Suite 504, Suite 561, Suite 562 and Suite 563, the Bathrooms and the Hallway located on the fifth (5<sup>th</sup>) floor of the Building; and

WHEREAS, Landlord and Tenant entered into that certain Seventh Amendment dated as of September, 2011 (the "Seventh Amendment"), whereby Tenant leased certain additional premises in the Building known as Suite 415, Suite 416, Suite 417, Suite 418, Suite 419, suite 420, suite 451 and Suite 606, and certain hallway premises located on the fourth (4<sup>th</sup>) floor of the Building; (the Lease, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment and Seventh Amendment are hereinafter, collectively, referred to as the "Lease" and Suites 512, 500, 501, 712, 502, 504, 561, 562, 563, 415, 416, 417, 418, 420, 451 and 606 are, hereinafter, collectively referred to as, the "Existing Premises"); and

WHEREAS, the parties now desire to further amend the Lease to provide for the inclusion therein of certain additional premises known as Suites 424, 452, 453A, 558, 559, 560, 612, 614, 620, 622 and 710 in the Building, for the same Use set forth in the Lease, upon such terms, provisions and conditions as are more particularly hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**FIRST**: Unless the context otherwise clearly indicates a contrary intent or unless specifically provided herein, each term used in this Agreement which is defined in the Lease shall be deemed to have the meaning ascribed to such term in the Lease.

SECOND: For a term commencing as of January 1, 2013 through and including July 31, 2016, unless sooner terminated upon terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suites 612, 620, 622 and 710 (collectively, the "January 2013

Landlord

Added Space") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively, the Existing Premises and the January 2013 Added Space. Tenant acknowledges that it is currently occupying the January 2013 Added Space in the Building pursuant to a License Agreement dated May 17, 2012 and, accordingly. Tenant is accepting the January 2013 Added Space in their "AS IS/WHERE IS" condition with no work, of any sort to be performed by the Landlord and no representation or warranty by Landlord as to the fitness of the January 2013 Added Space or any equipment servicing the same. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense.

THIRD : For a term commencing as of January 15, 2013 through and including July 31, 2016, unless sooner terminated upon terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 614 (the "Suite 614 Added Space") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, the January 2013 Added Space and Suite 614 Added Space. Landlord has not made any representations as to the physical condition or any other matter affecting or relating to the Suite 614 Added Space and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Suite 614 Added Space and Tenant agrees to accept possession of the Suite 614 Added Space in their "AS IS/WHERE IS" condition with no work of any sort to be performed by the Landlord and no representation or warranty by Landlord as to the fitness of the Suite 614 Added Space or any equipment servicing same. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense.

For a term commencing as of March 1, 2013 through and including July 31, 2016, unless sooner terminated upon terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises. Suites 452 and 453A (collectively, the "March 2013 Added Space") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, the January 2013 Added Space, Suite 614 Added Space and March 2013 Added Space. Landlord has not made any representations as to the physical condition or any other matter affecting or relating to the March 2013 Added Space and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the March 2013 Added Space and Tenant agrees to accept possession of the March 2013 Added Space in their "AS IS/WHERE IS" condition with no work of any sort to be performed by the Landlord and no representation or warranty by Landlord as to the fitness of the March 2013 Added Space or any equipment servicing same. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. Notwithstanding anything in this Agreement to the contrary, if Landlord is unable to deliver possession of any part or all of the March 2013 Added Space on March 1, 2013 because of any reason whatsoever, including, without limitation, the holding over or failure to surrender possession by any existing tenant, subtenant or occupant, construction or work in the Building or in all or part of the March 2013 Added Space, then Landlord shall not, in any such event, be subject to any liability for failure to give possession on said date and the validity of this Agreement and the Lease shall not be impaired or affected, but the annual base rent applicable to the March 2013 Added Space payable hereunder shall be abated equitably according to the Suite or Suites which has not been delivered until Landlord delivers possession of all of the March 2013 Added Space.

FOURTH : For a term commencing as of July 1, 2013 through and including July 31, 2016, unless sooner terminated upon terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises. Suite 424 ("July 2013 Added Space") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises. January 2013 Added Space, Suite 614 Added Space. March 2013 Added Space and July 2013 Added Space. Landlord has not made any representations as to the physical condition or any other matter affecting or relating to the July 2013 Added Space and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the July 2013 Added Space and Tenant agrees to accept possession of the July 2013 Added Space in its "AS IS/WHERE IS" condition with no work of any sort to be performed by the Landlord and no representation or warranty by Landlord as to the fitness of the July 2013 Added Space or any equipment servicing same. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. Notwithstanding anything in this Agreement to the contrary, if Landlord is

Landlord   
Tenant 

unable to deliver possession of the July 2013 Added Space on July 1, 2013 because of any reason whatsoever, including, without limitation, the holding over or failure to surrender possession by any existing tenant, subtenant or occupant, construction or work in the Building or in all or part of the July 2013 Added Space, then Landlord shall not, in any such event, be subject to any liability for failure to give possession on said date and the validity of this Agreement and the Lease shall not be impaired or affected, but the annual base rent for the July 2013 Added Space payable hereunder shall be abated until Landlord delivers possession of the July 2013 Added Space.

**FIFTH:** For a term commencing as of August 1, 2013 through and including July 31, 2016, unless sooner terminated upon terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suites 558 and 559 ("August 2013 Added Space") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, the January 2013 Added Space, Suite 614 Added Space, March 2013 Added Space, July 2013 Added Space and August 2013 Added Space. Landlord has not made any representations as to the physical condition or any other matter affecting or relating to the August 2013 Added Space and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the August 2013 Added Space and Tenant agrees to accept possession of the August 2013 Added Space in their "AS IS/WHERE IS" condition with no work of any sort to be performed by the Landlord and no representation or warranty by Landlord as to the fitness of the August 2013 Added Space or any equipment servicing same. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. Notwithstanding anything in this Agreement to the contrary, if Landlord is unable to deliver possession of any or all of the August 2013 Added Suite on August 1, 2013 because of any reason whatsoever, including, without limitation, the holding over or failure to surrender possession by any existing tenant, subtenant or occupant, construction or work in the Building or in all or part of the August 2013 Added Suite, then Landlord shall not, in any such event, be subject to any liability for failure to give possession on said date and the validity of this Agreement and the Lease shall not be impaired or affected, but the annual base rent applicable to the August 2013 Added Space payable hereunder shall be abated equitably according to the Suite or Suites which has not been delivered until Landlord delivers possession of all of the August 2013 Added Space.

**SIXTH:** For a term commencing as of February 1, 2014 through and including July 31, 2016, unless sooner terminated upon terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 560 ("February 2014 Added Space") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, January 2013 Added Space, Suite 614 Added Space, March 2013 Added Space, July 2013 Added Space, August 2013 Added Space and February 2014 Added Space. Landlord has not made any representations as to the physical condition or any other matter affecting or relating to the February 2014 Added Space and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the February 2014 Added Space and Tenant agrees to accept possession of the February 2014 Added Space in its "AS IS/WHERE IS" condition with no work of any sort to be performed by the Landlord and no representation or warranty by Landlord as to the fitness of the February 2014 Added Space or any equipment servicing the same. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. Notwithstanding anything in this Agreement to the contrary, if Landlord is unable to deliver possession of the February 2014 Added Space on February 1, 2014 because of any reason whatsoever, including, without limitation, the holding over or failure to surrender possession by any existing tenant, subtenant or occupant, construction or work in the Building or in all or part of the February 2014 Added Space, then Landlord shall not, in any such event, be subject to any liability for failure to give possession on said date and the validity of this Agreement and the Lease shall not be impaired or affected, but the annual base rent for the February 2014 Added Space payable hereunder shall be abated until Landlord delivers possession of the February 2014 Added Space.

**SEVENTH:** Notwithstanding anything in this Agreement to the contrary, in lieu of Landlord performing any work in the January 2013 Added Space, Suite 614 Added Space, the March 2013 Added Space, the July 2013 Added Space, the August 2013 Added Space and the February 2014 Added Space. Tenant shall receive a rent credit ("Rent Credit") in the aggregate amount of \$17,000.00. Such Rent Credit shall be applied against annual base rent payable under this Agreement for the month of February, 2013. Tenant shall, prior to the possession date of the January, 2013 Added Space, Suite 614 Added Space, the March 2013 Added Space, the July 2013 Added Space, the August 2013 Added Space and the February 2014 Added Space, deliver to Landlord an insurance certificate satisfying the provisions of the Lease covering the foregoing Added Spaces.

  
Landlord  
  
Tenant 

**EIGHTH:** (A) Effective as of the date hereof through and including July 31, 2016. Tenant shall pay Tenant's Percentage of Real Estate Taxes for the January, 2013 Added Space, Suite 614 Added Space, March, 2013 Added Space, July 2013 Added Space, August 2013 Added Space and February 2014 Added Space. "Tenant's Percentage" and applicable Base Year shall be amended to include the following percentages as follows:

1/1/13 to 7/31/16 (Suites 612, 620, 622, 710):	1.328% (Base Year: 7/12-6/13)
1/15/13 to 7/31/16 (Suite 614):	0.264% (Base Year: 7/12-6/13)
3/1/13 to 7/31/16 (Suites 452, 453A):	0.625% (Base Year: 7/12-6/13)
7/1/13 to 7/31/16 (Suite 424):	0.092% (Base Year: 7/13-6/14)
8/1/13 to 7/31/16 (Suites 558, 559):	1.196% (Base Year: 7/13-6/14)
2/15/14 to 7/31/16 (Suite 560):	1.267% (Base Year: 7/14-6/15)

Notwithstanding anything in this Agreement to the contrary, Tenant shall not be required to pay Tenant's Percentage of Real Estate Taxes: (a) for the January 2013 Added Space during the period from January 1, 2013 through June 30, 2013; (b) for the Suite 614 Added Space during the period from January 15, 2013 through July 31, 2013; and (c) for the March 2013 Added Space during the period from February 1, 2013 through July 31, 2013.

(B) Tenant agrees to pay Landlord Tenant's Percentage of the total amount of any business or building improvement district charges ("BID Charges") assessed on the Real Property in each year (or portion thereof) during the term of the Lease within ten (10) days after demand is made therefor as additional rent.

**NINTH:** Effective as of the date hereof through July 31, 2016, the annual base rent payable under Article 2 of the Lease shall be amended to include the following annual base rent:

**Suites 612, 620, 622 & 710**

1/1/13 to 12/31/13:	\$134,250.00 p/yr — \$11,187.50 p/mo
1/1/14 to 12/31/14:	\$137,606.25 p/yr — \$11,467.19 p/mo
1/1/15 to 12/31/15:	\$141,046.41 p/yr — \$11,753.87 p/mo
1/1/16 to 7/31/16:	\$144,572.56 p/yr — \$12,047.71 p/mo

**Suite 614**

1/15/13 – 1/14/14:	\$26,640.00 p/yr — \$2,220.00 p/mo
1/15/14 – 1/15/15:	\$27,306.00 p/yr — \$2,275.50 p/mo
1/15/15 – 1/14/16:	\$27,988.65 p/yr — \$2,332.39 p/mo
1/15/16 – 7/31/16:	\$28,688.37 p/yr — \$2,390.70 p/mo

**Suites 452 & 453A**

3/1/13 – 2/28/14:	\$59,838.00 p/yr — \$4,986.50 p/mo
3/1/14 – 2/28/15:	\$61,333.95 p/yr — \$5,111.16 p/mo
3/1/15 – 2/29/16:	\$62,867.30 p/yr — \$5,238.94 p/mo
3/1/16 – 7/31/16:	\$64,438.98 p/yr — \$5,369.92 p/mo

**Suite 424**

7/1/13 to 6/30/14:	\$4,650.00 p/yr — \$387.50 p/mo
7/1/14 to 6/30/15:	\$4,766.25 p/yr — \$397.19 p/mo
7/1/15 to 6/30/16:	\$4,885.41 p/yr — \$407.12 p/mo
7/1/16 to 7/31/16:	\$5,007.54 p/yr — \$417.30 p/mo

**Suites 558 & 559**

8/1/13 to 7/31/14:	\$120,900.00 p/yr — \$10,075.00 p/mo
8/1/14 to 7/31/15:	\$123,922.50 p/yr — \$10,326.88 p/mo
8/1/15 to 7/31/16:	\$127,020.56 p/yr — \$10,585.05 p/mo

**Suite 560**

2/15/14 to 2/14/15:	\$119,588.00 p/yr — \$9,965.67 p/mo
2/15/15 to 2/14/16:	\$122,577.70 p/yr — \$10,214.81 p/mo
2/15/16 to 7/31/16:	\$125,642.14 p/yr — \$10,470.18 p/mo

Landlord   
Tenant 

TENTH : Effective as of the date hereof through and including July 31, 2016, Tenant shall pay the following additional amounts for monthly trash removal for ordinary trash:

1/1/13 to 7/31/16 (Suites 612, 620, 622, 710):	\$74.58 per month
1/15/13 to 7/31/16 (Suite 614):	\$14.80 per month
3/1/13 to 7/31/16 (Suites 452, 453A):	\$20.60 per month
7/1/13 to 7/31/16 (Suite 424):	\$5.17 per month
8/1/13 to 7/31/16 (Suites 558, 559):	\$67.17 per month
2/15/14 to 7/31/16 (Suite 560):	\$71.18 per month

ELEVENTH : Effective as of the date Tenant takes possession of the January 2013 Added Space, Suite 614 Added Space, March 2013 Added Space, August 2013 Added Space and February 2014 Added Space (collectively, the “8<sup>th</sup> Amendment Added Spaces”) and during the Term, Tenant shall, at its own cost and expense, operate, maintain and repair the air-conditioning equipment in the foregoing 8<sup>th</sup> Amendment Added Spaces (each referred to as “AC System”; collectively referred to as the “8<sup>th</sup> Amendment Added Spaces AC Systems”) now or hereafter located in or servicing the 8<sup>th</sup> Amendment Added Spaces. Landlord shall replace any 8<sup>th</sup> Amendment Added Spaces AC Systems if necessary and required during the Term. The electricity consumed by the 8<sup>th</sup> Amendment Added Spaces AC Systems shall be paid for by Tenant as set forth in the applicable provisions of the Lease. Installation of any additional air-conditioning equipment is considered an alteration and as such shall be subject to the provisions of the Lease applicable to Alterations. If any permit or license is required for the operation of the 8<sup>th</sup> Amendment Added Spaces AC Systems. Tenant shall, at Tenant’s expense, obtain and maintain any such permit or license unless Landlord elects to obtain the same on Tenant’s behalf and at Tenant’s expense.

TWELFTH : Tenant shall continue to pay all items of additional rent and any escalation payments provided in the Lease for the Existing Premises and Added Space.

THIRTEENTH : Article 3 of the Lease is hereby amended so that the Security Deposit required under the Lease shall be \$455,902.82. Landlord is currently holding \$320,000.00 as security, accordingly, Tenant shall deposit with Landlord, concurrently with execution of this Agreement, by check made payable to **55 WASHINGTON STREET LLC**, the amount of \$135,902.82, which shall be held by Landlord as part of the security required under the Lease.

FOURTEENTH : Tenant’s Option to Renew, as set forth in Section 49 of the Lease, if properly exercised in accordance with the terms therein, shall be deemed to include the January 2013 Added Space, Suite 614 Added Space, March 2013 Added Space, July 2013 Added Space, August 2013 Added Space and February 2014 Added Space and Suite 500 and the annual base rent payable under the Lease for the foregoing Suites shall be as follows:

The greater of (a) the Fair Market Rent (as defined in Article 49 of the Lease) or (b) **Suites 612, 620, 622 and 710:** \$12,409.14 per month for the first renewal year; \$12,781.42 per month for the second renewal year; \$13,164.86 per month for the third renewal year; \$13,559.80 per month for the fourth renewal year; and \$13,966.60 per month for the fifth renewal year; **Suites 452, 453A and 614:** \$7,993.43 per month for the first renewal year; \$8,233.23 for the second renewal year; \$8,480.23 for the third renewal year; \$8,734.63 for the fourth renewal year; and \$8,996.67 for the fifth renewal year; **Suite 424:** \$429.82 per month for the first renewal year; \$442.71 per month for the second renewal year; \$456.00 per month for the third renewal year; \$469.68 per month for the fourth renewal year; and \$483.77 per month for the fifth renewal year; **Suites 558 and 559:** \$10,902.60 per month for the first renewal year; \$11,229.68 per month for the second renewal year; \$11,566.57 per month for the third renewal year; \$11,913.57 per month for the fourth renewal year; \$12,270.97 per month for the fifth renewal year; **Suite 560:** \$10,784.29 per month for the first renewal year; \$11,107.81 per month for the second renewal year; \$11,441.05 per month for the third renewal year; \$11,784.28 per month for the fourth renewal year; and \$12,137.81 per month for the fifth renewal year; and **Suite 500:** \$3,935.60 per month for the first renewal year; \$4,053.67 per month for the second renewal year; \$4,175.28 per month for the third renewal year; \$4,300.54 per month for the fourth renewal year; and \$429.55 for the fifth renewal year.

FIFTEENTH : Notwithstanding anything to the contrary herein contained. Landlord represents that as of the commencement date for the January 2013 Added Space. 614 Added Space. March 2013 Added Space. July 2013 Added space, August 2013 Added Space and February 2014 Added Space, the Building systems servicing the foregoing Added Spaces, including, but not limited to, electrical, mechanical, AC systems and plumbing systems shall be in working order.

Landlord   
Tenant 

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SIXTEENTH : With respect to the August 2013 Added Space and February 2014 Added Space, Landlord will deliver the same in broom clean condition and in the Building Standard condition (i.e. painted in Building standard white and the wood floors finished) or Tenant shall be afforded a rent credit in an amount necessary to deliver the August 2013 Added Space and February 2014 Added Space in the condition required herein.

SEVENTEENTH : Tenant warrants and represents to Landlord that, other than CBRE, INC. it has not dealt with any real estate broker, agent or finder in connection with the leasing of the 8<sup>th</sup> Amendment Added Spaces and the other transactions described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any other broker, agent or finder with respect to this Agreement or the negotiation of the terms hereof due to the dealings of Tenant with the claimant. Landlord shall pay CBRE, INC. a commission pursuant to a separate agreement between Landlord and CBRE, INC.

EIGHTEENTH : Except as modified by this Agreement, the Lease and all covenants, agreements, terms and conditions shall remain in full force and effect and are hereby in all respects ratified and confirmed and shall be binding upon the parties hereto and their respective successors and assigns.

NINETEENTH : The persons executing this Agreement on behalf of Landlord and Tenant represent and warrant that they do so with full authority to bind the parties hereto to the terms, conditions and provisions hereinabove set forth.

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[SIGNATURE PAGE FOLLOWS]

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Landlord   
Tenant 

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date and year written above.

**55 WASHINGTON STREET, LLC**



By:

David Walentas

**ETSY, INC.**



By:

Name: Sinohe Terrero  
Title: VP, Finance

State of New York

} SS:

County of Kings

On the 4<sup>th</sup> day of March in the year 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared David Walentas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

ELIZABETH J. BUENO

Notary Public, State of New York  
No. 01CO6181901

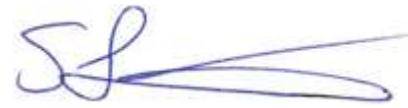
Qualified in Kings County  
Commission Expires February 11, 2016

State of New York

} SS:

County of

On the 26<sup>th</sup> day of February in the year 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared Sinohe Terrero personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signatures on the instrument, the individuals or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

SARAH M. FEINGOLD  
Notary Public, State of New York  
No. 02FE6153435

Qualified in Kings County  
Commission Expires October 02, 2014

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Landlord   
Tenant 

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## NINTH AMENDMENT TO LEASE

THIS NINTH AMENDMENT TO LEASE (the "Agreement"), made as of the March 21, 2013, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office at c/o Two Trees Management Co., Inc., 45 Main Street, Suite 602, Brooklyn, New York 11201, (the "Landlord"), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an office at 55 Washington Street, Suite 512, Brooklyn, New York 11201 (the "Tenant").

### W I T N E S S E T H :

WHEREAS, Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the "Lease") covering certain premises known as Suite 512, as more particularly described in the Lease and located on the fifth (5<sup>th</sup>) floor in the building (the "Building") known as 55 Washington Street, Brooklyn, New York; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of December 1, 2009 (the "First Amendment"), whereby Article 48 of the Lease was amended; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of March 1, 2010 (the "Second Amendment"), whereby Tenant temporarily leased Suite 500; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of April 1, 2010 (the "Third Amendment"), whereby Article 53 was added to the Lease; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of July 15, 2010 (the "Fourth Amendment"), whereby Tenant leased certain additional premises known as Suite 501 in the Building and extended the Term for Suite 500 through July 31, 2016; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of October 1, 2010 (the "Fifth Amendment"), whereby an additional Article 53 was added to the Lease; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of March 1, 2011 (the "Sixth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suite 502, Suite 504, Suite 561, Suite 562 and Suite 563, the Bathrooms and the Hallway located on the fifth (5<sup>th</sup>) floor of the Building; and

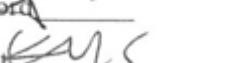
WHEREAS, Landlord and Tenant entered into that certain Seventh Amendment dated as of September, 2011 (the "Seventh Amendment"), whereby Tenant leased certain additional premises in the Building known as Suite 415, Suite 416, Suite 417, Suite 418, Suite 419, suite 420, suite 451 and Suite 606, and certain hallway premises located on the fourth (4<sup>th</sup>) floor of the Building; and

WHEREAS, Landlord and Tenant entered into that certain Eighth Amendment dated January 1, 2013 (the "Eighth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suites 424, 452, 453A, 558, 559, 560, 612, 614, 620, 622 and 710, (the Lease, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, Seventh Amendment and Eight Amendment are hereinafter, collectively, referred to as the "Lease" and Suites 512, 500, 501, 712, 502, 504, 561, 562, 563, 415, 416, 417, 418, 420, 451, 606, 424, 452, 453A, 558, 559, 560, 612, 614, 620, 622 and 710 are, hereinafter, collectively referred to as, the "Existing Premises"); and

WHEREAS, the parties now desire to further amend the Lease to provide for the inclusion therein of certain additional premises known as Suites 604, 608, 610, 633 and 661 in the Building, for the same Use set forth in the Lease, upon such terms, provisions and conditions as are more particularly hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

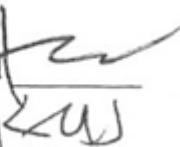
**FIRST :** Unless the context otherwise clearly indicates a contrary intent or unless specifically provided herein, each term used in this Agreement which is defined in the Lease shall be deemed to have the meaning ascribed to such term in the Lease.

Landlord  
  
Tenant  


SECOND : For a term commencing as of April 15, 2013 through and including July 31, 2016, unless sooner terminated upon terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 610 ("Suite 610) in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively, the Existing Premises and Suite 610. Landlord has not made any representations as to the physical condition or any other matter affecting or relating to Suite 610 and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Suite 610 and Tenant agrees to accept possession of the Suite 610 in its "AS IS/WHERE IS" condition with no work of any sort to be performed by the Landlord and no representation or warranty by Landlord as to the fitness of the Suite 610 or any equipment servicing same. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. If Landlord is unable to deliver possession of Suite 610 to Tenant on April 15, 2013 due to the holding-over or failure to surrender possession by any tenant, subtenant or occupant, construction or work in the Building or Suite 610, then Landlord shall not, in any such event, be subject to any liability for failure to give possession of Suite 610 on said date and the validity of this Agreement and the Lease shall not be impaired under such circumstances, but the annual base rent and additional rent payable for Suite 610 shall abate until Landlord delivers to Tenant possession of Suite 610.

THIRD : For a term commencing as of May 1, 2013 through and including July 31, 2016, unless sooner terminated upon terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 604 ("Suite 604") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, Suite 610 and Suite 604. Landlord has not made any representations as to the physical condition or any other matter affecting or relating to Suite 604 and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Suite 604 and Tenant agrees to accept possession of the Suite 604 in its "AS IS/WHERE IS" condition with no work of any sort to be performed by the Landlord and no representation or warranty by Landlord as to the fitness of the Suite 604 or any equipment servicing same. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. If Landlord is unable to deliver possession of Suite 604 to Tenant on May 1, 2013 due to the holding-over or failure to surrender possession by any tenant, subtenant or occupant, construction or work in the Building or Suite 604, then Landlord shall not, in any such event, be subject to any liability for failure to give possession of Suite 604 on said date and the validity of this Agreement and the Lease shall not be impaired under such circumstances, but the annual base rent and additional rent payable for Suite 604 shall abate until Landlord delivers to Tenant possession of Suite 604.

FOURTH : For a term commencing as of July 15, 2013 through and including July 31, 2016, unless sooner terminated upon terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suites 608 and 661 (collectively, the "July 15, 2013 Added Space") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, Suite 610, Suite 604 and the July 15, 2013 Added Space. Landlord has not made any representations as to the physical condition or any other matter affecting or relating to the July 15, 2013 Added Space and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the July 15, 2013 Added Space and Tenant agrees to accept possession of the July 15, 2013 Added Space in their "AS IS/WHERE IS" condition with no work of any sort to be performed by the Landlord and no representation or warranty by Landlord as to the fitness of the July 15, 2013 Added Space or any equipment servicing same. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. If Landlord is unable to deliver possession of the July 15, 2013 Added Space to Tenant on July 15, 2013 due to the holding-over or failure to surrender possession by any tenant, subtenant or occupant, construction or work in the Building or any part of the July 15, 2013 Added Space, then Landlord shall not, in any such event, be subject to any liability for failure to give possession of all of the July 15, 2013 Added Space on said date and the validity of this Agreement and the Lease shall not be impaired under such circumstances, but the annual base rent and additional rent payable for the July 15, 2013 Added Space shall abate equitably according to that part of the July 15, 2013 Added Space which has not been delivered until Landlord delivers to Tenant possession of all of the July 15, 2013 Added Space.

Landlord   
Tenant 

FIFTH: For a term commencing as of November 1, 2013 through and including July 31, 2016, unless sooner terminated upon terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 633 ("Suite 633") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, Suite 610, Suite 604, the July 15, 2013 Added Space and Suite 633. Landlord has not made any representations as to the physical condition or any other matter affecting or relating to Suite 633 and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Suite 633 and Tenant agrees to accept possession of the Suite 633 in its "AS IS/WHERE IS" condition with no work of any sort to be performed by the Landlord and no representation or warranty by Landlord as to the fitness of the Suite 633 or any equipment servicing same. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. If Landlord is unable to deliver possession of Suite 633 to Tenant on November 1, 2013 due to the holding-over or failure to surrender possession by any tenant, subtenant or occupant, construction or work in the Building or Suite 633, then Landlord shall not, in any such event, be subject to any liability for failure to give possession of Suite 633 on said date and the validity of this Agreement and the Lease shall not be impaired under such circumstances, but the annual base rent and additional rent payable for Suite 465 shall abate until Landlord delivers to Tenant possession of Suite 633.

SIXTH: Notwithstanding anything in this Agreement to the contrary, in lieu of Landlord performing any work in Suite 610, Suite 604, Suite 633 and the July 15, 2013 Added Space, Tenant shall receive a rent credit ("Rent Credit") in the aggregate amount of **\$2,400.00**. Such Rent Credit shall be applied against annual base rent payable under this Agreement for the month of July, 2013. Tenant shall, prior to the possession date of Suite 610, Suite 604, Suite 633 and the July 15, 2013 Added Space, deliver to Landlord an insurance certificate satisfying the provisions of the Lease covering the foregoing Added Spaces.

SEVENTH: (A) Effective as of the date hereof through and including July 31, 2016, Tenant shall pay Tenant's Percentage of Real Estate Taxes for Suite 610, 604, 633 and the July 15, 2013 Added Space. "Tenant's Percentage" and applicable Base Year shall be amended to include the following percentages:

4/15/13 to 7/31/16 (Suite 610):	0.264% (Base Year: 7/13-6/14)
5/1/13 to 7/31/16 (Suite 604):	0.273% (Base Year: 7/13-6/14)
7/15/13 to 7/31/16 (Suites 608 and 661):	0.522% (Base Year: 7/13-6/14)
11/1/13 to 7/31/16 (Suite 633):	0.297% (Base Year: 7/13-6/14)

(B) Tenant agrees to pay Landlord Tenant's Percentage of the total amount of any business or building improvement district charges ("BID Charges") assessed on the Real Property in each year (or portion thereof) during the term of the Lease within ten (10) days after demand is made therefor as additional rent.

EIGHTH: Effective as of the date hereof through July 31, 2016, the annual base rent payable under Article 2 of the Lease shall be amended to include the following annual base rent:

Suites 610

4/15/13 to 4/14/14:	\$29,304.00 p/yr — \$2,442.00 p/mo
4/15/14 to 4/14/15:	\$30,036.60 p/yr — \$2,503.05 p/mo
4/15/15 to 4/14/16:	\$30,787.52 p/yr — \$2,565.63 p/mo
4/15/16 to 7/31/16:	\$31,557.21 p/yr — \$2,629.77 p/mo

Suite 604

5/1/13 – 4/30/14:	\$30,327.00 p/yr — \$2,527.25 p/mo
5/1/14 – 4/30/15:	\$31,085.18 p/yr — \$2,590.43 p/mo
5/1/15 – 4/30/16:	\$31,862.31 p/yr — \$2,655.19 p/mo
5/1/16 – 7/31/16:	\$32,658.87 p/yr — \$2,721.57 p/mo

Suites 608 & 661

7/15/13 – 7/14/14:	\$43,117.00 p/yr — \$3,593.13 p/mo
7/15/14 – 7/14/15:	\$44,195.44 p/yr — \$3,682.95 p/mo
7/15/15 – 7/31/16:	\$45,300.33 p/yr — \$3,775.03 p/mo

Landlord  
\_\_\_\_\_  
Tenant 

**Suite 633**

11/1/13 – 10/31/14:	\$15,531.00 p/yr — \$1,294.25 p/mo
11/1/14 – 10/31/15:	\$15,919.28 p/yr — \$1,326.61 p/mo
11/1/15 – 7/31/16:	\$16,317.26 p/yr — \$1,359.77 p/mo

**NINTH :** Effective as of the date hereof through and including July 31, 2016, Tenant shall pay the following additional amounts for monthly trash removal for ordinary trash:

4/14/13 to 7/31/16 (Suites 610):	\$14.80 per month
5/1/13 to 7/31/16 (Suite 604):	\$15.32 per month
7/15/13 to 7/31/16 (Suites 608 & 661):	\$29.33 per month
11/1/13 to 7/31/16 (Suite 633):	\$16.70 per month

**TENTH :** Effective as of the date Tenant takes possession of the Suite 610, Suite 604, Suite 633 and the July 15, 2013 Added Space (collectively, the “9<sup>th</sup> Amendment Added Spaces”) and during the Term, Tenant shall, at its own cost and expense, operate, maintain and repair the air-conditioning equipment in the foregoing 9<sup>th</sup> Amendment Added Spaces (each referred to as “AC System”; collectively referred to as the “9<sup>th</sup> Amendment Added Spaces AC Systems”) now or hereafter located in or servicing the 9<sup>th</sup> Amendment Added Spaces. Landlord shall replace, at its sole cost, any 9<sup>th</sup> Amendment Added Spaces AC Systems if necessary and required during the Term. The electricity consumed by the 8<sup>th</sup> Amendment Added Spaces AC Systems shall be paid for by Tenant as set forth in the applicable provisions of the Lease. Installation of any additional air-conditioning equipment is considered an alteration and as such shall be subject to the provisions of the Lease applicable to Alterations. If any permit or license is required for the operation of the 9<sup>th</sup> Amendment Added Spaces AC Systems, Tenant shall, at Tenant’s expense, obtain and maintain any such permit or license unless Landlord elects to obtain the same on Tenant’s behalf and at Tenant’s expense.

**ELEVENTH :** Tenant shall continue to pay all items of additional rent and any escalation payments provided in the Lease for the Existing Premises and 9<sup>th</sup> Amendment Added Spaces.

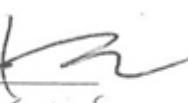
**TWELFTH :** Article 3 of the Lease is hereby amended so that the Security Deposit required under the Lease shall be **\$487,861.24**. Landlord is currently holding **\$455,902.82** as security, accordingly, Tenant shall deposit with Landlord, concurrently with execution of this Agreement, by check made payable to **55 WASHINGTON STREET LLC**, the amount of **\$31,958.42**, which shall be held by Landlord as part of the security required under the Lease.

**THIRTEENTH :** Tenant’s Option to Renew, as set forth in Section 49 of the Lease, if properly exercised in accordance with the terms therein, shall be deemed to include the 9<sup>th</sup> Amendment Added Spaces and the annual base rent payable during the renewal period for the 9<sup>th</sup> Amendment Added Suites shall be as follows:

The greater of (a) the Fair Market Rent (as defined in Article 49 of the Lease) or (b) **Suites 610:** \$2,708.66 per month for the first renewal year; \$2,789.92 per month for the second renewal year; \$2,873.62 per month for the third renewal year; \$2,959.83 per month for the fourth renewal year; and \$3,048.62 per month for the fifth renewal year; **Suite 633:** \$1,400.56 per month for the first renewal year; \$1,442.58 per month for the second renewal year; \$1,485.86 per month for the third renewal year; \$1,530.43 per month for the fourth renewal year; and \$1,576.35 per month for the fifth renewal year; **Suites 608 & 661:** \$3,888.28 per month for the first renewal year; \$4,004.93 per month for the second renewal year; \$4,125.07 per month for the third renewal year; \$4,248.83 per month for the fourth renewal year; and \$4,376.29 per month for the fifth renewal year; and **Suite 604:** \$2,803.22 per month for the first renewal year; \$2,887.32 per month for the second renewal year; \$2,973.94 per month for the third renewal year; \$3,063.16 per month for the fourth renewal year; and \$3,155.05 per month for the fifth renewal year.

**FOURTEENTH :** Notwithstanding anything to the contrary herein contained, Landlord represents that as of the respective commencement dates for Suite 604, 610, 633 and the July 15, 2013 Added Space, the Building systems servicing the foregoing Added Spaces, including, but not limited to, electrical, mechanical, AC systems and plumbing systems shall be in working order and, if necessary, Landlord shall deliver an ACP-5 certificate within thirty (30) days following request therefor.

**FIFTEENTH :** The commencement date for the August 2013 Added Space as set forth in the Eighth Amendment to Lease is hereby amended to November 1, 2013.

Landlord   
Tenant 

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SIXTEENTH: Tenant warrants and represents to Landlord that, other than CBRE, INC. it has not dealt with any real estate broker, agent or finder in connection with the leasing of the 9<sup>th</sup> Amendment Added Spaces and the other transactions described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any other broker, agent or finder with respect to this Agreement or the negotiation of the terms hereof due to the dealings of Tenant with the claimant. Landlord shall pay CBRE, INC. a commission pursuant to a separate agreement between Landlord and CBRE, INC.

SEVENTEENTH: Except as modified by this Agreement, the Lease and all covenants, agreements, terms and conditions shall remain in full force and effect and are hereby in all respects ratified and confirmed and shall be binding upon the parties hereto and their respective successors and assigns.

EIGHTEENTH: This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart, each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one and the same agreement.

NINETEENTH: The persons executing this Agreement on behalf of Landlord and Tenant represent and warrant that they do so with full authority to bind the parties hereto to the terms, conditions and provisions hereinabove set forth.

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[SIGNATURE PAGE FOLLOWS]

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Landlord   
Tenant 

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date and year written above.

**55 WASHINGTON STREET, LLC**



By:

David Walentas

**ETSY, INC.**



By:

Name: Kristina Salen

Title: CFO

State of New York

} SS:

County of

On the    day of                      in the year 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared                                  , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

State of New York

} SS:

County of Kings

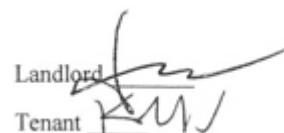
On the 13 day of June in the year 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared Kristina Salen personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signatures on the instrument, the individuals or the person upon behalf of which the individual acted, executed the instrument.



---

Notary Public

SARAH M. FEINGOLD  
Notary Public, State of New York  
No. 02FE6153435  
Qualified in Kings County  
Commission Expires October 02, 2014



Landlord  
Tenant KMW

Exhibit "A"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 6th Floor



INDICATES ADDED SPACE

Please Initial: Landlord KMS Tenant KMS

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## TENTH AMENDMENT TO LEASE

THIS TENTH AMENDMENT TO LEASE (the "Agreement"), made as of December 9, 2013, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office at c/o Two Trees Management Co., Inc., 45 Main Street, Suite 602, Brooklyn, New York 11201, (the "Landlord"), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an office at 55 Washington Street, Suite 512, Brooklyn, New York 11201 (the "Tenant").

### W I T N E S S E T H :

WHEREAS, Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the "Lease") covering certain premises known as Suite 512, as more particularly described in the Lease and located on the fifth (5<sup>th</sup>) floor in the building (the "Building") known as 55 Washington Street, Brooklyn, New York; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of December 1, 2009 (the "First Amendment"), whereby Article 48 of the Lease was amended; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of March 1, 2010 (the "Second Amendment"), whereby Tenant temporarily leased Suite 500; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of April 1, 2010 (the "Third Amendment"), whereby Article 53 was added to the Lease; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of July 15, 2010 (the "Fourth Amendment"), whereby Tenant leased certain additional premises known as Suite 501 in the Building and extended the Term for Suite 500 through July 31, 2016; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of October 1, 2010 (the "Fifth Amendment"), whereby an additional Article 53 was added to the Lease; and

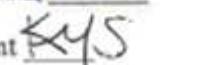
WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of March 1, 2011 (the "Sixth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suite 502, Suite 504, Suite 561, Suite 562 and Suite 563, the Bathrooms and the Hallway located on the fifth (5<sup>th</sup>) floor of the Building; and

WHEREAS, Landlord and Tenant entered into that certain Seventh Amendment dated as of September, 2011 (the "Seventh Amendment"), whereby Tenant leased certain additional premises in the Building known as Suite 415, Suite 416, Suite 417, Suite 418, Suite 419, suite 420, suite 451 and Suite 606, and certain hallway premises located on the fourth (4<sup>th</sup>) floor of the Building; and

WHEREAS, Landlord and Tenant entered into that certain Eighth Amendment dated January 1, 2013 (the "Eighth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suites 424, 452, 453A, 558, 559, 560, 612, 614, 620, 622 and 710; and

WHEREAS, Landlord and Tenant entered into that certain License Agreement dated January 1, 2013 (the "Suite 653 License Agreement") for Suites 653 and 740 in the Building, which license expires by its terms in December 31, 2013 and Tenant is desirous of adding Suite 653 to the Existing Premises; and

WHEREAS, Landlord and Tenant entered into that certain Ninth Amendment dated March 21, 2013 (the "Ninth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suites 604, 608, 610, 633 and 661 in the Building (the Lease, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, Seventh Amendment, Eight Amendment and Ninth Amendment are hereinafter, collectively, referred to as the "Lease" and Suites 512, 500, 501, 712, 502, 504, 561, 562, 563, 415, 416, 417, 418, 420, 451, 606, 424, 452, 453A, 558, 559, 560, 612, 614, 620, 622, 710, 604, 608, 610, 633 and 661 are, hereinafter, collectively referred to as, the "Existing Premises"); and

Landlord   
Tenant 

WHEREAS, the parties now desire to further amend the Lease to provide for the inclusion therein of certain additional premises known as Suites 602, 616, 632, 652, 653, 659 and 660 in the Building, as shown on the attached Exhibits as Exhibit A-1, A-2, A-3, A-4, A-5, A-6 and A-7 respectively (collectively, the "Tenth Amendment Added Spaces"), for the same Use set forth in the Lease, upon such terms, provisions and conditions as are more particularly hereinafter set forth.

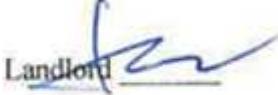
NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**FIRST** : Unless the context otherwise clearly indicates a contrary intent or unless specifically provided herein, each term used in this Agreement which is defined in the Lease shall be deemed to have the meaning ascribed to such term in the Lease.

**SECOND** : For a term commencing as of the date Tenant takes possession of Suite 602 ("Suite 602 Pos. Date") through and including July 31, 2016, unless sooner terminated in accordance with terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 602 ("Suite 602") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively, the Existing Premises and Suite 602. Except as otherwise expressly set forth herein, Landlord has not made any representations as to the physical condition or any other matter affecting or relating to Suite 602 and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Suite 602 and Tenant agrees, that except as set forth in Section FOURTEENTH hereof, to accept possession of the Suite 602 in its "AS IS/WHERE IS" condition. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense.

**THIRD** : For a term commencing as of the date Tenant takes possession of Suite 616 ("Suite 616 Pos. Date") through and including July 31, 2016, unless sooner terminated in accordance with terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 616 ("Suite 616") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, Suite 602 and Suite 616. Except as otherwise expressly set forth herein, Landlord has not made any representations as to the physical condition or any other matter affecting or relating to Suite 616 and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Suite 604 and Tenant agrees, that except as set forth in Section FOURTEENTH hereof, to accept possession of the Suite 604 in its "AS IS/WHERE IS" condition. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense.

**FOURTH** : For a term commencing as of the date Tenant takes possession of Suite 632 ("Suite 632 Pos. Date") through and including July 31, 2016, unless sooner terminated in accordance with terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 632 ("Suite 632") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, Suite 602, Suite 616 and Suite 632. Except as otherwise expressly set forth herein, Landlord has not made any representations as to the physical condition or any other matter affecting or relating to Suite 632 and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of Suite 632 and Tenant agrees, that except as set forth in Section FOURTEENTH hereof, to accept possession of Suite 632 in its "AS IS/WHERE IS" condition. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense.

  
Landlord \_\_\_\_\_

Tenant \_\_\_\_\_

**FIFTH:** For a term commencing as of April 1, 2014 through and including July 31, 2016, unless sooner terminated in accordance with terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 652 ("Suite 652") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, Suite 602, Suite 616, Suite 632 and Suite 652. Except as otherwise expressly set forth herein, Landlord has not made any representations as to the physical condition or any other matter affecting or relating to Suite 652 and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Suite 652 and Tenant agrees, that except as set forth in Section FOURTEENTH hereof, to accept possession of Suite 652 in its "AS IS/WHERE IS" condition. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. If Landlord is unable to deliver possession of Suite 652 to Tenant on April 1, 2014 due to the holding-over or failure to surrender possession by any tenant, subtenant or occupant, construction or work in the Building or Suite 652, then Landlord shall not, in any such event, be subject to any liability for failure to give possession of Suite 652 on said date and the validity of this Agreement and the Lease shall not be impaired under such circumstances, but the annual base rent and additional rent payable for Suite 652 shall abate until Landlord delivers to Tenant possession of Suite 652 in the condition required herein.

**SIXTH:** (A) For a term commencing as of February 1, 2014 through and including July 31, 2016, unless sooner terminated in accordance with terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 659 ("Suite 659") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, Suite 602, Suite 616, Suite 632, Suite 652 and 659. Except as otherwise expressly set forth herein, Landlord has not made any representations as to the physical condition or any other matter affecting or relating to Suite 659 and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Suite 659 and Tenant agrees, that except as set forth in Section FOURTEENTH hereof, to accept possession of Suite 659 in its "AS IS/WHERE IS" condition. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. If Landlord is unable to deliver possession of Suite 659 to Tenant on February 1, 2014 due to the holding-over or failure to surrender possession by any tenant, subtenant or occupant, construction or work in the Building or Suite 659, then Landlord shall not, in any such event, be subject to any liability for failure to give possession of Suite 659 on said date and the validity of this Agreement and the Lease shall not be impaired under such circumstances, but the annual base rent and additional rent payable for Suite 659 shall abate until Landlord delivers to Tenant possession of Suite 659 in the condition required herein.

(B) For a term commencing as of January 15, 2014 through and including July 31, 2016, unless sooner terminated in accordance with terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 660 ("Suite 660") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively the Existing Premises, Suite 602, Suite 616, Suite 632, Suite 652, Suite 659 and Suite 660. Except as otherwise expressly set forth herein, Landlord has not made any representations as to the physical condition or any other matter affecting or relating to Suite 660 and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Suite 660 and Tenant agrees, that except as set forth in Section FOURTEENTH hereof, to accept possession of Suite 660 in its "AS IS/WHERE IS" condition. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense. If Landlord is unable to deliver possession of Suite 660 to Tenant on January 15, 2014 due to the holding-over or failure to surrender possession by any tenant, subtenant or occupant, construction or work in the Building or Suite 660, then Landlord shall not, in any such event, be subject to any liability for failure to give possession of Suite 660 on said date and the validity of this Agreement and the Lease shall not be impaired under such circumstances, but the annual base rent and additional rent payable for Suite 660 shall abate until Landlord delivers to Tenant possession of Suite 660 in the condition required herein.



Landlord  
\_\_\_\_\_  
Tenant \_\_\_\_\_

(C) For a term commencing as of January 1, 2014 through and including July 31, 2016, unless sooner terminated in accordance with terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, Suite 653 ("Suite 653") in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively, the Existing Premises, Suite 602, Suite 616, Suite 632, Suite 652, Suite 653, Suite 659 and Suite 660. Landlord and Tenant acknowledge and agree that Tenant is presently in possession of Suite 653 pursuant to the Suite 653 License Agreement. Accordingly, Tenant agrees to accept possession of Suite 653 in its 'AS IS/WHERE IS" condition with no work to be performed by Landlord whatsoever. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's sole cost and expense.

SEVENTH : (A) As of the respective dates set forth below, Tenant shall pay Tenant's Percentage of Real Estate Taxes for the Tenth Amendment Added Spaces. "Tenant's Percentage" and applicable Base Year shall be amended to include the following percentages:

Suite 602 Pos. Date to 7/31/16 (Suite 602):	0.206% (Base Year: 7/14-6/15)
Suite 616 Pos. Date to 7/31/16 (Suite 616):	0.264% (Base Year: 7/14-6/15)
Suite 632 Pos. Date to 7/31/16 (Suite 632):	0.223% (Base Year: 7/14-6/15)
4/1/14 to 7/31/16 (Suite 652):	0.759% (Base Year: 7/14-6/15)
1/1/14 to 7/31/16 (Suite 653):	0.296% (Base Year: 7/12-6/13)
2/1/14 to 7/31/16 (Suite 659):	0.264% (Base Year: 7/14-6/15)
1/15/14 to 7/31/16 (Suite 660):	0.360% (Base Year: 7/14-6/15)

(B) Tenant agrees to pay Landlord Tenant's Percentage of the total amount of any business or building improvement district charges ("BID Charges") assessed on the Real Property in each year (or portion thereof) during the term of the Lease within ten (10) days after demand is made therefore as additional rent.

EIGHTH : As of the respective dates set forth below, the annual base rent payable under Article 2 of the Lease shall be amended to include the following annual base rent for the Tenth Amendment Added Spaces:

Suite 602 :

Suite 602 Pos. Date to 11/14/14:	\$22,935.00 p/yr — \$1,911.00 p/mo
11/15/14 to 11/14/15:	\$23,623.00 p/yr — \$1,969.00 p/mo
11/15/15 to 7/31/16:	\$24,332.00 p/yr — \$2,028.00 p/mo

Suite 616:

Suite 616 Pos. Date to 11/14/14:	\$29,304.00 p/yr — \$2,442.00 p/mo
11/15/14 to 11/14/15:	\$30,183.00 p/yr — \$2,515.00 p/mo
11/15/15 to 7/31/16:	\$31,089.00 p/yr — \$2,591.00 p/mo

Suite 632 :

Suite 632 Pos. Date to 11/14/14:	\$12,750.00 p/yr — \$1,063.00 p/mo
11/15/14 to 11/14/15:	\$13,133.00 p/yr — \$1,095.00 p/mo
11/15/15 to 7/31/16:	\$13,526.00 p/yr — \$1,127.00 p/mo

Suite 652 :

4/1/14 to 3/31/15:	\$84,414.00 p/yr — \$7,035.00 p/mo
4/1/15 to 3/31/16:	\$86,946.00 p/yr — \$7,246.00 p/mo
4/1/16 to 7/31/16:	\$89,555.00 p/yr — \$7,463.00 p/mo

Suite 653 :

1/1/14 to 12/31/14:	\$32,967.00 p/yr — \$2,747.25 p/mo
1/1/15 to 12/31/15:	\$33,956.00 p/yr — \$2,829.67 p/mo
1/1/16 to 7/31/16:	\$34,914.69 p/yr — \$2,914.56 p/mo

  
Landlord \_\_\_\_\_  
\_\_\_\_\_  
Tenant \_\_\_\_\_

Suite 659:

2/1/14 to 1/31/15:	\$15,096.00 p/yr — \$1,256.00 p/mo
2/1/15 to 1/31/16:	\$15,549.00 p/yr — \$1,296.00 p/mo
2/1/16 to 7/31/16:	\$16,015.00 p/yr — \$1,335.00 p/mo

Suite 660:

1/15/14 to 1/14/15:	\$20,621.00 p/yr — \$1,178.00 p/mo
1/15/15 to 1/14/16:	\$21,240.00 p/yr — \$1,770.00 p/mo
1/15/16 to 7/31/16:	\$21,877.00 p/yr — \$1,823.00 p/mo

NINTH : As of the respective dates set forth below, Tenant shall pay the following additional amounts for monthly trash removal for ordinary trash for the Tenth Amendment Added Spaces:

Suite 602 Pos. Date to 7/31/16 (Suites 602):	\$11.58 per month
Suite 616 Pos. Date to 7/31/16 (Suite 616):	\$14.80 per month
Suite 632 Pos. Date to 7/31/16 (Suite 632):	\$12.50 per month
4/1/14 to 7/31/16 (Suite 652):	\$42.63 per month
1/1/14 to 7/31/16 (Suite 653):	\$16.65 per month
2/1/14 to 7/31/16 (Suite 659):	\$14.80 per month
1/15/14 to 7/31/16 (Suite 660):	\$20.22 per month

TENTH : Except with respect to Suite 653, as of the respective dates that Tenant takes possession of the Tenth Amendment Added Spaces and during the Term, Tenant shall, at its own cost and expense, operate, maintain and repair the air-conditioning equipment in the Tenth Amendment Added Spaces (each referred to as "AC System"; collectively referred to as the "Tenth Amendment Added Spaces AC Systems") now or hereafter located in or servicing the Tenth Amendment Added Spaces. Landlord shall replace, at its sole cost, any Tenth Amendment Added Spaces AC Systems if necessary and required during the Term. The electricity consumed by the Tenth Amendment Added Spaces AC Systems shall be paid for by Tenant as set forth in the applicable provisions of the Lease. Installation of any additional air-conditioning equipment is considered an alteration and as such shall be subject to the provisions of the Lease applicable to Alterations. If any permit or license is required for the operation of the Tenth Amendment Added Spaces AC Systems, Tenant shall, at Tenant's expense, obtain and maintain any such permit or license unless Landlord elects to obtain the same on Tenant's behalf and at Tenant's expense.

ELEVENTH : Tenant shall continue to pay all items of additional rent and any escalation payments provided in the Lease for the Existing Premises and Tenth Amendment Added Spaces.

TWELFTH : Article 3 of the Lease is hereby amended so that the Security Deposit required under the Lease shall be **\$537,562.24** . Landlord is currently holding **\$487,861.24** as security, accordingly, Tenant shall deposit with Landlord, concurrently with execution of this Agreement, by check made payable to **55 WASHINGTON STREET LLC** , the amount of **\$49,701.00** , which shall be held by Landlord as part of the security required under the Lease.

THIRTEENTH : Tenant's Option to Renew, as set forth in Section 49 of the Lease, if properly exercised in accordance with the terms therein, shall be deemed to include the Tenth Amendment Added Spaces and the annual base rent payable during the renewal period for the Tenth Amendment Added Spaces shall be as follows:

The greater of (a) the Fair Market Rent (as defined in Article 49 of the Lease) or (b) **Suite 602** : \$25,061.96 per year for the first renewal year; \$25,813.82 per year for the second renewal year; \$26,558.23 per year for the third renewal year; \$27,385.88 per year for the fourth renewal year; and \$28,207.46 per year for the fifth renewal year; **Suite 616** : \$32,021.67 per year for the first renewal year; \$32,982.32 per year for the second renewal year; \$33,971.79 per year for the third renewal year; \$34,990.94 per year for the fourth renewal year; and \$36,040.67 per year for the fifth renewal year; **Suite 632** : \$13,931.78 per year for the first renewal year; \$14,349.73 per year for the second renewal year; \$14,780.23 per year for the third renewal year; \$15,223.63 per year for the fourth renewal year; and \$15,680.34 per year for the fifth renewal year; **Suite 652** : \$92,241.65 per year for the first renewal year; \$95,008.90 per year for the second renewal year;

  
Landlord \_\_\_\_\_  
  
Tenant \_\_\_\_\_

\$97,859.17 per year for the third renewal year; \$100,794.94 per year for the fourth renewal year; and \$103,818.79 per year for the fifth renewal year; **Suite 653** : \$36,023.93 per year for the first renewal year; \$37,104.65 per year for the second renewal year; \$38,217.79 for the third renewal year; \$39,364.32 per year for the fourth renewal year and \$40,545.25 per year for the fifth renewal year; **Suite 659** : \$16,495.45 per year for the first renewal year; \$16,990.31 per year for the second renewal year; \$17,500.02 per year for the third renewal year; \$18,025.02 per year for the fourth renewal year; and \$18,565.77 per year for the fifth renewal year; **Suite 660** : \$22,533.31 per year for the first renewal year; \$23,209.31 per year for the second renewal year; \$23,905.59 per year for the third renewal year; \$24,622.76 per year for the fourth renewal year; and \$25,361.44 per year for the fifth renewal year.

**FOURTEENTH:** Notwithstanding anything to the contrary herein contained, Landlord represents that as of the respective commencement dates for the Tenth Amendment Added Spaces, the Building systems servicing the Tenth Amendment Added Spaces, including, but not limited to, electrical, mechanical, AC systems and plumbing systems shall be in working order and, if necessary, Landlord shall deliver an ACP-5 certificate within thirty (30) days following written request therefore.

**FIFTEENTH:** Tenant shall have the right, without Landlord's prior written consent, to perform the following alterations, at Tenant's cost and expense, in connection with its occupancy of the Tenth Amendment Added Spaces ("Tenth Amendment Alterations"): (a) demolition work to join the Tenth Amendment Added Spaces or any part thereof with contiguous space currently leased and occupied by Tenant; (b) repair and paint interior walls and ceilings; (c) re-glaze and refinish the Tenth Amendment Added Space floors; and (d) remove window treatments, electrical wiring or fixtures and relocate electrical outlets and conduits required in connection with the demolition work set forth herein. The Tenth Amendment Alterations shall be performed in accordance with and subject to all of the terms and conditions set forth in the Lease, including, but not limited to, Article 10 thereof.

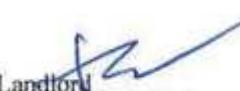
**SIXTEENTH:** Notwithstanding anything in this Agreement to the contrary, in lieu of Landlord performing any work in Suite 602, 616 and 652, Tenant shall receive a rent credit ("Rent Credit") in aggregate amount of \$3,000.00. Such Rent Credit shall be applied against annual base rent payable under this Agreement for the month of January, 2014. Except with respect to Suite 653, Landlord will deliver possession of the Tenth Amendment Added Spaces vacant and in broom clean condition, with existing cabling, wiring, carpeting and window treatments removed.

**SEVENTEENTH:** Notwithstanding anything in the Lease to the contrary, provided the Lease is in full force and effect without any breach or default thereunder on the part of Tenant beyond applicable notice and cure period, Tenant may, without Landlord's prior written consent, grant a license to Harbor Engraving, Inc. for Suite 560 upon and subject to all of the terms, provisions, covenants and conditions under the Lease.

**EIGHTEENTH:** Tenant warrants and represents to Landlord that, other than CBRE, INC. it has not dealt with any real estate broker, agent or finder in connection with the leasing of the Tenth Amendment Added Spaces and the other transactions described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any other broker, agent or finder with respect to this Agreement or the negotiation of the terms hereof due to the dealings of Tenant with the claimant. Landlord shall pay CBRE, INC. a commission pursuant to a separate agreement between Landlord and CBRE, INC.

**NINTEENTH:** Except as modified by this Agreement, the Lease and all covenants, agreements, terms and conditions shall remain in full force and effect and are hereby in all respects ratified and confirmed and shall be binding upon the parties hereto and their respective successors and assigns.

**TWENTIETH:** This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart, each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one and the same agreement.

  
Landlord \_\_\_\_\_  
  
Tenant \_\_\_\_\_

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TWENTY-FIRST: The persons executing this Agreement on behalf of Landlord and Tenant represent and warrant that they do so with full authority to bind the parties hereto to the terms, conditions and provisions hereinabove set forth.

[Balance of Page Intentionally Left Blank]

[SIGNATURE PAGE FOLLOWS]

Landlord   
Tenant \_\_\_\_\_

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IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date and year written above.

**55 WASHINGTON STREET, LLC**



By:

David Walentas

**ETSY, INC.**



By:

Name: Kristina Salen

Title: CFO

State of New York

} SS:

County of Kings

On the 15<sup>th</sup> day of January in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared David Walentas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

SUSAN YUNG  
Notary Public, State of New York  
No. 02YU6282549  
Qualified in Queens County  
My Commission Expires: 5/28/17

State of New York

} SS:

County of Kings

On the 9<sup>th</sup> day of December in the year 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared Kristina Salen personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signatures on the instrument, the individuals or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

SARAH M. FEINGOLD  
Notary Public, State of New York  
No. 02FE6153435  
Qualified in Kings County  
Commission Expires October 02, 2014

Landlord   
Tenant 

---

**Exhibit A**

9

Landlord 

Tenant \_\_\_\_\_

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**EXHIBIT A-1**

Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 6TH FLOOR



Please Initial: Landlord  Tenant 

**EXHIBIT A-2**

Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 6TH FLOOR



Please Initial \_\_\_\_\_ Landlord \_\_\_\_\_ Tenant \_\_\_\_\_  


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**EXHIBIT A-3**

Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 6TH FLOOR



Please initial:

Exhibit "A-4"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 6TH FLOOR



Please Initial: L Landlord T Tenant

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**EXHIBIT A-5**

Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 6TH FLOOR

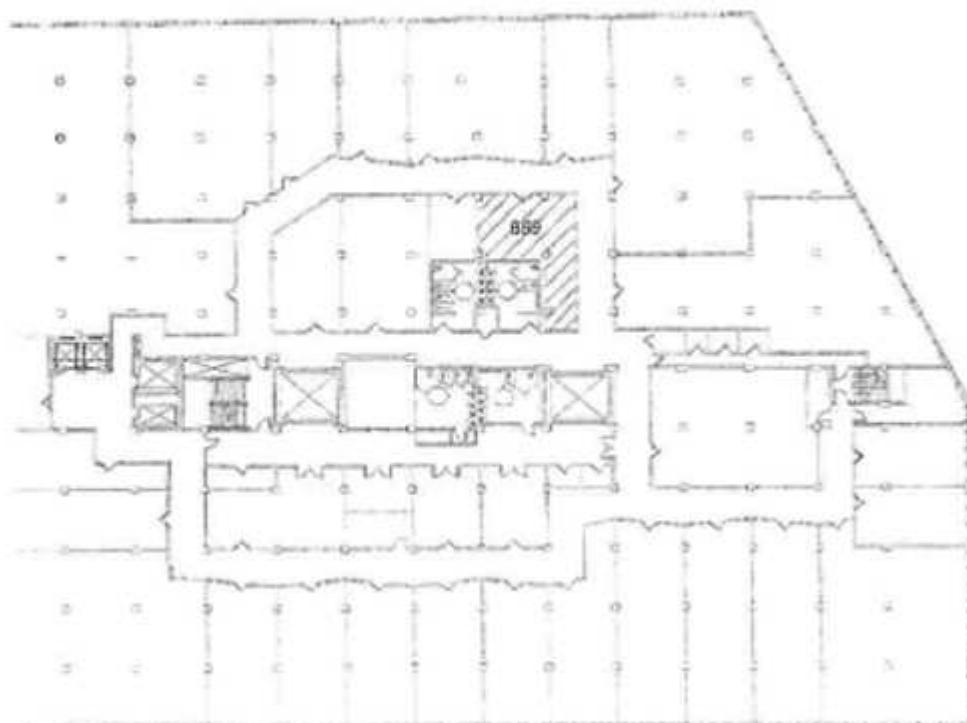


Please Initial: Landlord  Tenant \_\_\_\_\_

## **EXHIBIT A-6**

**Diagram of the Demised Premises**  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 6TH FLOOR



---

**EXHIBIT A-7**

Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 WASHINGTON STREET, 6TH FLOOR



Please Initial: Landlord ✓ Tenant

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## ELEVENTH AMENDMENT TO LEASE

THIS ELEVENTH AMENDMENT TO LEASE (the "Agreement"), made as of April 7, 2014, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office at c/o Two Trees Management Co., Inc., 45 Main Street, Suite 602, Brooklyn, New York 11201, (the "Landlord"), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an office at 55 Washington Street, Suite 512, Brooklyn, New York 11201 (the "Tenant").

### W I T N E S S E T H :

WHEREAS, Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the "Lease") covering certain premises known as Suite 512, as more particularly described in the Lease and located on the fifth (5<sup>th</sup>) floor in the building (the "Building") known as 55 Washington Street, Brooklyn, New York; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of December 1, 2009 (the "First Amendment"), whereby Article 48 of the Lease was amended; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of March 1, 2010 (the "Second Amendment"), whereby Tenant temporarily leased Suite 500; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of April 1, 2010 (the "Third Amendment"), whereby Article 53 was added to the Lease; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of July 15, 2010 (the "Fourth Amendment"), whereby Tenant leased certain additional premises known as Suite 501 in the Building and extended the Term for Suite 500 through July 31, 2016; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of October 1, 2010 (the "Fifth Amendment"), whereby an additional Article 53 was added to the Lease; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of March 1, 2011 (the "Sixth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suite 502, Suite 504, Suite 561, Suite 562 and Suite 563, the Bathrooms and the Hallway located on the fifth (5<sup>th</sup>) floor of the Building; and

WHEREAS, Landlord and Tenant entered into that certain Seventh Amendment dated as of September, 2011 (the "Seventh Amendment"), whereby Tenant leased certain additional premises in the Building known as Suite 415, Suite 416, Suite 417, Suite 418, Suite 419, suite 420, suite 451 and Suite 606, and certain hallway premises located on the fourth (4<sup>th</sup>) floor of the Building; and

WHEREAS, Landlord and Tenant entered into that certain Eighth Amendment dated January 1, 2013 (the "Eighth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suites 424, 452, 453A, 558, 559, 560, 612, 614, 620, 622 and 710; and

  
Landlord

  
Tenant 

WHEREAS, Landlord and Tenant entered into that certain License Agreement dated January 1, 2013 (the "License Agreement") for Suites 653 and 740 in the Building, which license expires by its terms in December 31, 2013; and

WHEREAS, Landlord and Tenant entered into that certain Ninth Amendment dated March 21, 2013 (the "Ninth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suites 604, 608, 610, 633 and 661 in the Building;

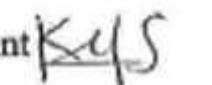
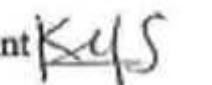
WHEREAS, Landlord and Tenant entered into that certain Tenth Amendment executed by Tenant on December 9, 2013 (the "Tenth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suites 602, 616, 632, 652, 653, 659 and 660 (the Lease, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, Seventh Amendment, Eighth Amendment, Ninth Amendment and Tenth Amendment are hereinafter, collectively, referred to as the "Lease" and Suites 512, 500, 501, 712, 502, 504, 561, 562, 563, 415, 416, 417, 418, 420, 451, 606, 424, 452, 453A, 558, 559, 560, 612, 614, 620, 622, 710, 604, 608, 610, 633, 661 602, 616, 632, 652, 653, 659 and 660 are, hereinafter, collectively referred to as, the "Existing Premises"); and

WHEREAS, the parties now desire to further amend the Lease to provide for the inclusion therein of certain additional premises known as Suites 453, 471, 702 and 703 in the Building, as shown on the attached Exhibits as Exhibit A-1, A-2, A-3 (collectively, the "Eleventh Amendment Added Spaces"), for the same Use set forth in the Lease, upon such terms, provisions and conditions as are more particularly hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**FIRST :** Unless the context otherwise clearly indicates a contrary intent or unless specifically provided herein, each term used in this Agreement which is defined in the Lease shall be deemed to have the meaning ascribed to such term in the Lease.

**SECOND :** For a term commencing as of the date Tenant takes possession of the Eleventh Amendment Added Spaces ("11<sup>th</sup> Amend Com Date" or "CD") through and including July 31, 2016, unless sooner terminated in accordance with terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, the Eleventh Amendment Added Spaces in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively, the Existing Premises and the Eleventh Amendment Added Spaces. Except as otherwise expressly set forth herein, Landlord has not made any representations as to the physical condition or any other matter affecting or relating to the Eleventh Amendment Added Spaces and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Eleventh Amendment Added Spaces

  
Landlord  
  
Tenant 

and Tenant agrees, that except as set forth in Sections ELEVENTH and TWELFTH hereof, to accept possession of the Eleventh Amendment Added Spaces in their "AS IS/WHERE IS" condition. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense.

THIRD : Notwithstanding anything in the License Agreement to the contrary, Tenant shall be permitted to operate and occupy Suite 740, upon the same terms and conditions as set forth in the License Agreement, on a month-to-month basis until the later to occur of: (i) the date Tenant takes possession of and commences its business operation in Suites 702 and 703 or (ii) 30 days following the date of either Tenant's or Landlord's notice terminating such month-to-tenancy.

FOURTH : (A) As of the respective dates set forth below, Tenant shall pay Tenant's Percentage of Real Estate Taxes for the Eleventh Amendment Added Spaces. "Tenant's Percentage" and applicable Base Year shall be amended to include the following percentages:

CD to 7/31/16 (Suite 453):	1.0% (Base Year: 7/14-6/15)
CD to 7/31/16 (Suite 471):	0.1% (Base Year: 7/14-6/15)
CD to 7/31/16 (Suite 702):	1.0% (Base Year: 7/14-6/15)
CD to 7/31/16 (Suite 703):	0.3% (Base Year: 7/14-6/15)

(B) Tenant agrees to pay Landlord Tenant's Percentage of the total amount of any business or building improvement district charges ("BID Charges") assessed on the Real Property in each year (or portion thereof) during the term of the Lease within ten (10) days after demand is made therefore as additional rent.

FIFTH : As of the respective dates set forth below, the annual base rent payable under Article 2 of the Lease shall be amended to include the following annual base rent for Suite 740 and the Eleventh Amendment Added Spaces:

Suite 453:

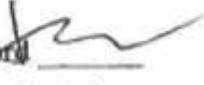
CD to 2/28/15:	\$113,900.00 p/yr — \$9,491.70 p/mo
3/1/15 to 2/28/16:	\$117,317.00 p/yr — \$9,776.40 p/mo
3/1/16 to 7/31/16:	\$120,836.50 p/yr — \$10,069.70 p/mo

Suite 471:

CD to 2/28/15:	\$7,157.00 p/yr — \$596.40 p/mo
3/1/15 to 2/28/16:	\$7,371.70 p/yr — \$614.30 p/mo
3/1/16 to 7/31/16:	\$7,592.90 p/yr — \$632.70 p/mo

Suite 702:

CD to 2/28/15:	\$116,620.00 p/yr — \$9,718.30 p/mo
3/1/15 to 2/28/16:	\$120,118.60 p/yr — \$10,009.90 p/mo
3/1/16 to 7/31/16:	\$123,722.20 p/yr — \$10,310.20 p/mo

Landlord   
Tenant 

Suite 703 :

CD to 2/28/15:	\$37,400.00 p/yr — \$3,116.70 p/mo
3/1/15 to 2/28/16:	\$38,522.00 p/yr — \$3,210.20 p/mo
3/1/16 to 7/31/16:	\$39,677.70 p/yr — \$3,306.50 p/mo

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SIXTH : As of the respective dates set forth below, Tenant shall pay the following additional amounts for monthly trash removal for ordinary trash for the Eleventh Amendment Added Spaces:

CD to 7/31/16 (Suites 453):	\$55.80 per month
CD to 7/31/16 (Suite 471):	\$7.00 per month
CD to 7/31/16 (Suite 702):	\$57.20 per month
CD to 7/31/16 (Suite 703):	\$18.30 per month

SEVENTH : As of the respective dates that Tenant takes possession of the Eleventh Amendment Added Spaces and during the Term, Tenant shall, at its own cost and expense, operate, maintain and repair the air-conditioning equipment in the Eleventh Amendment Added Spaces (each referred to as "AC System"; collectively referred to as the "Eleventh Amendment Added Spaces AC Systems") now or hereafter located in or servicing the Eleventh Amendment Added Spaces. Landlord shall replace, at its sole cost, any Eleventh Amendment Added Spaces AC Systems if necessary and required during the Term. The electricity consumed by the Eleventh Amendment Added Spaces AC Systems shall be paid for by Tenant as set forth in the applicable provisions of the Lease. Installation of any additional air-conditioning equipment is considered an alteration and as such shall be subject to the provisions of the Lease applicable to Alterations.

EIGHTH : Tenant shall continue to pay all items of additional rent and any escalation payments provided in the Lease for the Existing Premises and Eleventh Amendment Added Spaces.

NINTH : Article 3 of the Lease is hereby amended so that the Security Deposit required under the Lease shall be **\$594,233.30**. Landlord is currently holding **\$537,562.24** as security. Tenant shall deposit with Landlord, concurrently with execution of this Agreement, by check made payable to **55 WASHINGTON STREET LLC**, the amount of **\$56,671.06**, which shall be held by Landlord as part of the security required under the Lease.

TENTH : Tenant's Option to Renew, as set forth in Section 49 of the Lease, if properly exercised in accordance with the terms therein, shall be deemed to include the Eleventh Amendment Added Spaces and the annual base rent payable during the renewal period for the Eleventh Amendment Added Spaces shall be as follows:

The greater of (a) the Fair Market Rent (as defined in Article 49 of the Lease) or (b) **Suite 740**: \$46,552.40 per year for the first renewal year; \$47,949.00 per year for the second renewal year; \$49,387.40 per year for the third renewal year; \$50,869.10 per year for the fourth renewal year; and \$52,395.10 per year for the fifth renewal year; **Suite 453** : \$124,461.60 per year for the first renewal year; \$128,195.50 per year for the second renewal year; \$132,041.30 per year for the

Landlord   
Tenant 

third renewal year; \$136,002.60 per year for the fourth renewal year; and \$140,082.60 per year for the fifth renewal year; **Suite 471** : \$7,820.60 per year for the first renewal year; \$8,055.30 per year for the second renewal year; \$8,296.90 per year for the third renewal year; \$8,545.80 per year for the fourth renewal year; and \$8,802.20 per year for the fifth renewal year; **Suite 702** : \$127,433.80 per year for the first renewal year; \$131,256.80 per year for the second renewal year; \$135,194.50 per year for the third renewal year; \$139,250.40 per year for the fourth renewal year; and \$143,427.90 per year for the fifth renewal year; **Suite 703** : \$40,868.00 per year for the first renewal year; \$42,094.00 per year for the second renewal year; \$43,356.90 for the third renewal year; \$44,657.60 per year for the fourth renewal year and \$45,997.30 per year for the fifth renewal year;

**ELEVENTH:** Notwithstanding anything to the contrary herein contained, Landlord represents that as of the respective commencement dates for the Eleventh Amendment Added Spaces, the Building systems servicing the Eleventh Amendment Added Spaces, including, but not limited to, electrical, mechanical, Eleventh Amendment Added Spaces AC Systems (if any) and plumbing systems shall be in working order and, if necessary, Landlord shall deliver an ACP- 5 certificate within thirty (30) days following written request therefore.

**TWELFTH:** Tenant shall have the right, without Landlord's prior written consent, to perform the following alterations, at Tenant's cost and expense, in connection with its occupancy of the Eleventh Amendment Added Spaces ("Eleventh Amendment Alterations"): (a) demolition work to join the Eleventh Amendment Added Spaces or any part thereof with contiguous space currently leased and occupied by Tenant; (b) repair and paint interior walls and ceilings; (c) re-glaze and refinish the Eleventh Amendment Added Space floors; and (d) remove window treatments, electrical wiring or fixtures and relocate electrical outlets and conduits required in connection with the demolition work set forth herein. The Eleventh Amendment Alterations shall be performed in accordance with and subject to all of the terms and conditions set forth in the Lease, including, but not limited to, Article 10 thereof.

**THIRTEENTH:** Notwithstanding anything in this Agreement to the contrary, in lieu of Landlord performing any work in Suite 453, 702 and 703, Tenant shall receive a rent credit ("Rent Credit") in aggregate amount of \$3,000.00. Such Rent Credit shall be applied against annual base rent payable under this Agreement for the month of January, 2014. Landlord will deliver possession of the Eleventh Amendment Added Spaces vacant and in broom clean condition, with any existing cabling, wiring, carpeting and window treatments removed and shall remove the dishwasher currently in Suite 453.

**FOURTEENTH:** Tenant warrants and represents to Landlord that, other than CBRE, INC. it has not dealt with any real estate broker, agent or finder in connection with the leasing of the Eleventh Amendment Added Spaces and the other transactions described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any other broker, agent or finder with respect to this Agreement or the negotiation of the terms hereof due to the dealings of Tenant with the claimant. Landlord shall pay CBRE, INC. a commission pursuant to a separate agreement between Landlord and CBRE, INC.

Landlord   
Tenant 

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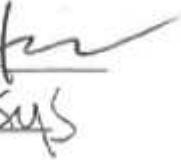
FIFTEENTH : Except as modified by this Agreement, the Lease and all covenants, agreements, terms and conditions shall remain in full force and effect and are hereby in all respects ratified and confirmed and shall be binding upon the parties hereto and their respective successors and assigns.

SIXTEENTH : This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart, each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one and the same agreement.

SEVENTEENTH : The persons executing this Agreement on behalf of Landlord and Tenant represent and warrant that they do so with full authority to bind the parties hereto to the terms, conditions and provisions hereinabove set forth.

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[SIGNATURE PAGE FOLLOWS]

Landlord   
Tenant 

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date and year written above.

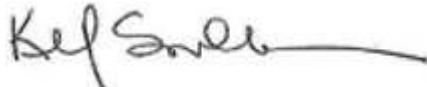
55 WASHINGTON STREET, LLC



By:

David Walentas

ETSY, INC.



By:

Name: Kristina Salen

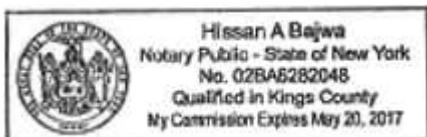
Title: CFO

State of New York

} SS:

County of

On the 7th day of April in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared Kristina Salen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



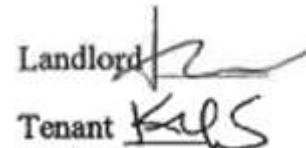
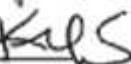
Notary Public

State of New York

} SS:

County of Kings

On the 11<sup>th</sup> day of April in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared David Walentas personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signatures on the instrument, the individuals or the person upon behalf of which the individual acted, executed the instrument.

  
Landlord  
  
Tenant

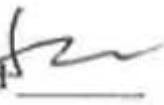


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Notary Public

SUSAN YUNG  
Notary Public, State of New York  
No. 02YU6282549  
Qualified in Queens County  
My Commission Expires: 5/28/17

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Landlord   
\_\_\_\_

Tenant   
\_\_\_\_

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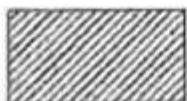
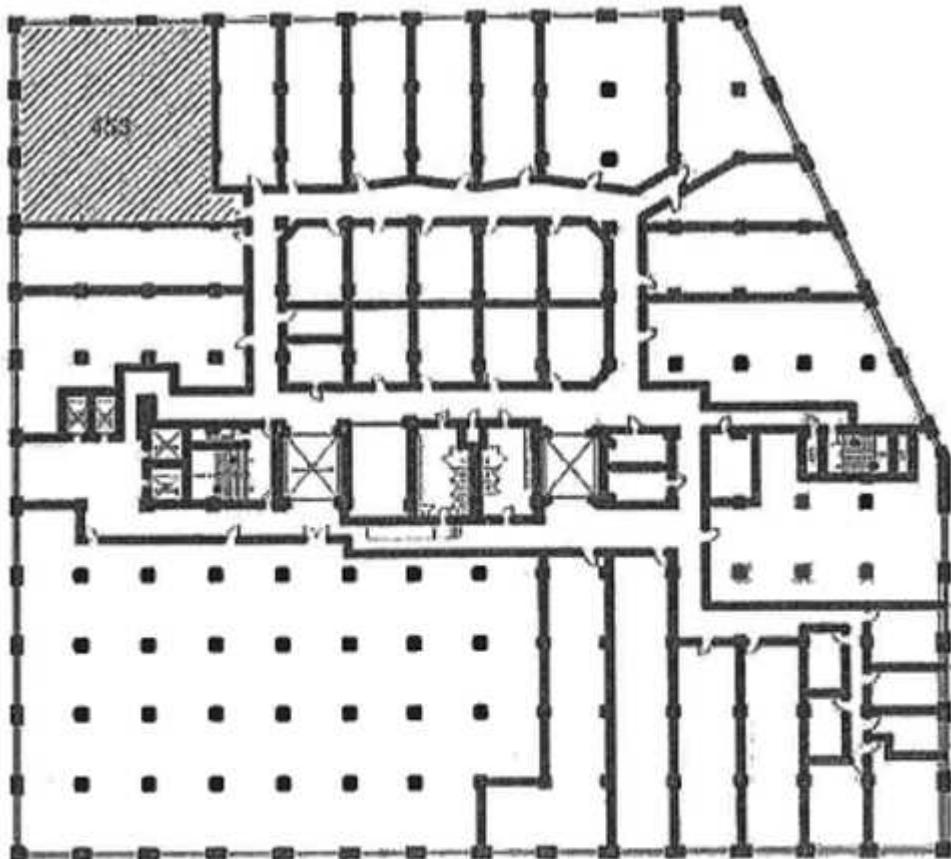
Exhibit A

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Landlord   
Tenant 

Exhibit "A"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 4th Floor

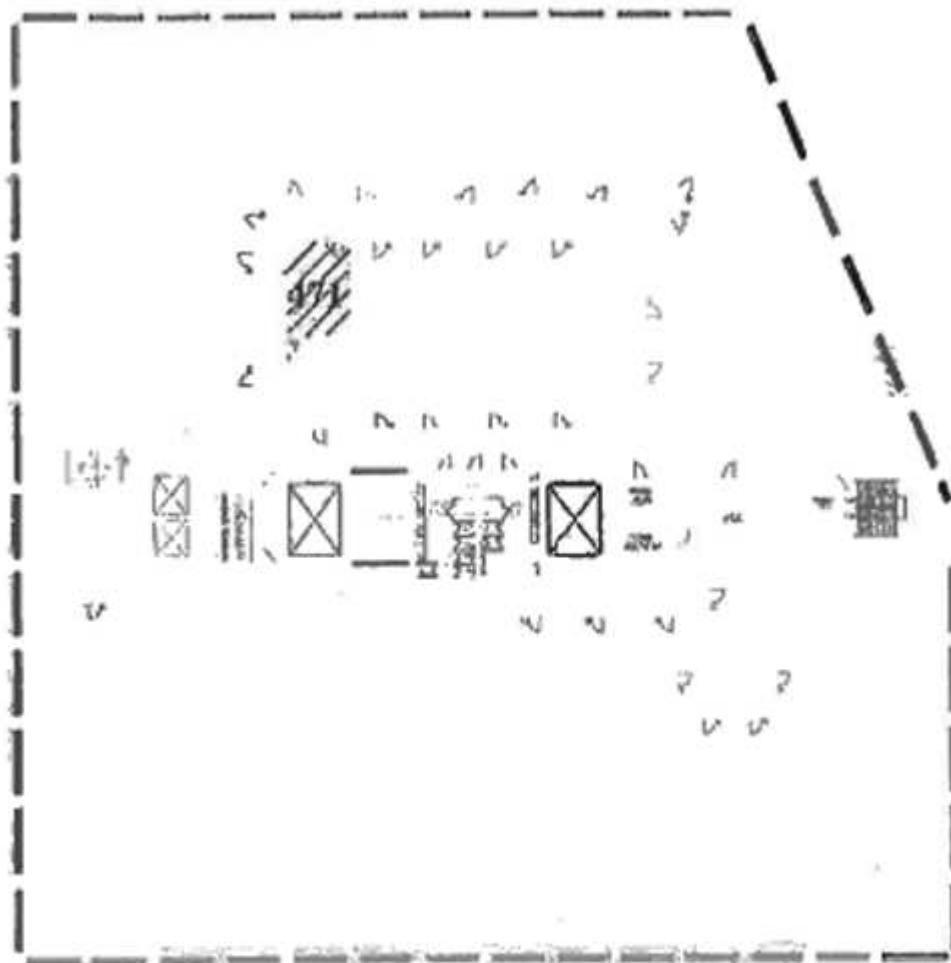


INDICATES **SUITE 453**

Please Initial: Landlord  Tenant \_\_\_\_\_

Exhibit "A"  
Diagram of the Licensed Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 4th Floor

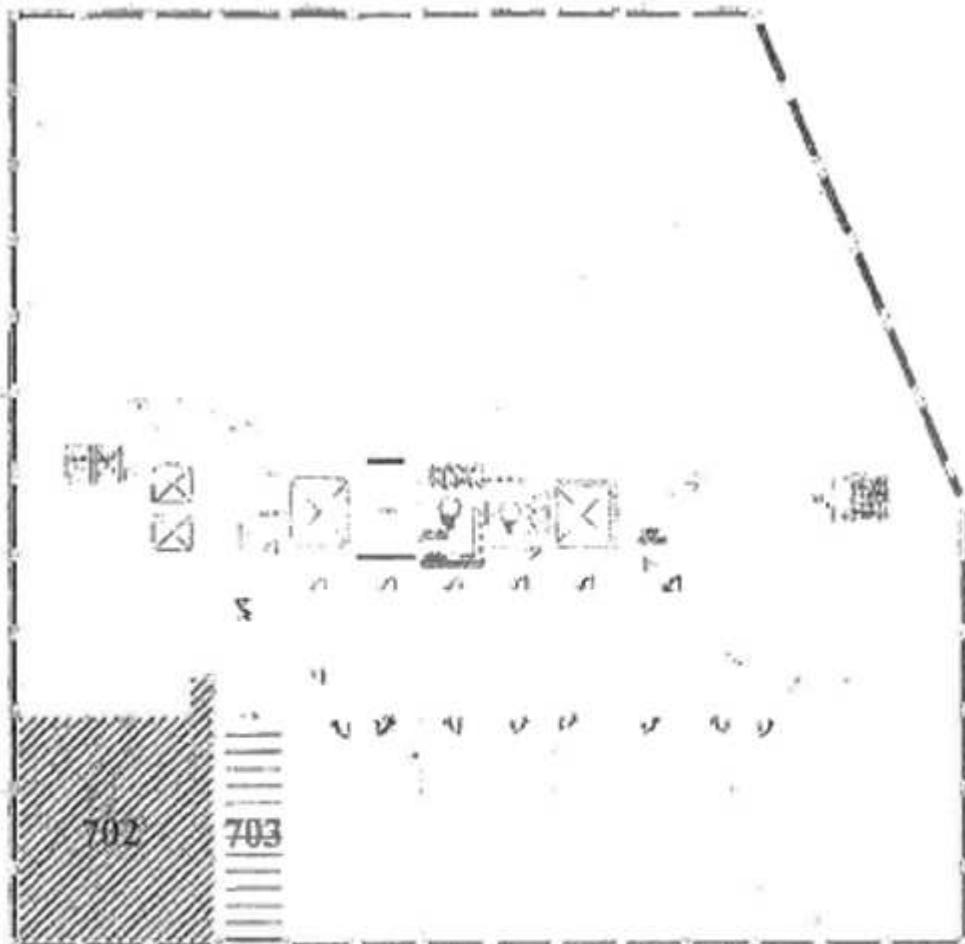


INDICATES SUITE 471

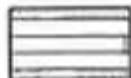
Please initial: Lessor \_\_\_\_\_ Licensee KYS

Exhibit "A"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 7th Floor



INDICATES SUITE 702



INDICATES SUITE 703

Please Initial: Landlord K Tenant \_\_\_\_\_

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## **TWELFTH AMENDMENT TO LEASE**

THIS TWELFTH AMENDMENT TO LEASE (the "Agreement"), made as of the August 1, 2014, by and between **55 WASHINGTON STREET LLC**, a limited liability company, having an office at c/o Two Trees Management Co., Inc., 45 Main Street, Suite 602, Brooklyn, New York 11201, (the "Landlord"), and **ETSY INC.**, a Delaware corporation, qualified to do business in the State of New York, having an office at 55 Washington Street, Suite 512, Brooklyn, New York 11201 (the "Tenant").

### **W I T N E S S E T H :**

WHEREAS, Landlord and Tenant entered into that certain lease dated as of April 14, 2009 (the "Lease") covering certain premises known as Suite 512, as more particularly described in the Lease and located on the fifth (5<sup>th</sup>) floor in the building (the "Building") known as 55 Washington Street, Brooklyn, New York; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of December 1, 2009 (the "First Amendment"), whereby Article 48 of the Lease was amended; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of March 1, 2010 (the "Second Amendment"), whereby Tenant temporarily leased Suite 500; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of April 1, 2010 (the "Third Amendment"), whereby Article 53 was added to the Lease; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of July 15, 2010 (the "Fourth Amendment"), whereby Tenant leased certain additional premises known as Suite 501 in the Building and extended the Term for Suite 500 through July 31, 2016; and

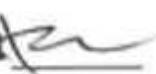
WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of October 1, 2010 (the "Fifth Amendment"), whereby an additional Article 53 was added to the Lease; and

WHEREAS, Landlord and Tenant entered into that certain lease amendment dated as of March 1, 2011 (the "Sixth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suite 502, Suite 504, Suite 561, Suite 562 and Suite 563, the Bathrooms and the Hallway located on the fifth (5<sup>th</sup>) floor of the Building; and

WHEREAS, Landlord and Tenant entered into that certain Seventh Amendment dated as of September, 2011 (the "Seventh Amendment"), whereby Tenant leased certain additional premises in the Building known as Suite 415, Suite 416, Suite 417, Suite 418, Suite 419, suite 420, suite 451 and Suite 606, and certain hallway premises located on the fourth (4<sup>th</sup>) floor of the Building; and

WHEREAS, Landlord and Tenant entered into that certain Eighth Amendment dated January 1, 2013 (the "Eighth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suites 424, 452, 453A, 558, 559, 560, 612, 614, 620, 622 and 710; and

WHEREAS, Landlord and Tenant entered into that certain License Agreement dated January 1, 2013 (the "License Agreement") for Suites 653 and 740 in the Building, which license expired by its terms in December 31, 2013, however, Suite 740 has been extended on a month to month basis until the later to occur of; (i) the date Tenant takes possession of and commences its business operation in Suites 702 and 703 or (ii) 30 days following the date of either Tenant's or Landlord's notice terminating such month-to-tenancy; and

Landlord   
Tenant 

WHEREAS, Landlord and Tenant entered into that certain Ninth Amendment dated March 21, 2013 (the "Ninth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suites 604, 608, 610, 633 and 661 in the Building;

WHEREAS, Landlord and Tenant entered into that certain Tenth Amendment executed by Tenant on December 9, 2013 (the "Tenth Amendment"), whereby Tenant leased certain additional premises in the Building known as Suites 602, 616, 632, 652, 653, 659 and 660; and

WHEREAS, Landlord and Tenant entered into that certain Eleventh Amendment dated as of April 7, 2014 (the "Eleventh Amendment"), whereby Tenant leased certain additional premises in the Building known as Suites 453, 471, 702 and 703 (the Lease, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, Seventh Amendment, Eighth Amendment, Ninth Amendment, Tenth Amendment and Eleventh Amendment are, hereinafter, collectively, referred to as the "Lease" and Suites 512, 500, 501, 712, 502, 504, 561, 562, 563, 415, 416, 417, 418, 420, 451, 606, 424, 452, 453A, 558, 559, 560, 612, 614, 620, 622, 710, 604, 608, 610, 633, 661 602, 616, 632, 652, 653, 659, 660, 453, 471, 702 and 703 are, hereinafter, collectively referred to as, the "Existing Premises"); and

WHEREAS, the parties now desire to further amend the Lease to provide for the inclusion therein of certain additional premises known as Suites 400, 459A, 459B, 460 and 469 in the Building, as shown on the attached Exhibits as Exhibit A-1, A-2, A-3, A-4 and A-5 (collectively, the "Twelfth Amendment Added Spaces"), for the same Use set forth in the Lease, upon such terms, provisions and conditions as are more particularly hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**FIRST :** Unless the context otherwise clearly indicates a contrary intent or unless specifically provided herein, each term used in this Agreement which is defined in the Lease shall be deemed to have the meaning ascribed to such term in the Lease.

**SECOND :** For a term commencing as of the date Tenant takes possession of the Twelfth Amendment Added Spaces ("12<sup>th</sup> Amend Com Date" or "CD") through and including July 31, 2016, unless sooner terminated in accordance with terms set forth herein or in the Lease, there shall be added to and included in the Existing Premises, the Twelfth Amendment Added Spaces in the Building, so that the term "demised premises" as defined in the Lease shall mean collectively, the Existing Premises and the Twelfth Amendment Added Spaces. Except as otherwise expressly set forth herein, Landlord has not made any representations as to the physical condition or any other matter affecting or relating to the Twelfth Amendment Added Spaces and Tenant specifically acknowledges that and agrees that no such representation has been made. Tenant further acknowledges that Landlord has afforded Tenant the opportunity for a full and complete investigation, examination and inspection of the Twelfth Amendment Added Spaces and Tenant agrees, that except as set forth in Sections NINTH and ELEVENTH hereof, to accept possession of the Twelfth Amendment Added Spaces in their "AS IS/WHERE IS" condition. Any and all work necessary for Tenant to operate its business in accordance with the terms of the Lease and this Agreement shall be Tenant's obligation to perform at Tenant's cost and expense.

Landlord   
Tenant 

THIRD: (A) As of the respective dates set forth below, Tenant shall pay Tenant's Percentage of Real Estate Taxes for the Twelfth Amendment Added Spaces. "Tenant's Percentage" and applicable Base Year shall be amended to include the following percentages:

9/15/14 to 7/31/16 (Suite 400):	3.03% (Base Year: 7/14-6/15)
7/1/14 to 7/31/16 (Suite 459A):	0.23% (Base Year: 7/14-6/15)
8/15/14 to 7/31/16 (Suite 459B):	0.23% (Base Year: 7/14-6/15)
8/15/14 to 7/31/16 (Suite 460):	0.34% (Base Year: 7/14-6/15)
8/15/14 to 7/31/16 (Suite 469):	0.12% (Base Year: 7/14-6/15)

(B) Tenant agrees to pay Landlord Tenant's Percentage of the total amount of any business or building improvement district charges ("BID Charges") assessed on the Real Property in each year (or portion thereof) during the term of the Lease within ten (10) days after demand is made therefore as additional rent.

FOURTH: As of the respective dates set forth below, the annual base rent payable under Article 2 of the Lease shall be amended to include the following annual base rent for the Twelfth Amendment Added Spaces:

Suite 400:

9/15/14 to 9/30/15:	\$459,000.00 p/yr — \$38,250.00 p/mo
10/1/15 to 7/31/16:	\$472,770.00 p/yr — \$39,397.50 p/mo

Suite 459A:

7/1/14 to 8/30/15:	\$33,755.00 p/yr — \$2,812.92 p/mo
9/1/15 to 7/31/16:	\$34,767.65 p/yr — \$2,897.30 p/mo

Suite 459B:

8/15/14 to 8/30/15:	\$33,454.00 p/yr — \$2,787.83 p/mo
9/1/15 to 7/31/16:	\$34,457.62 p/yr — \$2,871.47 p/mo

Suite 460:

8/15/14 to 8/30/15:	\$49,751.00 p/yr — \$4,145.92 p/mo
9/1/15 to 7/31/16:	\$51,243.53 p/yr — \$4,270.29 p/mo

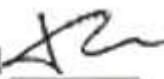
Suite 469:

8/15/14 to 8/30/15:	\$7,999.00 p/yr — \$666.58 p/mo
9/1/15 to 7/31/16:	\$8,238.97 p/yr — \$686.58 p/mo

FIFTH: As of the respective dates set forth below, Tenant shall pay the following additional amounts for monthly trash removal for ordinary trash for the Twelfth Amendment Added Spaces:

9/15/14 to 7/31/16 (Suites 400):	\$170.00 per month
7/1/14 to 7/31/16 (Suite 459A):	\$13.08 per month
8/15/14 to 7/31/16 (Suite 459B):	\$12.97 per month
8/15/14 to 7/31/16 (Suite 460):	\$19.28 per month
8/15/14 to 7/31/16 (Suite 469):	\$7.02 per month

SIXTH: As of the respective dates that Tenant takes possession of the Twelfth Amendment Added Spaces and during the Term, Tenant shall, at its own cost and expense, operate, maintain and repair the air-conditioning equipment in the Twelfth Amendment Added Spaces (each referred to as "AC System"; collectively referred to as the "Twelfth Amendment Added Spaces AC Systems") now or hereafter located in or servicing the Twelfth Amendment Added Spaces. Landlord shall replace, at its sole

Landlord   
Tenant 

cost, any Twelfth Amendment Added Spaces AC Systems if necessary and required during the Term. The electricity consumed by the Twelfth Amendment Added Spaces AC Systems shall be paid for by Tenant as set forth in the applicable provisions of the Lease. Installation of any additional air- conditioning equipment is considered an alteration and as such shall be subject to the provisions of the Lease applicable to Alterations.

SEVENTH: Tenant shall continue to pay all items of additional rent and any escalation payments provided in the Lease for the Existing Premises and Twelfth Amendment Added Spaces.

EIGHTH: Article 3 of the Lease is hereby amended so that the Security Deposit required under the Lease shall be **\$644,356.44**. Landlord is currently holding **\$594,233.30** as security. Tenant shall deposit with Landlord, concurrently with execution of this Agreement, by check made payable to **55 WASHINGTON STREET LLC**, the amount of **\$50,123.14**, which shall be held by Landlord as part of the security required under the Lease.

NINTH: Notwithstanding anything to the contrary herein contained, Landlord represents that as of the respective commencement dates for the Twelfth Amendment Added Spaces, the Building systems servicing the Twelfth Amendment Added Spaces, including, but not limited to, electrical, mechanical, Twelfth Amendment Added Spaces AC Systems (if any) and plumbing systems shall be in working order and, if necessary, Landlord shall deliver an ACP-5 certificate within thirty (30) days following written request therefore.

TENTH: Tenant shall have the right, without Landlord's prior written consent, to perform the following alterations, at Tenant's cost and expense, in connection with its occupancy of the Twelfth Amendment Added Spaces ("Twelfth Amendment Alterations"): (a) demolition work to join the Twelfth Amendment Added Spaces or any part thereof with contiguous space currently leased and occupied by Tenant; (b) repair and paint interior walls and ceilings; (c) re-glaze and refinish the Twelfth Amendment Added Space floors; and (d) remove window treatments, electrical wiring or fixtures and relocate electrical outlets and conduits required in connection with the demolition work set forth herein. The Twelfth Amendment Alterations shall be performed in accordance with and subject to all of the terms and conditions set forth in the Lease, including, but not limited to, Article 10 thereof.

ELEVENTH: Notwithstanding anything in this Agreement to the contrary, (A) in lieu of Landlord performing any work in Suites 459A, 459B and 460, Tenant shall receive a rent credit ("Rent Credit") in aggregate amount of \$5,000.00; (B) Landlord shall, at Landlord's cost and expense, deliver Suite 400 with all interior walls removed and floors finished. Such Rent Credit shall be applied against annual base rent payable under this Agreement for the month of August, 2014. Landlord will deliver possession of the Twelfth Amendment Added Spaces vacant and in broom clean condition.

TWELFTH: Tenant warrants and represents to Landlord that, other than CBRE, INC. it has not dealt with any real estate broker, agent or finder in connection with the leasing of the Twelfth Amendment Added Spaces and the other transactions described in this Agreement and Tenant agrees to indemnify, defend and hold Landlord harmless on demand from and against any and all costs, expenses or liability (including reasonable attorneys' fees) for any compensation, commissions, fees and charges claimed by any other broker, agent or finder with respect to this Agreement or the negotiation of the terms hereof due to the dealings of Tenant with the claimant. Landlord shall pay CBRE, INC. a commission pursuant to a separate agreement between Landlord and CBRE, INC.

THIRTEENTH: Tenant's execution of this Twelfth Amendment is without prejudice to the exercise of the Option to Renew in accordance with the terms of the Lease and shall include the Twelfth Amendment Added Spaces at a renewal rent of the greater of Fair Market Rental or 103% of the annual

Landlord  
Tenant *KJS*

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base rent payable for the last year of the Term for the Twelfth Amendment Added Spaces. Notwithstanding anything herein or in the Lease to the contrary, the parties acknowledge that this Option to Renew is personal to Tenant. Accordingly, if the Lease has been assigned or all or a portion of the Twelfth Amendment Added Spaces have been sublet, then the Option to Renew as applicable to the Twelfth Amendment Added Spaces shall be deemed null and void and neither Tenant nor any assignee or subtenant shall have the right to exercise such Option to Renew for the Twelfth Amendment Added Spaces.

**FOURTEENTH** : Except as modified by this Agreement, the Lease and all covenants, agreements, terms and conditions shall remain in full force and effect and are hereby in all respects ratified and confirmed and shall be binding upon the parties hereto and their respective successors and assigns.

**FIFTEENTH** : The persons executing this Agreement on behalf of Landlord and Tenant represent and warrant that they do so with full authority to bind the parties hereto to the terms, conditions and provisions hereinabove set forth.

[Balance of Page Intentionally Left Blank]

[SIGNATURE PAGE FOLLOWS]

5

Landlord   
Tenant 

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date and year written above.

**55 WASHINGTON STREET, LLC**



By:

David Walentas

**ETSY, INC.**



By:

Name: Kristina Salen

Title: CFO

State of New York

}SS:

County of Kings

On the 6<sup>th</sup> day of August in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared David Walentas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

SUSAN YUNG

Notary Public, State of New York

No. 02YU6282549

Qualified in Queens County

My Commission Expires: 5/28/17

State of New York

}SS:

County of Kings

On the 1<sup>st</sup> day of August in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared Kristina Salen personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signatures on the instrument, the individuals or the person upon behalf of which the individual acted, executed the instrument.

SARAH M. FEINGOLD

Notary Public, State of New York

No. 02FE6153435

Qualified in Kings County

Commission Expires October 02, 2014

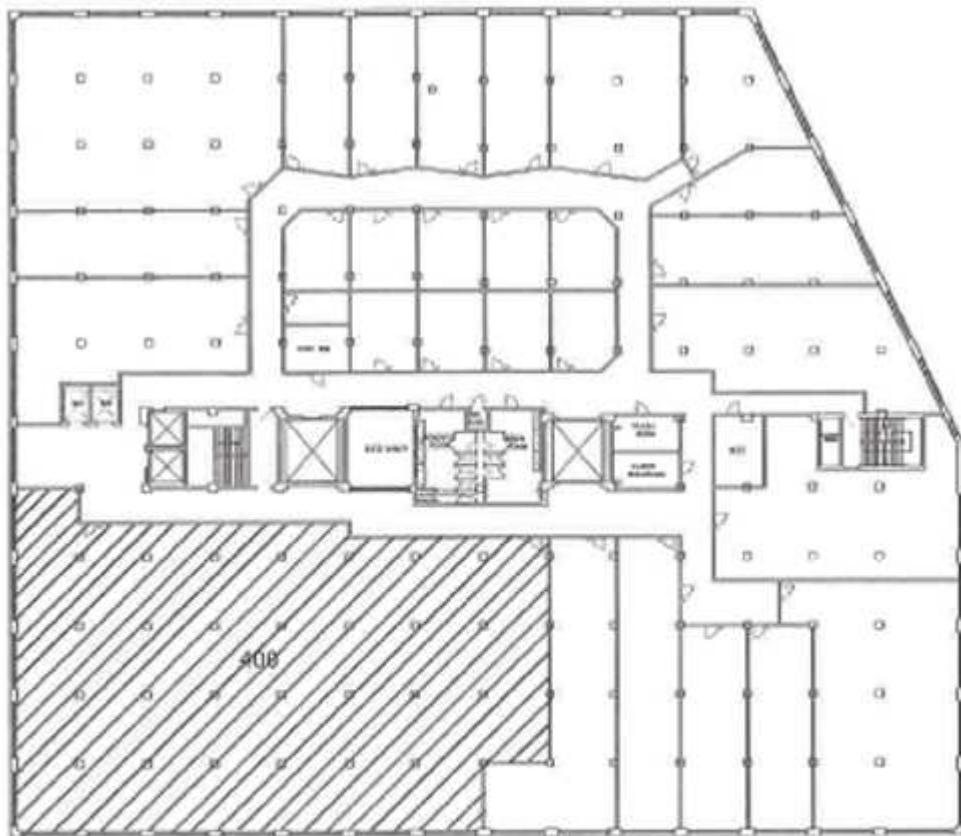


Notary Public

Landlord   
Tenant 

Exhibit "A-1"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 4th Floor

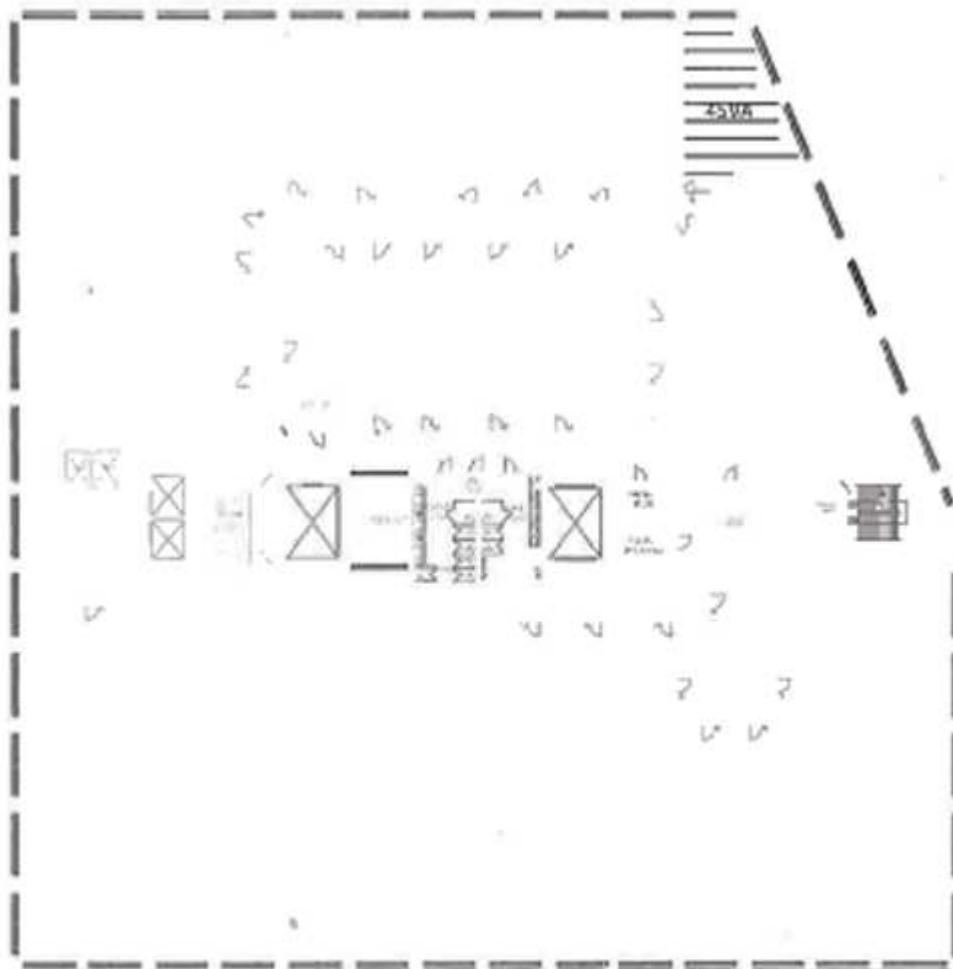


INDICATES SUITE 408

Please Initial: Landlord \_\_\_\_\_ Tenant \_\_\_\_\_

Exhibit "A-2"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 4th Floor

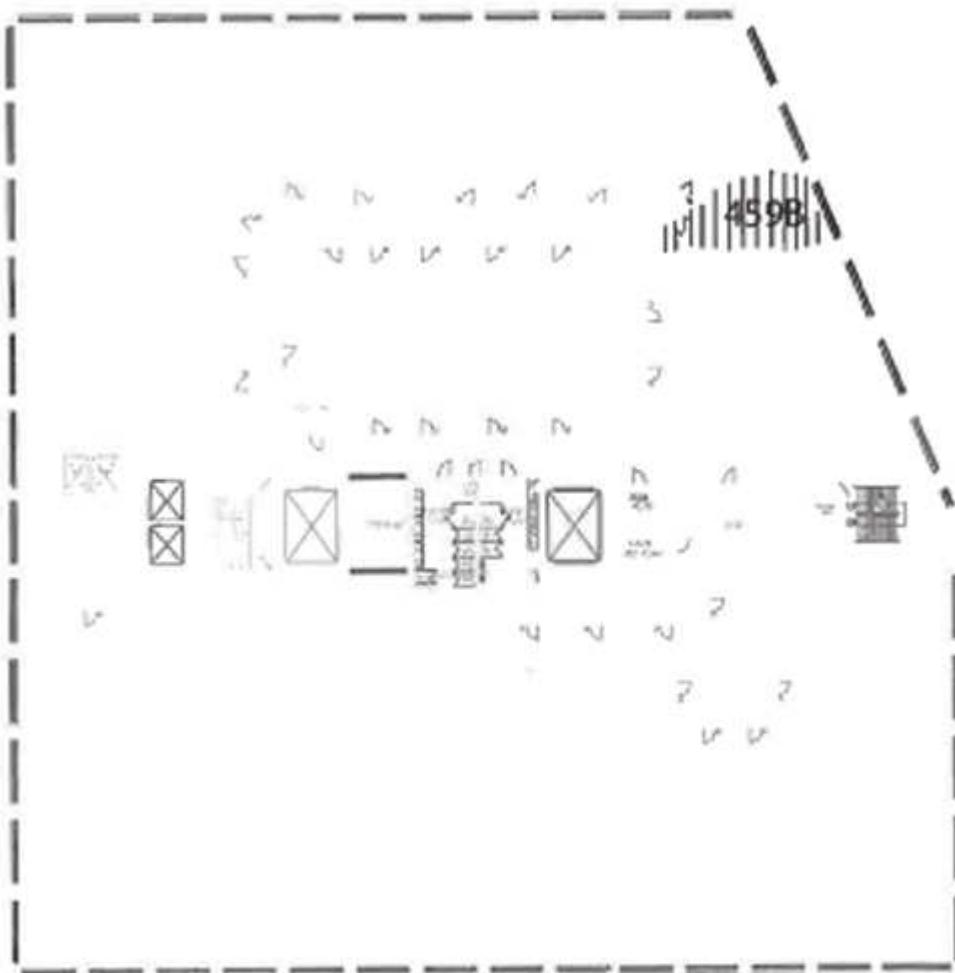


INDICATES SUITE 459A

Please initial: Landlord \_\_\_\_\_ Tenant \_\_\_\_\_

Exhibit "A-3"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 4th Floor

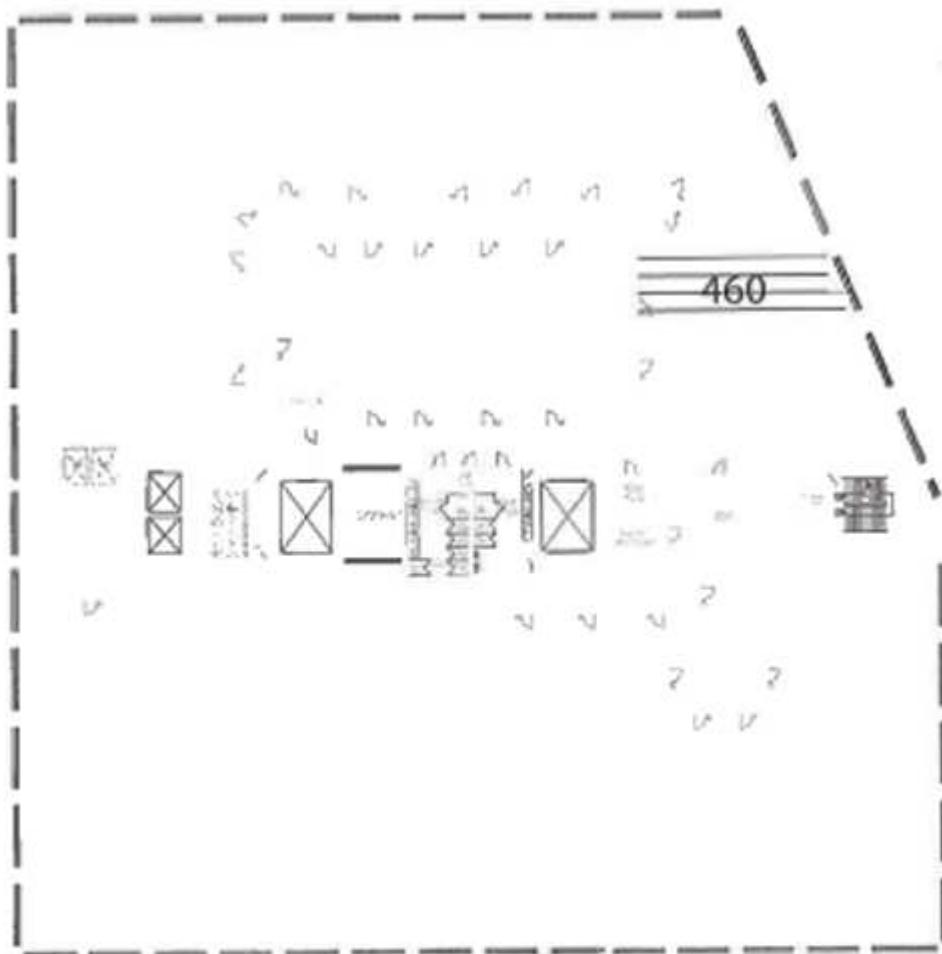


INDICATES SUITE 459B

Please Initial: Landlord \_\_\_\_\_ Tenant \_\_\_\_\_

Exhibit "A-4"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 4th Floor

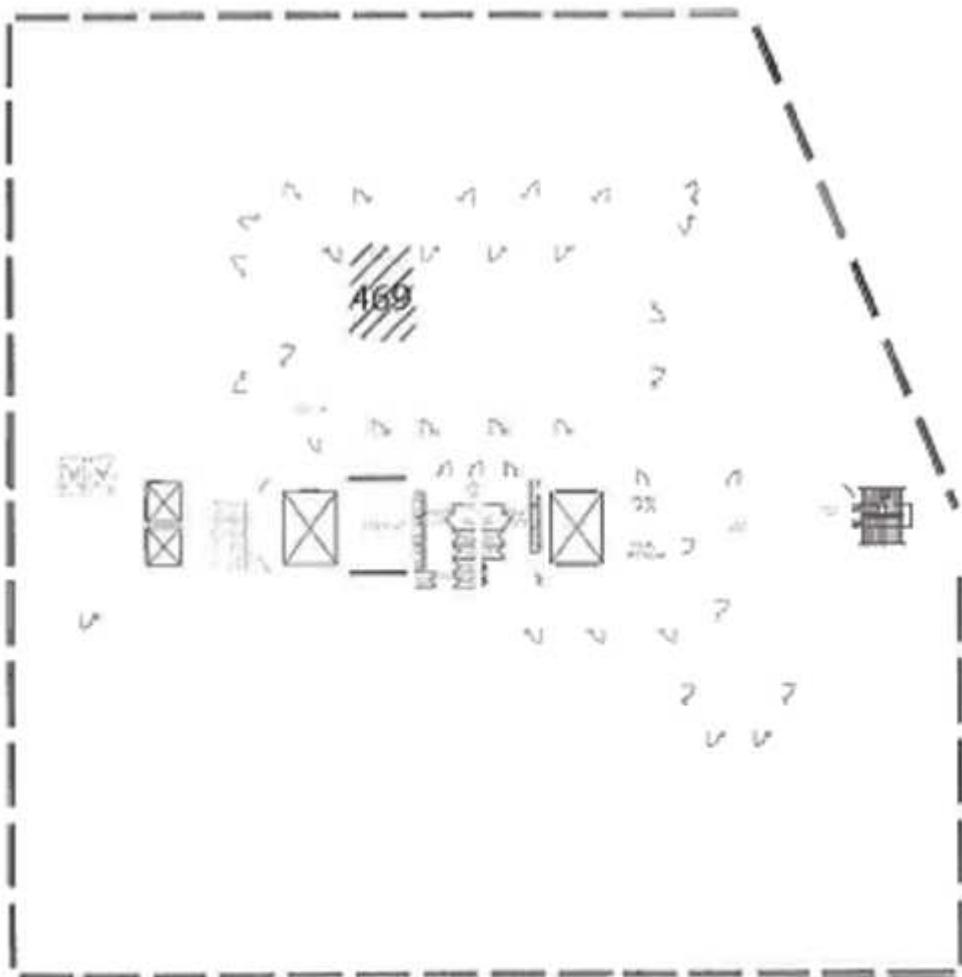


INDICATES SUITE 460

Please Initial: Landlord \_\_\_\_\_ Tenant \_\_\_\_\_ 

Exhibit "A-5"  
Diagram of the Demised Premises  
[Not to scale; all dimensions approximate; subject to actual conditions.]

55 Washington Street, 4th Floor



INDICATES SUITE 469

Please initial: Landlord  Tenant

**AGREEMENT OF LEASE**

**117 ADAMS OWNER LLC AND 55 PROSPECT OWNER LLC,**  
each a Delaware limited liability company,  
**Landlord**

And

**ETSY, INC.,**  
a Delaware corporation,  
**Tenant**

For

A portion of the ground Floor, a portion of the 2<sup>nd</sup> Floor and the entire 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Floors  
at

117 Adams Street, Brooklyn, New York  
and  
The entire 6<sup>th</sup> Floor  
at

55 Prospect Street, Brooklyn, New York

May 12, 2014

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## **SCHEDULES AND EXHIBITS**

Schedule “A”	Fixed Rent Schedule
Schedule “B”	List of Approved Contractors
Schedule “C”	HVAC Design Standards
Schedule “D”	Copies of Current Certificates of Occupancy
Schedule “E”	Form of Certificate of Insurance
Schedule “F”	Schedule of Sustainability Work
Schedule “G”	Schedule of Useable Square Footage
Exhibit “A”	Floor Plans of Premises
Exhibit “B”	Definitions
Exhibit “C”	Landlord’s Base Building Work
Exhibit “D”	Cleaning Specifications
Exhibit “E-1”	Rules and Regulations
Exhibit “E-2”	Construction Rules and Regulations
Exhibit “F”	Subordination Non-Disturbance and Attornment Agreement
Exhibit “G”	Form of Letter of Credit
Exhibits “H-1,H-2 and H-3”	Signage Exhibits
Exhibit I	Memorandum of Lease

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## **AGREEMENT OF LEASE**

**THIS AGREEMENT OF LEASE** ("Lease"), is made as of the 12<sup>th</sup> day of May, 2014, by and between **117 ADAMS OWNER LLC** ("Adams Street Owner") and **55 PROSPECT OWNER LLC** ("Prospect Street Owner"), as landlord (individually, and jointly, as the case may be, "Landlord"), each a Delaware liability company, having an office at c/o Kushner Companies, 666 Fifth Avenue, 15<sup>th</sup> Floor, New York, New York 10103 and **ETSY, INC.**, as tenant ("Tenant"), a Delaware corporation, having an office at 55 Washington Street Brooklyn, New York 11201. Landlord and Tenant hereby agree as follows:

### **ARTICLE 1**

#### **BASIC LEASE PROVISIONS**

**PREMISES:**

A portion of the ground floor lobby comprising 4,104 rentable square feet (the "Lobby Area Space"); a portion of the ground floor storage area comprising 2,044 rentable square feet (the "Storage Area Space"); a portion of the 2<sup>nd</sup> floor, comprising 15,927 rentable square feet; the entire 3<sup>rd</sup> floor, comprising 26,506 rentable square feet; the entire 4<sup>th</sup> floor, comprising 26,496 rentable square feet; the entire 5<sup>th</sup> floor, comprising 22,044 rentable square feet; the entire 6<sup>th</sup> floor, comprising 21,515 rentable square feet; the entire 7<sup>th</sup> floor, comprising 21,401 rentable square feet; the entire 8<sup>th</sup> floor, comprising 21,498 rentable square feet, and the entire 9<sup>th</sup> floor, comprising 10,600 rentable square feet at the building ("Building") located at 117 Adams Street, Brooklyn New York (collectively, the "Adams Street Premises"), and the entire 6<sup>th</sup> Floor, comprising 26,500 rentable square feet at the building located at 55 Prospect Street, Brooklyn, New York (the "Prospect Street Premises"). Landlord and Tenant hereby agree that (i) the Adams Street Premises is comprised of 172,135 rentable square feet and (ii) the Prospect Street Premises is comprised of 26,500 rentable square feet (collectively, the "Premises") and, (iii) the Premises in the aggregate is comprised of 198,635 rentable square feet, as more particularly shown on drawings annexed hereto as **Exhibit "A"** and made a part hereof. Landlord and Tenant stipulate that the number of rentable square feet in the Premises and in the Buildings is conclusive as to the square footage in existence on the date of this Lease and shall be binding upon them.

**BUILDINGS:**

The buildings, fixtures, equipment and other improvements and appurtenances now located or hereafter erected, located or placed upon the land located at 117 Adams Street Brooklyn, New York (the "Adams Street Building") and 55 Prospect Street, Brooklyn, New York (the "Prospect Street Building").

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<b>REAL PROPERTY:</b>	The Buildings, together with the plot of land upon which they stand.
<b>DUMBO HEIGHTS CAMPUS:</b>	The Buildings together with the buildings located at 77 Sands Street, 81 Prospect Street, 175 Pearl Street, each in the Borough of Brooklyn, State of New York.
<b>PERMITTED USE:</b>	General, administrative and executive offices and all other lawful use ancillary to Tenant's business, including, but not limited to, a fitness center with locker room and showers, kitchen/cafeteria, day care center, exhibition area, auditorium, workshop/woodshop, bicycle storage and for no other purpose.
<b>ADAMS STREET PREMISES COMMENCEMENT DATE:</b>	The date that is the earlier of (a) the date that Tenant, or a person acting through, or on behalf of, Tenant first occupies the Adams Street Premises for the conduct of Tenant's ordinary business, or for the performance of Tenant's Initial installations (as hereinafter defined) therein, and (b) last of the following to occur: (i) the Lease is fully executed by, and delivered to, both Landlord and Tenant, (ii) Landlord tenders to Tenant vacant possession of the Premises in the Delivery Condition (as hereinafter defined) required hereunder, (iii) Landlord notifies Tenant, in writing, that Landlord has Substantially Completed (as hereinafter defined) all Landlord's Pre-Commencement Base Building Work, and (iv) Landlord delivers to Tenant an ACP-5 Certificate in connection with Landlord's Pre-Commencement Base Building Work (the " <b>Delivery Condition</b> "), as expressly set forth on <b>Exhibit "C"</b> annexed hereto and made a part hereof, (iv) the Dual Use Elevator (as hereinafter defined) shall be fully operational and suitable for Tenant's use in connection with the performance of Tenant's Initial Installations and thereafter the use and occupancy of the Premises, and (v) March 1, 2015.
<b>PROSPECT STREET PREMISES COMMENCEMENT DATE:</b>	The date that is the earlier of (a) the date that Tenant, or a person acting through, or on behalf of, Tenant first occupies the Prospect Street Premises for the conduct of Tenant's ordinary business, or for the performance of Tenant's Initial installations therein, and (b) last of the following to occur: (i) the Lease is fully executed by, and delivered to, both Landlord and Tenant, (ii) Landlord tenders to Tenant vacant possession of the Premises in the Delivery Condition (as hereinafter defined) required hereunder, (iii) Landlord notifies Tenant, in writing, that Landlord has Substantially Completed (as hereinafter defined) all Landlord's Pre-Commencement Base Building Work, and (iv) Landlord delivers to Tenant an ACP-5 Certificate in connection with

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Landlord's Pre-Commencement Base Building Work (the " **Delivery Condition** "), as expressly set forth on **Exhibit C** annexed hereto and made a part hereof, (iv) at least one (1) elevator shall be operational for Tenant's use in connection with the performance of Tenant's Initial Installations, and (v) July 1, 2015. The Adams Street Premises Commencement Date and the Prospect Street Premises Commencement Date are, from time to time, hereinafter collectively referred to as applicable, the " **Commencement Date** ").

**ADAMS STREET PREMISES RENT COMMENCEMENT DATE:**

The date that is nine (9) months immediately following the Adams Street Premises Commencement Date, subject to extension as set forth in **Section 2.2** and **Section 4.1** .

**PROSPECT STREET PREMISES RENT COMMENCEMENT DATE:**

The date that is nine (9) months immediately following the Prospect Street Premises Commencement Date, subject to extension as set forth in **Section 2.2** and **Section 4.1** . The Adams Street Premises Rent Commencement Date and the Prospect Street Premises Rent Commencement Date are, from time to time, hereinafter collectively referred to as applicable the " **Rent Commencement Date** ".

**EXPIRATION DATE:**

If, the Adams Street Premises Rent Commencement Date, or the Prospect Street Premises, shall be the first day of a calendar month, then the date which is the day immediately preceding the ten (10) year anniversary of the later of the Adams Street Premises Rent Commencement Date, or the Prospect Street Premises Rent Commencement Date shall occur; otherwise, the last day of the month in which the ten (10) year anniversary of the later to occur of the Adams Street Premises Rent Commencement Date and the Prospect Street Premises Rent Commencement Date.

**TERM:**

The period commencing on the Commencement Date first occurring hereunder and ending on the Expiration Date unless sooner terminated in accordance with the terms and conditions of this Lease or pursuant to law, or extended pursuant to the terms of this Lease.

**INTEREST RATE:**

The lesser of (i) 3% per annum above the then-current Base Rate, and (ii) the maximum rate permitted by applicable law.

**BASE TAXES:**

With respect to the Adams Street Building, Taxes payable for the Tax Year (as hereinafter defined) commencing on July 1, 2020 and ending on June 30, 2021 (the " **Adams Base Tax Year** "), and with respect to the Prospect Street Building, Taxes payable for

the Tax Year commencing on July 1, 2016 and ending on June 30, 2017 (the “**Prospect Base Tax Year**”). The term “**Base Tax Year**” as used in this Lease shall be deemed to refer the Adams Base Tax Year or Prospect Base Tax Year, as applicable, and the term “**Base Taxes**” as used in this Lease shall be deemed to refer to the Base Taxes for the Adams Street Building or the Base Taxes for the Prospect Street Building, as applicable.

**AGREED AREA OF  
ADAMS STREET  
BUILDING:**

183,297 rentable square feet.

**AGREED AREA OF  
PROSPECT STREET  
BUILDING:**

254,356 rentable square feet.

**TENANT’S  
PROPORTIONATE  
SHARE:**

93.910% with respect to the Adams Street Premises and 10.418% with respect to the Prospect Street Premises.

**LANDLORD’S BASE  
BUILDING WORK:**

Landlord’s Pre-Commencement Base Building Work together with Landlord’s Post-Commencement Base Building Work, as each is set forth on **Exhibit “C”** annexed hereto and made a part hereof.

**FIXED RENT:**

As set forth on **Schedule “A”** annexed hereto and made a part hereof.

**SECURITY:**

Subject to adjustment, if any, as set forth in **Section 27.8** hereof, Five Million Three Hundred Forty Thousand Six Hundred Sixty- One and 00/100 (\$5,340,661.00) Dollars, in the form of an Irrevocable Standby Letter of Credit complying with the requirements of **Article 27** hereof.

**TENANT’S  
ADDRESS FOR  
NOTICES:**

Until Tenant commences business operations at the Premises:

55 Washington Street, Suite 512, Brooklyn, New York 11201

Attn: Josh Wise

With a copy to:

Attn: Legal Department, Hissan Bajwa

Thereafter:

117 Adams Street, Brooklyn, New York 11201:

Attn: Josh Wise

With a copy to:

Attn: Legal Department, Hissan Bajwa

**LANDLORD'S  
ADDRESS FOR  
NOTICES:**

117 Adams Owner, LLC and 55 Prospect Owner, LLC  
c/o Kushner Companies  
666 Fifth Avenue, 15<sup>th</sup> Floor  
New York, New York 10103  
Attn: Leasing Department  
Attn: General Counsel

With a copy to:  
RFR Holding LLC  
390 Park Avenue, 3<sup>rd</sup> Floor  
New York, New York 10022  
Attn: Mr. Michael Fuchs and Mr. Frank Mangieri

With a copy to:  
INVESCO Real Estate  
1166 Avenue of the Americas  
26<sup>th</sup> floor  
New York, New York 10036  
Attn: Mr. James Gillen

**TENANT'S  
BROKER:**

CBRE, Inc.

**LANDLORD'S  
AGENT:**

Watchtower Leasing, LLC

## **ARTICLE 2**

### **PREMISES, TERM, RENT**

**Section 2.1 Lease of Premises .** Subject to the terms of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises as described in **Article 1** for the Term. In addition, Tenant shall have a right to use, on a non-exclusive basis and in common with other tenants, the Common Areas (as hereinafter defined).

**Section 2.2 Commencement Date .** The Term shall commence on the Commencement Date and (unless sooner terminated or extended as hereinafter provided), shall end on the Expiration Date. Except as hereinafter expressly provided, if Landlord does not tender possession of the Premises to Tenant on or before any specified date, for any reason whatsoever, Landlord shall not be liable for any damage thereby, this Lease shall not be void or voidable thereby, and the Term shall not commence until Landlord tenders possession of the Premises to Tenant in the Delivery Condition. Notwithstanding anything to the contrary contained herein, if the Commencement Date does not occur before August 1, 2015 (the “**Target Commencement Date**”), then the Adams Street Rent Commencement Date and/or the Prospect Street Rent Commencement Date, as applicable shall be extended by (i) one (1) calendar day (after the date on which it would otherwise have occurred) for each calendar day beginning on the day immediately after the Target Commencement Date

until the earlier to occur of (x) the Commencement Date, and (y) the forty-fifth (45<sup>th</sup>) day immediately following the Target Commencement Date, (ii) one and one-half (1 1/2) calendar days (after the date on which it would otherwise have occurred) for each calendar day beginning on the forty-sixth (46<sup>th</sup>) day after the Target Commencement Date until the earlier to occur of (x) the Commencement Date, and (y) the seventy-fifth (75<sup>th</sup>) day immediately following the Target Commencement Date, and (iii) two (2) calendar days (after the date on which it would otherwise have occurred) for each calendar day beginning on the ninety-first (91<sup>st</sup>) day after the Target Commencement Date until the Commencement Date has occurred; it being understood and agreed that the Adams Street Rent Commencement Date shall only be extended as aforesaid if the Adams Street Premises Commencement Date does not occur by the Target Commencement Date, and the Prospect Street Rent Commencement Date shall only be extended as aforesaid if the Prospect Street Commencement Date does not occur by the Target Commencement Date. To the extent that Landlord's achievement of the Commencement Date is delayed by reason of Tenant Delay and/or Unavoidable Delay (as each such term is hereinafter defined), the applicable deadline shall be extended by such Tenant Delay and/or Unavoidable Delay. The provisions of this **Section 2.2** are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law or any successor Requirement. Promptly after the Commencement Date, Landlord shall deliver to Tenant a "**Commencement Letter**" setting forth the Commencement Date, the Rent Commencement Date, and the Expiration Date provided that the failure of Tenant to execute the Commencement Letter shall not defer the Commencement Date or Rent Commencement Date or Expiration Date, otherwise affect or invalidate this Lease. If Tenant disputes the dates set forth in the Commencement Letter, Tenant shall notify Landlord within ten (10) Business Days of its receipt of the Commencement Letter. If within ten (10) Business Days after Landlord's receipt of Tenant's notice, Landlord and Tenant cannot agree on the Commencement Date, or the Rent Commencement Date or the Expiration Date, then the Commencement Date, Rent Commencement Date and the Expiration Date, as the case may be, shall be determined by "quick" arbitration, conducted by a three (3) member panel, in accordance with the rules and regulations of the American Arbitration Association in the borough of Manhattan, City of New York. If Tenant does not dispute the dates set forth in the Commencement Letter, in writing, within the foregoing ten (10) Business Day period, then Landlord shall provide Tenant with a second written request (a "**CD Letter Second Request**"), which shall set forth in bold capital letters the following statement: "**IF TENANT FAILS TO APPROVE OR DISAPPROVE THE COMMENCEMENT DATE OR RENT COMMENCEMENT DATE OR EXPIRATION DATE SET FORTH IN THE COMMENCEMENT LETTER WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN TENANT SHALL BE DEEMED TO HAVE AGREED TO SAME.**" In the event that Tenant fails to approve or disapprove the Commencement Date, Rent Commencement Date or Expiration Date within five (5) Business Days after Tenant's receipt of the CD Second Letter Request, then such dates shall be deemed to be the Commencement Date, Rent Commencement Date, and/or the Expiration Date set forth in the Commencement Letter for all purposes of this Lease, with such determination being conclusive and binding on Tenant without the requirement of acknowledgement written or otherwise on the part of Tenant.

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**Section 2.3 Payment of Rent**. Tenant shall pay to Landlord, without notice or demand, and without any set-off, counterclaim, abatement or deduction whatsoever, except as may be expressly set forth in this Lease, in lawful money of the United States by check or by wire transfer of funds, (i) Fixed Rent, as set forth on **Schedule “A”**, in equal monthly installments, in advance, on the first day of each month during the Term, commencing on the Rent Commencement Date, and (ii) Additional Rent commencing on the Rent Commencement Date (subject to the provisions of **Article 7** hereof), at the times and in the manner set forth in this Lease.

**Section 2.4 First Month’s Rent**. Tenant shall upon its execution of this Lease pay to Landlord, by check or wire transfer of funds, one month’s Fixed Rent, in the amount of \$875,452.50 (“**Advance Rent**”). If the Rent Commencement Date is (i) the first day of a calendar month, the Advance Rent shall be credited towards the Fixed Rent payment for the first calendar month of the Term, or (ii) not the first day of a calendar month, then on the Rent Commencement Date Tenant shall pay Fixed Rent for the period from the Rent Commencement Date through the last day of such month, and the Advance Rent shall be credited towards Fixed Rent for the next succeeding calendar month.

**Section 2.5 Tenant’s Existing Lease Obligation Rent Credit**. Tenant currently leases certain premises in the building located at 55 Washington Street, Brooklyn, New York, the term of which may overlap to some extent with the term of this Lease. In consideration of entering into this Lease, Landlord hereby agrees that Tenant shall be entitled to an abatement of Rent (the “**Existing Lease Rent Abatement**”) (which Existing Lease Rent Abatement shall be in addition to the Rent that shall be abated during the period commencing on the Commencement Date through and including the date immediately preceding the Rent Commencement Date), in the aggregate amount of One Million Seven Hundred Forty-Eight Thousand and 00/100 (\$1,748,000.00) Dollars. The amount of the Existing Lease Rent Abatement shall be applied against the next installments of Rent becoming due immediately following the Adams Street Rent Commencement Date until fully utilized, and shall be in addition to (and shall not run concurrent with) all other abatements and credits against Rent set forth in this Lease.

**Section 2.6 (a) 5<sup>th</sup> Floor Prospect Street Premises.** (a) Tenant shall have the option (the “**5<sup>th</sup> Floor Prospect Street Premises Option**”), exercisable by Tenant delivering irrevocable notice to Landlord (the “**5<sup>th</sup> Floor Prospect Street Notice**”), no later than June 30, 2014 TIME OF THE ESSENCE, to lease the entirety of the 5<sup>th</sup> floor at the Prospect Street Building consisting of 26,500 rentable square feet (the “**5<sup>th</sup> Floor Prospect Street Premises**”), for the period commencing on the date that is the later to occur of (i) the Commencement Date and (ii) the date on which Landlord delivers to Tenant the 5th Floor Prospect Street Premises in the Delivery Condition (the “**5<sup>th</sup> Floor Prospect Street Premises Commencement Date**”) through and including the Expiration Date, as the same may be extended, upon the same terms and conditions as

contained in this Lease, as if the 5<sup>th</sup> Floor Prospect Street Premises was part of the Premises initially leased to Tenant hereunder (the “**Initial Premises**”), including, without limitation, the following material lease terms: (x) the amount of the Fixed Rent payable for the 5<sup>th</sup> Floor Prospect Street Premises, on a rentable square foot basis, shall be the same amount of Fixed Rent, on a square foot basis, payable for the Premises during the Term, as the same may be extended, (y) Landlord shall with respect to the 5<sup>th</sup> Floor Prospect Street Premises provide Tenant with (1) an abatement of Rent for the period commencing the 5<sup>th</sup> Floor Prospect Street Premises Commencement Date through and including the date immediately preceding the nine (9) month anniversary thereof (the “**5<sup>th</sup> Floor Initial Rent Abatement Period**”), and (2) in lieu of a work allowance, additional free Rent in the amount of One Million Three Hundred Fifty-Two Thousand Five Hundred and 00/100 (\$1,352,500.00) Dollars (the “**Additional 5<sup>th</sup> Floor Rent Abatement**”); provided that in no event shall the Additional 5<sup>th</sup> Floor Rent Abatement exceed the amount of hard and soft construction costs incurred by Tenant in connection with Tenant’s Initial Installations. The Additional 5<sup>th</sup> Floor Rent Abatement shall be applied against the next installment(s) of Rent becoming due immediately following the expiration of the 5<sup>th</sup> Floor Initial Rent Abatement Period until fully utilized, and shall be in addition to (and shall not run concurrent with) all other abatements and credits against Rent set forth in this Lease.

(b) If Tenant fails to timely give the 5<sup>th</sup> Floor Prospect Street Notice as provided in **Section 2.6** (a), then subject to the provisions of Section 2.6(d), Tenant shall lease the 5<sup>th</sup> Floor Prospect Street Premises, effective as of the date that is the later to occur of (x) the date specified by in the 5<sup>th</sup> Floor Commencement Date Notice, any (y) the date on which Landlord delivers possession of the 5<sup>th</sup> Floor Prospect Street Premises to Tenant in the Delivery Condition (the latter of such dates, the “**5<sup>th</sup> Floor Prospect Street Premises Must Take Commencement Date**”) through and including the Expiration Date as the same may be extended, upon the same terms and conditions contained in this Lease, as if the 5<sup>th</sup> Floor Prospect Street Premises were part of the Initial Premises except that (i) the Fixed Rent payable for 5<sup>th</sup> Floor Prospect Street Premises shall be in an amount equal to the Fixed Rent then payable for the Premises, on a per rentable square foot basis, on the 5<sup>th</sup> Floor Prospect Street Premises Must Take Commencement Date, (ii) in lieu of receiving a work allowance, Tenant shall be entitled to additional free rent in the amount of the Additional 5<sup>th</sup> Floor Rent Abatement, provided that if Landlord has performed the work necessary to improve the bathrooms at the 5<sup>th</sup> Floor Prospect Street Premises, in a Building standard manner, using Building standard materials consistent with the standards adopted by the Landlord for the Buildings, prior to 5<sup>th</sup> Floor Prospect Street Must Take Commencement Date then the Additional 5<sup>th</sup> Floor Rent Abatement shall be reduced by One Hundred Twenty Thousand and 00/100 (\$120,000.00) Dollars, and/or if Landlord has installed the heating element(s), in a Building standard manner, using Building standard materials consistent with the standards adopted by the Landlord for the Buildings at the 5<sup>th</sup> Floor Prospect Street Premises prior to 5<sup>th</sup> Floor Prospect Street Must Take Commencement Date, then the Additional 5<sup>th</sup> Floor Rent Abatement shall be reduced by Forty Thousand and 00/100 (\$40,000.00) Dollars and (iii) Tenant shall be entitled to an abatement of Rent for the period commencing the 5<sup>th</sup> Floor Prospect Street Premises Must Take Commencement Date through and including the date immediately preceding the date

which is four (4) months immediately thereafter (the “**5<sup>th</sup> Floor Must Take Initial Rent Abatement Period**”); it being understood and agreed that Additional Floor Rent Abatement shall be applied against the next installment(s) of Rent becoming due immediately following the expiration of the 5<sup>th</sup> Floor Must Take Initial Rent Abatement Period. Tenant shall indicate the 5<sup>th</sup> Floor Prospect Street Must Take Commencement Date (which date shall in no event be later than January 1, 2019) in a notice to Landlord delivered on or prior to December 31, 2017 (the “**5<sup>th</sup> Floor Commencement Notice**”). If Tenant fails to deliver the 5<sup>th</sup> Floor Commencement Notice to Landlord on or prior to December 31, 2017, then the 5<sup>th</sup> Floor Prospect Street Must Take Commencement Date shall be deemed to be January 1, 2019.

(c) Effective on the 5<sup>th</sup> Floor Prospect Street Premises Commencement Date or the 5<sup>th</sup> Floor Prospect Street Premises Must Take Commencement Date, as the case may be, the 5<sup>th</sup> Floor Prospect Street Premises shall be deemed to be part of the Premises, so that effective on such applicable date, the word Premises shall be deemed to include the 5<sup>th</sup> Floor Prospect Street Premises for all purposes of this Lease including, without limitation, for purposes of calculating (i) the Fixed Rent for the Premises, and (ii) the number of square feet then comprising the Premises, and (iii) Tenant’s Proportionate Share, and (iv) an adjustment of the amount of Additional 5<sup>th</sup> Floor Rent Abatement.

(d) Notwithstanding any language to the contrary contained in Section 2.6(b) and (c), if Landlord shall fail to deliver possession of the 5<sup>th</sup> Floor Prospect Street Premises to Tenant in the Delivery Condition as of the date that is six (6) months following the 5<sup>th</sup> Floor Prospect Street Must Take Commencement Date set forth in the 5<sup>th</sup> Floor Commencement Date Notice (the “**Must Take Inclusion Outside Date**”), then Tenant may elect to vitiate Tenant’s obligation to lease the 5<sup>th</sup> Floor Prospect Street Premises, by giving Landlord notice thereof (a “**Vitiation Notice**”) at any time following the Must Take Inclusion Outside Date but prior to the date that Landlord delivers possession of the 5<sup>th</sup> Prospect Street Premises to Tenant in the Delivery Condition. If Tenant’s sends a Vitiation Notice in accordance with the provisions of this Section 2.6(d), then Tenant shall have no obligation to lease the 5<sup>th</sup> Floor Prospect Street Premises and the provisions of Section 2.6(b) and (c) shall be rendered void *ab initio* and of no force and effect.

**Section 2.7 Sands Street Sidewalk Expansion**. Promptly following the date of this Lease, Landlord shall apply to the Department of Transportation of the City of New York for the purpose of expanding the width of the sidewalk on Sands Street between Adams Street and Pearl Street (the “**Sands Street Sidewalk Expansion**”). Landlord shall use commercially reasonable efforts to obtain the Sands Street Sidewalk Expansion. In the event Landlord is successful in its application to obtain the Sands Street Sidewalk Expansion, Landlord shall, at no additional cost to Tenant, to the extent legally permissible, provide Tenant, at Tenant’s sole option, with a portion, determined in Landlord’s sole discretion, of such increased sidewalk area for Tenant’s exclusive use (“**Tenant’s Sidewalk Area**”). Tenant must exercise such election within thirty (30) days of Tenant’s receipt of notice from Landlord indicating that the Sands Street Sidewalk Expansion has been obtained, which notice shall include a designation of Tenant’s

Sidewalk Area and Landlord's estimate of the costs to be incurred in connection with the Sands Street Sidewalk Expansion. If Tenant so elects to take the Tenant's Sidewalk Area, then Landlord shall deliver same to Tenant in compliance with all applicable Requirements, including free of violations, and Tenant shall be responsible for its proportionate share of all reasonable out-of-pocket costs incurred by Landlord in connection with the Sands Street Sidewalk Expansion. Tenant hereby acknowledges and agrees that (i) any costs and expenses associated with Tenant's improvement, alteration and/or use of Tenant's Sidewalk Area including, without limitation, any permits, licenses or modification of the same, shall be at Tenant's sole cost and expense, (ii) Tenant shall, at its cost and expense, be responsible for the maintenance and repair, if necessary of Tenant's Sidewalk Area, and for compliance with all applicable Requirements in connection with Tenant's use of Tenant's Sidewalk Area (except to the extent of Landlord's obligation set forth above to deliver same to Tenant in compliance with Requirements and free of violations), (iii) Landlord shall have no obligations whatsoever in connection with (i),(ii) and (iii) of this **Section 2.7**, and (iv) Tenant shall indemnify and save harmless Landlord and/or Landlord's Indemnitees (as hereinafter defined) from any and all liability, damages, cost, expenses, fees (including reasonable attorneys' fees) which Landlord and/or Landlord's Indemnitees may suffer in connection with Tenant's improvement, maintenance and/or use of Tenant's Sidewalk Area. Notwithstanding anything to the contrary contained in this **Section 2.7**, in the event Landlord's application for Sands Street Sidewalk Expansion is denied, this Lease shall nevertheless remain in full force and effect in accordance with its terms and conditions.

**Section 2.8 Sky Bridges**. Subject to the provisions of this **Section 2.8**, Tenant shall have the exclusive right to use the sky bridges that connect the 5<sup>th</sup> floor and 6<sup>th</sup> floor of the Adams Street Building to the corresponding 5<sup>th</sup> floor and 6<sup>th</sup> floor of the Prospect Street Building (collectively, the " **Sky Bridges** ") as a convenience passageway between the Premises; provided and on the condition that (i) Tenant leases the applicable corresponding floor in both Buildings, and (ii) Landlord has obtained any applicable governmental consent, license or other approval that permits the use of the Sky Bridges as contemplated hereunder (collectively, " **Sky Bridge Consent** "). Landlord shall use commercial reasonable efforts to apply for and obtain the Sky Bridge Consent, including any required renewals thereof. The Sky Bridges shall not be deemed part of the Premises, and Landlord shall, at its sole cost and expense, be responsible for the repair and maintenance thereof except to the extent any such repair or maintenance is required as a result of the negligence or willful misconduct of Tenant. With respect to the sky bridge that connects the 6<sup>th</sup> floor of the Adams Street Building to the 6<sup>th</sup> floor of the building located at 77 Sands Street (the " **Sands Street Building** "), Landlord shall, at its sole cost and expense, install a rated hollow metal door at the entrance of either or both of the 6<sup>th</sup> floor of the Adams Street Building or Sands Street Building so that access through such sky bridge between the Sands Street Building and Adams Street Building shall be closed off.

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## ARTICLE 3

### USE AND OCCUPANCY

Tenant shall use and occupy the Premises for the Permitted Uses and for no other purpose. Tenant shall not use or occupy or permit the use or occupancy of any part of the Premises in a manner constituting a Prohibited Use (as hereinafter defined). If Tenant uses the Premises for a purpose constituting a Prohibited Use, violating any Requirement (as hereinafter defined), or causing the Buildings to be in violation of any Requirement, then Tenant shall promptly discontinue such use upon notice from Landlord of such violation. Tenant, at its expense, shall procure and at all times maintain and comply with the terms and conditions of all licenses and permits required for the lawful conduct of the Permitted Uses in the Premises. Landlord shall, at no cost or expense to Landlord, cooperate with Tenant in connection with Tenant's obtaining of any such governmental license or permit (including any permit required in connection with Tenant's Alterations, including Tenant's Initial Installations) or any application by Tenant for any amendment or modification to the Certificate of Occupancy for the Building (including the Zero Occupancy TCO), and Landlord shall reasonably promptly execute and deliver any applications, reports or related documents as may be requested by Tenant in connection therewith, provided that Tenant shall reimburse Landlord, as Additional Rent, for the reasonable out-of-pocket costs and expenses incurred by Landlord in connection with such cooperation within thirty (30) days after demand therefore, accompanied by reasonably satisfactory documentation of such costs and expenses.

## ARTICLE 4

### CONDITION OF THE PREMISES; ADDITIONAL RENT CREDIT

**Section 4.1 Condition .** Tenant has inspected the Premises and agrees (a) to accept possession of the Premises on the Commencement Date in the Delivery Condition, and (b) except for the Free Rent Credits (as hereinafter defined) and Landlord's Pre-Commencement Base Building Work, Landlord has no obligation to perform any work, supply any materials, incur any expense or make any alterations or improvements to the Premises in order to prepare the same for Tenant's initial occupancy on the Commencement Date. Except for Landlord's Pre-Commencement Base Building Work and Landlord's Post-Commencement Base Building Work which shall be performed by Landlord, at Landlord's sole cost and expense, any work to be performed by Tenant in connection with Tenant's initial occupancy of the Premises shall be hereinafter referred to as the "**Tenant's Initial Installation s**". Promptly following Landlord's Substantial Completion of Landlord's Pre-Commencement Base Building Work and Landlord's Post-Commencement Building Work, as the case may be, Landlord and Tenant shall jointly inspect the Premises (each a "**Joint Inspection**") and prepare and execute a list of Punch List Items. Subject to Landlord's obligation to complete any Punch List Items relating to the Pre-Commencement Base Building Work, Tenant's occupancy of any portion of the Premises shall be conclusive evidence, as against Tenant, that Tenant has accepted possession of the Premises, in its then

current condition and at the time such possession was taken, the Premises was in the Delivery Condition, and the obligation to complete such Punch List Items shall not affect the occurrence of the Commencement Date and/or the Rent Commencement Date. If Landlord's Post-Commencement Base Building Work, or a portion of Landlord's Post-Commencement Base Building Work, as the case may be, is not Substantially Completed by October 1, 2015, then the Fixed Rent, or a portion of the Fixed Rent, as the case may be, calculated on the basis of the percentage of the Premises for which Landlord's Post-Commencement Base Building Work was not Substantially Completed by October 1, 2015, shall be abated on a per diem basis, for each calendar day beginning on October 1, 2015 until the date that Landlord's Post-Commencement Base Building Work, or such portion of Landlord's Post-Commencement Base Building Work, as the case may be, is Substantially Completed in accordance with the terms and conditions of this Lease. Notwithstanding the foregoing, with respect to solely Landlord's Post-Commencement Work obligation to furnish Tenant with a second fully functional elevator in the Adams Street Building by May 15, 2015 (the "**Second Elevator Outside Date**"), the reference to "October 1, 2015" in the prior sentence shall be deemed to be the Second Elevator Outside Date. To the extent that Substantial Completion of Landlord's Post-Commencement Base Building Work is delayed by reason of Tenant Delay and/or Unavoidable Delay (as each such term is hereinafter defined), the applicable deadline shall be extended by the length of such Tenant Delay and/or Unavoidable Delay. Upon Substantial Completion of Landlord's Pre-Commencement Base Building Work and Landlord's Post-Commencement Base Building Work, as the case may be, Landlord shall notify Tenant that it has Substantially Completed the same. Tenant shall have ten (10) Business Days following the Joint Inspection within which to notify Landlord, in writing, that it disputes Landlord's determination that it has Substantially Completed Landlord's Pre-Commencement Base Building Work or Landlord's Post-Commencement Base Building Work, as the case may be, and whether any additional items which should be Punch List Items. If Tenant does not so notify Landlord that it disputes said determination within the foregoing ten (10) Business Days period, it shall be deemed that Landlord's Pre-Commencement Base Building Work or Landlord's Post-Commencement Date Work, as the case may be, has been Substantially Completed. Any dispute as to whether Landlord has Substantially Completed Landlord's Pre-Commencement Base Building Work and/or Landlord's Post-Commencement Date Base Building Work, or whether an item should be a Punch List Item, shall be resolved in accordance with **Section 11.8**.

**Section 4.2 Additional Rent Credit.** Notwithstanding anything to the contrary contained herein, in lieu of receiving a work allowance, Tenant shall be entitled to additional free rent in the amount of Ten Million Five Hundred Eighty-Two Thousand Five Hundred Eighty Five and 00/100 (\$10,582,585.00) Dollars (the "**Additional Rent Credit**"); provided that in no event shall the Additional Rent Credit exceed the amount of hard and soft construction costs incurred by Tenant in connection with Tenant's Initial Installations (collectively, "**Tenant's Initial Work Cost**"). The Additional Rent Credit shall be applied against the next installment(s) of Rent becoming due immediately following the Rent Commencement Date until fully utilized, and shall be in addition to (and shall not run concurrent with) all other abatements and/or credits against Rent set forth in this Lease. For the sole purpose of determining that Tenant's Initial Work Cost

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exceeds the Additional Rent Credit and/or the Additional 5<sup>th</sup> Floor Rent Abatement, Tenant shall furnish Landlord with documentation reasonably evidencing Tenant's Initial Work Cost. Notwithstanding anything to contrary contained herein, for so long as Tenant may be in monetary default or material non-monetary default of its obligations under this Lease, including any default under **Section 5.4** hereof (i.e., with respect to the removal of liens), Tenant shall not be entitled to apply the Additional Rent Credit or the Additional 5<sup>th</sup> Floor Rent Abatement until such time as such default is cured and Tenant furnishes Landlord with documentation reasonably evidencing that Tenant's Initial Installations have been substantially completed, which documentation may consist of an architect's certification to that effect.

**Section 4.3 Base Building Redesign Costs**. To the extent Tenant requests any re-design of any portion of the Buildings, and Landlord and Tenant agree that such design changes will be implemented and at what cost, then Tenant shall bear the agreed to incremental costs of same which may be applied to reduce the Additional Rent Credit.

## ARTICLE 5

### ALTERATIONS

**Section 5.1 Tenant's Alterations.** (a) Tenant shall not make any alterations, additions or other physical changes in or about the Premises (collectively, "Alterations"), without Landlord's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided such Alterations: (i) are non-structural other than type which are routinely performed by multi-floor tenants in Class A office buildings, (ii) do not materially and adversely affect any Building Systems other than by connecting thereto and/or temporarily during the performance of an Alteration, such as a power shut down during the performance of same, (iii) affect only the Premises, and are not visible from the street level outside of the Premises, (iv) do not effect a modification of the Temporary Certificate of Occupancy ("TCO"), or the Certificate of Occupancy issued for the Building or the Premises (but the existing Certificate of Occupancy may be amended and updated to reflect the completion of Tenant's Alterations that otherwise conform to this Lease), and (v) do not violate any Requirement, and (v) do not require the issuance of a Building Permit by the Department of Buildings of the City of New York. Notwithstanding anything to the contrary contained herein, Landlord's consent shall not be required for any Alteration, if such Alteration (x) satisfies subsections (i) through (iv) above and does not require any submissions to, or approval of, any Governmental Authority (collectively, "Governmental Approval"); it being understood and agreed that any Alteration that requires Government Approval shall always require the consent of Landlord hereunder, which consent shall be granted or withheld in accordance with the provisions of this Article 5, or (y) is of a cosmetic nature such as painting, wallpapering, hanging pictures or installing carpeting (the categories of Alterations set forth in said clauses (x) and (y) being collectively referred to herein as "Decorative Alterations"). Tenant shall give Landlord not less than five (5) Business Days' notice prior to performing any Decorative Alteration, which notice shall contain a description of such Decorative Alteration. The

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performance and installation of all Decorative Alterations that are visible from the street level outside of the Premises shall be deemed an Alteration requiring Landlord's prior approval in accordance with last sentence of **Subsection 5.1(b) below**, regardless of the cost of such Decorative Alteration(s).

(b) **Plans and Specifications**. Prior to making any Alterations, Tenant, at its reasonable expense, shall (i) submit to Landlord for its approval, detailed plans and specifications ("Plans") of each proposed Alteration (other than Decorative Alterations that do not require Landlord's approval), (ii) obtain all permits, approvals and certificates required by any Governmental Authorities, and (iii) furnish to Landlord duplicate original policies or certificates of worker's compensation (covering all persons to be employed by Tenant, and Tenant's contractors and subcontractors in connection with such Alteration) and commercial general liability (including property damage coverage) insurance and Builder's Risk coverage (as described in **Article 11**), naming Landlord, Landlord's Agent, any Lessor and any Mortgagee of whom Tenant has been notified as additional insureds (provided, however, that for contractors performing work costing less than \$100,000.00 Adjusted by CPI, which does not in any manner affect the structural integrity of the Building or affect any Building Systems or the TCO or the Certificate of Occupancy of the Building and are not visible from the street level outside the Building, Landlord shall accept such lower limits of liability insurance then being accepted by landlords of Comparable Buildings [hereinafter defined]). Landlord shall provide written approval or denial of approval of Plans for Tenant's Alteration(s), including Tenant's Initial Installations, within ten (10) Business Days of Landlord's receipt of Plans for such Alteration(s) (and any re-submission of any such Plans after Landlord has disapproved the initial set of Plans (stating in reasonable detail the reasons for such disapproval within five (5) Business Days after receipt thereof by Landlord). If Landlord fails to either approve or disapprove (stating in reasonable detail the reasons for such disapproval), Tenant's Plans within said ten (10) Business Day period or five (5) Business Day period, as the case may be, Tenant shall provide Landlord with a second written request for approval (a "Second Request") to Landlord, which shall set forth in bold capital letters the following statement: "**IF LANDLORD FAILS TO APPROVE OR DISAPPROVE (STATING IN REASONABLE DETAIL THE REASONS FOR SUCH DISAPPROVAL, WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN THE TENANT PLANS AS TO WHICH THIS SECOND REQUEST APPLIES SHALL BE DEEMED APPROVED.**" In the event that Landlord fails to approve or disapprove (stating in reasonable detail the reasons for such disapproval) the Second Request within five (5) Business Days after receipt thereof by Landlord, Tenant's Plans and specifications as to which such Second Request applies shall be deemed approved. Notwithstanding anything to the contrary contained herein, no failure by Tenant to furnish Landlord with a second written request as aforesaid shall constitute a default and/or breach of Tenant's obligations hereunder.

(c) **Governmental Approvals**. Tenant, at its expense, shall, as and when required, promptly obtain certificates of partial and final approval of such Alterations required by any Governmental Authority and shall, with all reasonable promptness after completion of any Alterations, furnish Landlord with copies thereof, together with contractor's "as-built" Plans, marked to reflect field changes, provided

such field changes are not substantial, for such Alterations prepared on an AutoCAD Computer Assisted Drafting and Design System to the extent prepared by the contractor (or such other system or medium as Landlord may reasonably accept), using naming conventions issued by the American Institute of Architects in June, 1990 (or such other naming conventions as Landlord may reasonably accept) and magnetic computer media of such record drawings and specifications translated in DWG format or another format reasonably acceptable to Landlord. Landlord shall promptly and expeditiously cooperate with Tenant, at no cost or expense to Landlord, in obtaining any permits or approvals necessary from any Governmental Authority having jurisdiction in connection with the performance of Tenant's Initial Installations or Alterations which cooperation shall include without limitation, promptly executing, which Landlord shall endeavor to do within three (3) Business Days (but in no event more than five (5) Business Days) of request therefor, applications reasonably required by Tenant for such permits prior to commencement or completion of Landlord's review of Plans; provided, that execution of any such application by Landlord shall not constitute Landlord's consent to the proposed Alteration in question or the Plans.

**(d) Asbestos Containing Material and other Hazardous Materials.** Landlord represents to Tenant that to Landlord's knowledge, there shall be no ACM (as hereinafter defined) in the Premises on the Commencement Date in violation of applicable Requirements. Landlord shall, at its cost and expense, deliver to Tenant, (i) on or before the Commencement Date, a ACP-5 Certificate which shall provide that Landlord's Pre-Commencement Base Building Work does not constitute an "asbestos project", and (ii) within fifteen (15) Business Days of Landlord's receipt of Tenant's final Plans for Tenant's Initial Installations, a ACP-5 Certificate for the Premises, which shall provide that Tenant's Initial Installations do not constitute an "asbestos project". If during the performance of Tenant's Initial Installations, any (i) asbestos-containing materials, or (ii) any other Hazardous Materials existing on the Commencement Date that are legally required to be remediated and/or removed from the Premises under applicable Requirements (collectively, "ACM") shall be discovered in, or about the Premises, or in any part of the Building or Common Areas that Tenant shall have the right to enter or use in connection with Tenant's performance of Tenant's Initial Installations pursuant to the provisions of this Lease (e.g., conduits, shaft ways, mechanical areas, or the Building roof), which ACM shall be required pursuant to applicable Requirements to be removed, encapsulated, or otherwise abated, then, Landlord shall, after receiving notice thereof from Tenant, remove, encapsulate or otherwise abate such ACM in accordance with all Requirements at Landlord's sole cost and expense. If and to the extent any such ACM shall be discovered in, or about the Premises that was not brought in, on or about the Premises by Tenant or a party under Tenant's control, and if and to the extent Tenant is unable to and ceases the performance of all or a portion of Tenant's Initial Installations as a result of same (including due to Landlord's remediation work), then Tenant from the date on which Tenant provides Landlord with written notice of the foregoing shall be entitled to an abatement of Fixed Rent for one (1) day for each day of delay for the portion or portions of the Premises actually affected, until such date that the ACM has been removed, encapsulated or otherwise abated by Landlord in accordance with the terms hereof and Landlord has notified Tenant thereof. If the Rent Commencement Date shall not have yet occurred at the time of such abatement, such abatement of Fixed Rent shall be applied to the day or days immediately succeeding the Rent Commencement Date.

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**Section 5.2 Manner and Quality of Alterations**. All Alterations shall be performed (a) in a good and workmanlike manner and free from defects, (b) substantially in accordance with the Plans, and in the case of Major Construction Work (as hereinafter defined) by contractors approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed (c) in compliance with all Requirements, the terms of this Lease and the Building standard construction procedures and regulations set forth on **Exhibit E-2** annexed hereto, and any future modifications thereto prescribed by Landlord, provided the same do not increase Tenant's obligations or reduce Tenant's rights hereunder, in each case, other than to a de minimis extent, and provided, further, that any conflict between such procedures and regulations and the terms and conditions of this Lease, shall be resolved in favor of the terms and conditions of this Lease, and (d) at Tenant's expense (subject to Tenant's right, with respect to the Initial Installations, to receive the Free Rent Credits). All materials and equipment shall be of first quality and at least equal to the applicable standards for the Building then established by Landlord, and no such materials or equipment (other than Tenant's Property) shall be subject to any lien or other encumbrance. Attached to this Lease as **Schedule "B"** is a list of contractors that are hereby approved by Landlord (as same may be modified from time to time by Landlord "**Landlord's Contractor List**"). Tenant shall be required to use Landlord's designated contractor(s) to perform all work in connection with the (i) elevators, (ii) Class E system, (iii) tie-in by Tenant to Landlord's emergency generator, (iv) Submeters, (v) and Landlord's expeditor (Charles Rizzo & Associates, Inc.) and (vi) BMS; provided that such contractor(s) shall charge such rates as are substantially similar and customary for other contractors performing such work in Comparable Buildings. If Tenant engages any contractor set forth on Landlord's Contractor List, Tenant shall not be required to obtain Landlord's consent to such contractor, provided Tenant shall be required to obtain Landlord's confirmation (which confirmation may be oral) that such contractor remains on Landlord's Contractor List. If Tenant desires to use a contractor who is not named on Landlord's Contractor List, Landlord shall not unreasonably withhold its approval of any reputable contractor proposed by Tenant (except for those contractors performing work with respect to Building Systems including, without limitation the Class E System), provided such contractor shall provide Landlord with appropriate positive references and proof of financial responsibility reasonably satisfactory to Landlord. Landlord shall, within ten (10) Business Days after receiving any request from Tenant for such approval, together with such references and proof, respond to such request, and if Landlord fails to respond to such request within such ten (10) Business Day period, such request for approval shall be deemed approved by Landlord.

**Section 5.3 Removal of Tenant's Property.** Tenant's Property shall remain the property of Tenant and Tenant may remove the same at any time on or before the Expiration Date, as the same may be extended. On or prior to the Expiration Date, as the same may be extended, Tenant shall, at Tenant's cost and expense, remove all of Tenant's Property, and subject to the last sentence of this Section 5.3 and the provisions of Section 5.10, any Specialty Alterations; it being understood and agreed

that Tenant shall have no obligation to remove any cabling or wires. Tenant shall repair and restore, in a good and workmanlike manner, any damage to the Building (or material damage that would materially increase the cost of the next tenant build-out) or the Building caused by Tenant's removal of any Specialty Alterations or Tenant's Property, and upon default thereof, Tenant shall reimburse Landlord for Landlord's reasonable out-of-pocket cost of repairing or restoring such damage or Landlord's demolition, as the case may be. Any Specialty Alterations or Tenant's Property not so removed shall be deemed abandoned and Landlord may retain or remove and dispose of same, and repair and restore any damage caused thereby, at Tenant's reasonable out-of-pocket cost and without accountability or liability to Tenant. Landlord, at the time of Landlord's approval of Tenant's Plans for any Tenant's Alterations (including the Initial Installations), shall identify which Specialty Alterations, Tenant be required to remove at the end of the Term.

**Section 5.4 Mechanic's Liens.** Tenant, at its expense, shall discharge any lien or charge recorded or filed against the Real Property in connection with any work done or claimed to have been done by or on behalf of, or materials furnished or claimed to have been furnished to, Tenant, within thirty (30) days after Tenant's receipt of notice thereof by payment, filing the bond required by law or otherwise in accordance with law.

**Section 5.5 Labor Relations.** Tenant shall not employ, or permit the employment of, any contractor, mechanic or laborer, or permit any materials to be delivered to or used in the Building, if, in Landlord's sole judgment, such employment, delivery or use will interfere or cause any conflict with other contractors, mechanics or laborers engaged in the construction, maintenance or operation of the Building by Landlord, Tenant or others. If such interference or conflict occurs, upon Landlord's request, Tenant shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Building immediately. Landlord confirms that no Building staff or employees are presently unionized, and notwithstanding anything to the contrary contained herein, Tenant shall be permitted to use non-union labor in the performance of Alterations, including Tenant's Initial Installations.

**Section 5.6 Tenant's Costs.** Except as expressly set forth herein, Tenant shall pay to Landlord, within thirty (30) days of demand, all reasonable third party out-of-pocket costs actually incurred by Landlord in connection with: (a) Landlord's review of Plans for such Alterations (including review of requests for approval thereof), and (b) to the extent requested by Tenant in writing, the provision of Building personnel during the performance of any Alterations to operate elevators or otherwise facilitate the performance of such Alteration.

**Section 5.7 Tenant's Equipment.** Tenant shall provide notice to Landlord prior to moving any heavy machinery, heavy equipment, freight, bulky matter or fixtures (collectively, "**Equipment**") into or out of the Building. If such Equipment requires special handling, Tenant agrees (a) to employ only persons holding all necessary licenses to perform such work, (b) that all work to be performed in connection therewith shall comply with all applicable Requirements and (c) with respect only to the Prospect Street Building, such work shall be done only during hours reasonably designated by Landlord.

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**Section 5.8 Legal Compliance**. The approval of Plans, or consent by Landlord to the making of any Alterations, does not constitute Landlord's representation that such Plans or Alterations comply with any Requirements. Landlord shall not be liable to Tenant or any other party in connection with Landlord's approval of any Plans, or Landlord's consent to Tenant's performing any Alterations, subject to Landlord's obligations with respect to ACM as provided in **Section 5.1(d)**. If any Alterations made by or on behalf of Tenant, require Landlord to make any alterations or improvements to any part of the Buildings in order to comply with any Requirements, Tenant shall pay all reasonable actual costs and expenses incurred by Landlord in connection with such Alterations or improvements.

**Section 5.9 Floor Load**. Tenant shall not place a load upon any floor of the Premises that shall exceed the pounds per square foot "live load", for such floor. Landlord hereby represents that as of the date hereof: (i) (w) each floor (except the 8<sup>th</sup> floor) at the Adams Street Building is rated for 100 lbs. per square foot of live load, and (x) the 8<sup>th</sup> floor at the Adams Street Building is rated for 100 lbs. per square foot of live load, and (y) the 8<sup>th</sup> floor roof at the Adams Street Building is rated for 100 lbs. per square foot of live load, and (z) the fifth floor roof at the Adams Street Premises is rated for 100 lbs. per square foot of live load, and (ii) the 6<sup>th</sup> floor at the Prospect Street Building is rated for 100 lbs. per square foot of live load.

**Section 5.10 Internal Staircase(s)**. Tenant shall, at its cost and expense, have the right to install, one (1) or more internal staircase(s) (the "Internal Staircase[s]") between contiguous floors of the Premises. The installation of the Internal Staircase(s) shall be subject to, and conditioned upon, (i) Landlord's prior review and written approval of the location of the Internal Staircase(s) and the structural impact of the Internal Staircase(s) on the Building, which approval shall not be unreasonably withheld, and (ii) compliance with the terms and conditions of **Article 5**. Notwithstanding anything to the contrary contained in this Lease, including **Section 5.3**, if Tenant elects to construct and install one or more Internal Staircases subject to the terms of this Section 5.10, then, in lieu of completing a restoration of any such Specialty Alteration as of the Expiration Date as required pursuant Section 5.3, Tenant shall have the right to provide Landlord with a letter of credit (the "Restoration L/C") in an amount equal to one hundred twenty-five percent (125%) of the then market costs for the removal of the stairs, replacement of the slab, and restoration of the floors and ceiling as reasonably determined by Landlord ("Staircase Restoration Work"). The Restoration L/C shall be substantially in the form annexed to this Lease as **Exhibit F**. Landlord may apply the proceeds of the Restoration L/C against any and all costs incurred by Landlord in connection with the performance of any Staircase Restoration Work. The unused portion of the Restoration L/C, if any, shall be returned to Tenant promptly following the earlier to occur of (x) completion and payment in full for the Staircase Restoration Work covering all such internal stairways; (y) the date on which Landlord leases all of the space containing such internal stairways to tenant(s) who desire to retain same as part of their demised premises; provided, that, if Landlord leases only a portion of the space

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containing such internal stairways to tenant(s) who desire to retain same as part of their demised premises, the Restoration L/C shall be equitably reduced to an amount necessary to cover the cost of Staircase Restoration Work that would then be required as reasonably determined by Landlord; provided, that, Tenant provide a replacement letter of credit in such reduced amount (upon which would enter into a simultaneous exchange of the Restoration L/C with the replacement letter of credit), and (z) twelve (12) months following the Expiration Date. The provisions of this **Section 5.10** shall survive the Expiration Date or earlier expiration of the Term.

## **ARTICLE 6**

### **REPAIRS**

**Section 6.1 Landlord's Repair and Maintenance** . Landlord shall operate, maintain and replace, if necessary, except for such repairs to the Buildings as are expressly made the obligation of Tenant as provided in **Section 6.2** hereof, make all necessary repairs (both structural and nonstructural) to (i) the Building Systems, and (ii) the public portions of the Buildings, including the adjacent sidewalks (other than Tenant's Sidewalk Area) and (iii) the structural elements of the Buildings, both exterior and interior, including the roofs, foundations and curtain walls thereof, in a manner consistent with a Class A standard.

**Section 6.2 Tenant's Repair and Maintenance** . Tenant shall, at its expense and in compliance with **Article 5** , maintain and promptly make all nonstructural repairs to the Premises and the fixtures, equipment and appurtenances therein (including all electrical, plumbing, heating, ventilation and air conditioning, sprinklers and life safety systems in and serving the Premises from the point of connection to the Building Systems) within the Premises (collectively, " **Tenant Fixtures** ") as and when needed to preserve the Premises in good working order and condition, except for (x) reasonable wear and tear and damage as a result of a casualty in the Premises for which Tenant is not responsible or (y) such repairs as are required as the result of the negligence or willful misconduct of Landlord, Landlord's Agent, or their respective employees or contractors. All damage to the Buildings or to any portion thereof, or to any Tenant Fixtures requiring structural or nonstructural repair caused by or directly resulting from any negligence or willful misconduct of a Tenant Party, shall be repaired at Tenant's reasonable expense by (i) Tenant, if the required repairs are nonstructural in nature and do not affect any Building System, or (ii) Landlord, if the required repairs are structural in nature, involve replacement of exterior window glass or affect any Building System. All Tenant repairs shall be of good quality utilizing new construction materials in conformity with Building standards as reasonably adopted by the Landlord for the Buildings. In the event Tenant shall fail to make a repair or perform a maintenance obligation(s) on its part to be performed under this **Section 6.2** , after ten (10) days of written notice thereof (subject to Unavoidable Delay), Landlord may make such repair or perform such maintenance obligation(s), at Tenant's expense (immediately, and without advance notice, in the case of emergency). All actual out of pocket reasonable costs

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and expenses incurred by Landlord in connection with the making of such repair or performance of such maintenance obligation by, or on behalf of Landlord, and all actual out of pocket reasonable costs and expenses, including reasonable counsel fees and disbursements, incurred by Landlord, as a result of such failure by Tenant under this Lease, in any action or proceeding brought by Landlord in which Landlord is the prevailing party (as determined by a court of competent jurisdiction), shall be paid by Tenant to Landlord on demand, with interest thereon at the Interest Rate from the date incurred by Landlord.

**Section 6.3 Restorative Work** . Landlord reserves the right to make all changes, alterations, additions, improvements, repairs or replacements to the Buildings (excluding the Premises except as expressly permitted under Section 14.1(a)) and Building Systems, including changing the arrangement or location of or passageways, doors and doorways, corridors, elevators, stairs, toilets or other Common Areas (collectively, “**Restorative Work**”), as Landlord deems necessary or desirable; provided that (a) the level of any Building service shall not decrease in any material respect from the level required of Landlord in this Lease as a result thereof (other than temporary changes in the level of such services during the performance of any such Restorative Work, provided such temporary changes do not unreasonably interfere with Tenant’s ordinary conduct of business), (b) such Restorative Work shall not deprive Tenant of access to any portion of the Premises (other than a de minimis portion) (and provided any such continued access does not unreasonably interfere with Tenant’s ordinary course of business), (c) interfere with Tenant’s ordinary use and occupancy of the Premises during the performance of such Restorative Work, and **Section 14.3** shall apply to any blackening or covering of the windows of the Premises, and (d) Landlord shall not change the arrangement or location of the entrances to the Adams Street Building other than on a temporary basis as may be reasonably required in connection with the performance of any Restorative Work. Except as expressly set forth in **Section 10.11(b)** , there shall be no abatement of Rent or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant’s other obligations under this Lease, and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant or others performing, or failing to perform, any Restorative Work. Landlord may take all materials into the Premises required for the performance of any such Restorative Work; provided that Landlord shall not store such materials in the Premises unless reasonably necessary and only for a reasonable period of time not to exceed the performance of the subject Restorative Work. Except in case of emergency, Landlord shall provide Tenant with reasonable written notice prior to commencing any Restorative Work, which would affect the Premises and shall use reasonable efforts to minimize interference (and duration of interference) with Tenant’s use and occupancy of the Premises during the performance of such Restorative Work.

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## ARTICLE 7

### INCREASES IN TAXES

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

(a) “ **Assessed Valuation** ” shall mean the amount for which the Real Property is assessed pursuant to the applicable provisions of the City Charter and the Administrative Code of New York, or any successor Requirements, for the purpose of imposition of Taxes.

(b) **Intentionally Omitted .**

(c) “ **Base Taxes** ” are defined in **Article 1**.

(d) “ **Comparison Year** ” shall mean (i) with respect to the Adams Street Building, each Tax Year commencing on or after July 1, 2021, and (ii) with respect to the Prospect Street Building, each Tax Year commencing on or after July 1, 2017.

(e) **Intentionally Omitted .**

(f) “ **Statement** ” shall mean a statement containing a comparison of (i) the Base Taxes and the Taxes for any Comparison Year.

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

(h) “ **Taxes** ” shall mean (i) all real estate taxes, assessments (including any ICAP benefits and any assessments made as a result of the Building being within a business improvement), and other governmental levies, impositions or charges, whether general, special, ordinary, extraordinary, foreseen or unforeseen, which may be assessed, levied or imposed upon all or any part of the Real Property, and (ii) all expenses (including reasonable attorneys’ fees and disbursements and experts’ and other witnesses’ fees) incurred in contesting any of the foregoing or the Assessed Valuation of the Building (such expenses shall be included in Base Taxes if incurred during the Base Tax Year but only to the extent such expenses are also incurred in a Comparison Year and included in Taxes for such Comparison Year). Taxes shall not include (x) interest or penalties incurred by Landlord as a result of Landlord’s late payment of Taxes, or (y) net income, franchise, transfer, gift, inheritance, estate, succession, corporation taxes, documentary stamp taxes, transfer gains tax, tax increment financing or recording fees imposed upon Landlord. If Landlord elects to pay any assessment in annual installments, then (i) such assessment shall be deemed to have been so divided and to be payable in the maximum number of installments permitted by law, and (ii) there shall be deemed included in Taxes for each Comparison Year the installments of such assessment becoming payable during such Comparison Year. If at any time the methods of taxation prevailing on the Commencement Date

shall be altered so that in lieu of or as an addition to the whole or any part of Taxes, there shall be assessed, levied or imposed (1) a tax, assessment, levy, imposition or charge based on the income or rents received from the Building whether or not wholly or partially as a capital levy or otherwise, (2) a tax, assessment, levy, imposition or charge measured by or based in whole or in part upon all or any part of the Building and imposed upon Landlord, (3) a license fee measured by the rents, or (4) any other tax, assessment, levy, imposition, charge or license fee however described or imposed, then to the extent the same shall be similarly treated as Taxes by owners of Comparable Buildings all such alternative or additional taxes, assessments, levies, impositions, charges or license fees or the part thereof so measured or based shall be deemed to be Taxes. Notwithstanding anything to the contrary contained herein, if, by Requirements or in accordance with the provisions of the last sentence of **Section 7.2**, any such tax assessment may be paid in installments, then, for the purposes hereof (a) such tax assessment shall be deemed to have been payable in the maximum number of installments permitted by Requirements and (b) there shall be included in Taxes, for each Comparison Year in which such installments may be paid, the installments of such tax assessment so becoming payable during such Comparison Year.

**Section 7.2 Tenant's Tax Payment**. (a) If the Taxes payable for any Tax Year after the Base Tax Year exceed the Base Taxes, Tenant shall pay to Landlord, Tenant's Proportionate Share of such excess (" **Tenant's Tax Payment** "). For each Comparison Year in which any such Tax Year commences, Landlord shall furnish to Tenant a statement setting forth Landlord's reasonable estimate of Tenant's Tax Payment for such Tax Year (the " **Tax Estimate** "). Tenant shall pay to Landlord on the 1<sup>st</sup> day of each month during such Comparison Year an amount equal to 1/12<sup>th</sup> of the Tax Estimate for such Tax Year (" **Monthly Tax Escrow Payments** "). If Landlord furnishes a Tax Estimate for a Comparison Year subsequent to the commencement thereof, then (i) until the 1<sup>st</sup> day of the month following the month in which the Tax Estimate is furnished to Tenant (subject to the prior notice requirements set forth below), Tenant shall pay to Landlord on the 1<sup>st</sup> day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this **Section 7.2(a)** for the last month of the preceding Comparison Year; (ii) promptly after the Tax Estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of the Tax Estimate previously made for such Comparison Year were greater or less than the installments of the Tax Estimate to be made for such Comparison Year in accordance with the Tax Estimate, and (x) if there shall be a deficiency, Tenant shall pay the amount thereof within twenty (20) Business Days after demand, or (y) if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rent next coming due hereunder (or if there shall be no subsequent payments of Rent next coming due, Landlord shall pay to Tenant the amount of such overpayment within twenty (20) Business Days); and (iii) on the 1<sup>st</sup> day of the month following the month in which the Tax Estimate is furnished to Tenant (provided Tenant has a least twenty (20) Business Days' notice), and on the 1<sup>st</sup> day of each month thereafter throughout the remainder of such Comparison Year, Tenant shall pay to Landlord an amount equal to 1/12<sup>th</sup> of the Tax Estimate. Landlord may, during each Comparison Year, furnish to Tenant a revised Tax Estimate for such Comparison Year, and in such case, Tenant's Tax Payment for such Comparison Year

shall be adjusted and any deficiencies paid or overpayments credited, as the case may be, substantially in the same manner as provided in the preceding sentence. After the end of each Comparison Year, Landlord shall furnish to Tenant a Statement of Taxes applicable to Tenant's Tax Payment payable for such Comparison Year and (A) if such Statement shall show that the sums so paid by Tenant were less than Tenant's Tax Payment due for such Comparison Year, Tenant shall pay to Landlord the amount of such deficiency within twenty (20) Business Days after delivery of the Statement to Tenant, or (B) if such Statement shall show that the sums so paid by Tenant were more than such Tenant's Tax Payment, Landlord shall credit such overpayment against subsequent payments of Rent next coming due, if any (or if there shall be no subsequent payments of Rent next coming due, Landlord shall pay to Tenant the amount of such overpayment within twenty (20) Business Days). If there shall be any increase in the Taxes for any Tax Year, whether during or after such Tax Year, or if there shall be any decrease in the Taxes for any Tax Year, Tenant's Tax Payment for such Comparison Year shall be appropriately adjusted and any deficiencies paid or overpayments credited (or repaid), as the case may be, substantially in the same manner as provided in the preceding sentence. Notwithstanding anything to the contrary contained herein, Tenant shall have no obligation to make Monthly Tax Escrow Payments unless Landlord is required to deposit monthly escrow payments of Taxes with its lender, and if Landlord's lender does not so require such monthly escrow, Tenant shall pay Tenant's Tax Payment no later than thirty (30) days prior to the date on which the Taxes (or the installment thereof) for such Comparative Year shall become due and payable to the applicable taxing authority, provided, however that in no event shall Tenant be obligated to pay any Tenant's Tax Payment prior to the date that is thirty (30) days after the date that Tenant has received a Statement of the Taxes payable during the Comparative Year, together with a copy of the tax bills for the Comparative Year in question. In addition to Tenant's Tax Payment, for each Tax Year during the Term commencing with Tax Year beginning July 1, 2017, Tenant shall pay to Landlord, with respect to the Adams Street Premises only, an amount equal to the Fixed Tax Escalations. The Fixed Tax Escalations shall be payable in the same manner and times (other than the date on which such payments commence) as Tenant's Tax Payment (i.e., 30 days prior to the date on which such Taxes for such Comparative Year shall become due and payable to the applicable taxing authority, or monthly if such amounts are required to be escrowed by Landlord's lender as set forth above).

(b) Only Landlord may institute proceedings to reduce the Assessed Valuation of the Building and the filing of any such proceeding by Tenant without Landlord's consent shall constitute an Event of Default. If the Base Taxes are reduced, the Additional Rent previously paid or payable on account of Tenant's Tax Payment hereunder for all Comparison Years shall be recomputed on the basis of such reduction, and Tenant shall pay to Landlord, within ten (10) Business Days after demand therefore, any deficiency between the amount of such Additional Rent previously computed and paid by Tenant to Landlord, and the amount due as a result of such recomputation. If the Base Taxes are increased, then Landlord shall either pay to Tenant, or at Landlord's election, credit against subsequent payments of Rent due, if any (or if there shall be no subsequent payments of Rent next coming due, Landlord shall pay to Tenant the amount of such overpayment within twenty [20] Business Days),

the amount by which such Additional Rent previously paid on account of Tenant's Tax Payment exceeds the amount actually due as a result of such recomputation. If Landlord receives a refund of Taxes for any Comparison Year, Landlord shall, at its election, either pay to Tenant, or credit against subsequent payments of Rent due hereunder (or if there shall be no subsequent payments of Rent next coming due, Landlord shall pay to Tenant the amount of such overpayment within twenty [20] Business Days), an amount equal to Tenant's Proportionate Share of the refund, net of any reasonable, actual, out of pocket expenses incurred by Landlord in achieving such refund (without duplication to the extent such expenses were included in Taxes), which amount shall not exceed Tenant's Tax Payment paid for such Comparison Year. The benefit of any exemption or abatement relating to all or any part of the Building shall accrue to the benefit of Landlord provided, however, that Taxes for the Base Tax Year and all Comparison Years shall be computed by taking into account any such exemption or abatement.

(c) Landlord shall, with respect to each Comparison Year, initiate and pursue in good faith an application and proceeding seeking a reduction in Taxes or the assessed valuation of the Real Property for the Adams Street Building (a " **Certiorari Application** ") to the extent that (i) doing so would be reasonable and customary for landlords of Comparable Buildings for the Comparison Year in question (without taking into account any considerations with respect to any other properties owned by Landlord or any affiliate of Landlord in the City of New York), and (ii) so long as the Adams Street Premises consist of not less than seventy-five percent (75%) of the rentable square area of the Adams Street Building (the " **Minimum Leasing Requirement** "), if Landlord does not intend to pursue a Certiorari Application, Landlord obtains and provides to Tenant with respect to such Comparison Year a letter from a recognized certiorari attorney or consultant that, in such person's opinion, it would not be advisable or productive to bring any such application or proceeding; provided, however, that if Landlord shall elect not to initiate and pursue a Certiorari Application for any Comparison Year, not later than thirty (30) days prior to the last day on which Landlord would be entitled to initiate a Certiorari Application, Landlord shall use commercially reasonable efforts to give notice of such election (a " **Certiorari Waiver Notice** ") to Tenant, which notice shall contain a statement in bold type and capital letters stating " **THIS IS A CERTIORARI WAIVER NOTICE** ." If Landlord fails within such thirty (30) day period to give to Tenant either (i) a Certiorari Waiver Notice or (ii) a notice indicating that Landlord will initiate and pursue a Certiorari Application, Landlord shall be deemed to have given to Tenant a Certiorari Waiver Notice. For so long as Tenant satisfied the Minimum Leasing Requirement, Tenant shall have the right within fifteen (15) days (time being of the essence) after the giving (or deemed giving) of such Certiorari Waiver Notice to give a notice to Landlord directing Landlord to initiate and pursue a Certiorari Application (a " **Certiorari Direction Notice** "). In the event that Tenant shall give a Certiorari Direction Notice to Landlord in accordance with the provisions of the preceding sentence, Landlord shall initiate a Certiorari Application prior to the last day on which it is entitled to initiate same and shall pursue same in good faith. In connection with any Certiorari Application relating to any Comparison Year occurring during the term of this Lease that Tenant satisfies the Minimum Leasing Requirement, Tenant shall have the right to retain, at Tenant's sole cost and expense, its own

certiorari counsel (hereinafter called “**Tenant’s Certiorari Counsel**”), who shall have the right to consult with the counsel retained by Landlord in connection with such Certiorari Application (“**Landlord’s Certiorari Counsel**”) with respect to such Certiorari Application and any proceedings in connection therewith, provided that Tenant’s Certiorari Counsel shall have first executed and delivered to Landlord a confidentiality agreement in form reasonably acceptable to Landlord wherein Tenant’s Certiorari Counsel shall agree to maintain in strict confidence and not to reveal to any third parties (other than Tenant, except as hereinafter set forth) any confidential information concerning the Adams Street Building or its operations that has not otherwise been made public, except as may be required by applicable Requirements or by a court of competent jurisdiction or in connection with any action or proceeding before a court of competent jurisdiction. In addition, Tenant’s Certiorari Counsel shall not reveal any such confidential information to Tenant, except to the extent necessary in the reasonable judgment of Tenant’s Certiorari Counsel to enable Tenant to decide whether and how to exercise any rights of Tenant set forth in this **Section 7.2(c)**. Tenant shall be subject to maintain the confidentiality of any and all such information on terms identical to those by which Tenant’s Certiorari Counsel is bound and, in addition, Tenant hereby expressly acknowledges and agrees that it shall not have the right to use such information for any other purpose whatsoever (including, without limitation, in connection with any fair market rental determination under this Lease, except to the extent that all or a portion of such information has been made known to Tenant by other sources (e.g., public filings or the brokerage community). Subject to the provisions of the preceding two sentences, Landlord shall cause Landlord’s Certiorari Counsel to meet with Tenant’s Certiorari Counsel, to keep Tenant’s Certiorari Counsel advised as to the status of the Certiorari Application(s) in question and the strategies employed or to be employed by Landlord and Landlord’s Certiorari Counsel in connection therewith, and Landlord and Landlord’s Certiorari Counsel shall consider any recommendations of Tenant’s Certiorari Counsel with respect to such Certiorari Application(s). Tenant’s Certiorari Counsel shall have the right to attend meetings, including participation in meetings, between Landlord and/or Landlord’s Certiorari Counsel and the New York City Department of Finance Assessor’s Office and/or New York City Tax Commission and/or the New York City Law Department with respect to any such Certiorari Applications. Notwithstanding anything to the contrary set forth in this **Section 7.2(c)**, Landlord shall have the right to settle any and all certiorari proceedings with respect to the Real Property, provided that Landlord shall act in a commercially reasonable manner and as if this Real Property were Landlord’s only property, and Tenant, for itself and its immediate and remote subtenants and successors in interest hereunder, hereby waives, to the extent permitted by law, any right Tenant may now or in the future have to protest or contest any Taxes or to bring any application or proceeding seeking a reduction in Taxes or assessed valuation or otherwise challenging the determination of such settlement.

(d) Tenant shall be responsible for any applicable occupancy or rent tax now in effect or hereafter enacted and, if such tax is payable by Landlord, Tenant shall promptly pay such amounts to Landlord, upon Landlord’s demand.

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

**Section 7.3 Survival of Obligations** . Except as expressly set forth in Section 7.4, the obligations of Landlord and Tenant set forth in this Article 7 shall survive the Expiration Date or earlier termination of this Lease for a period of one (1) year after the date that Taxes for such Comparison Year are finally determined.

**Section 7.4 Non-Waiver; Disputes** . Landlord's failure to render any Statement on a timely basis with respect to any Comparison Year shall not prejudice Landlord's right to thereafter render a Statement with respect to such Comparison Year or any subsequent Comparison Year, nor shall the rendering of a Statement prejudice Landlord's right to thereafter render a corrected Statement for that Comparison Year, provided, however, in no event shall Tenant have any liability hereunder with respect to any Statement or corrected Statement not delivered to Tenant within two (2) years after the later of (a) the last day of such Comparison Year and (b) the date that the Taxes for such Comparison Year are finally determined (including if Taxes for a Comparison Year are then being contested by Landlord in accordance with **Section 7.2 (b)** or **(c)**, in which event the foregoing two (2) year period shall be extended base on the date that a final determination is rendered by the Department of Taxation and Finance of the City of New York for the Comparison Year contested).

**Section 7.5 Proration** . It is understood and agreed that Tenant's obligation to make (i) Tenant's Tax Payments with respect to the Adams Street Premises commences on July 1, 2021, and (ii) Tenant's Tax Payments with respect to the Prospect Street Premises and Fixed Tax Escalation Payments with respect to the Adams Street Premises, both commence on July 1, 2017. If, as contemplated, the Rent Commencement Date occurs prior to July 1, 2017, no proration of Additional Rent under this Article 7 shall be required. If the Expiration Date occurs on a date other than June 30, any Additional Rent under this **Article 7** for the Comparison Year in which such Expiration Date occurs shall be apportioned on the basis of the number of days in the year from July 1 to the Expiration Date. Upon the expiration or earlier termination of this Lease, any Additional Rent under this **Article 7** shall be adjusted or paid within 30 days after submission of the Statement for the last Comparison Year.

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

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## ARTICLE 8

### REQUIREMENTS OF LAW

#### **Section 8.1 Compliance with Requirements .**

(a) **Tenant's Compliance** . Tenant, at its cost and expense, shall comply with all Requirements applicable to the Premises that are triggered as a result of Tenant's specific manner of use or occupancy thereof including, without limitation, obtaining any modifications to the Zero Occupancy TCO required for Tenant's occupancy (i.e., as opposed to laws of general applicability to the leasable space in the Building, the compliance of which shall be Landlord's responsibility, at Landlord's cost and expense); provided, however, that Tenant shall not be obligated to comply with any Requirements requiring any structural alterations to the Building unless the application of such Requirements arises from (i) the specific manner and nature of Tenant's use or occupancy of the Premises, as distinct from general office use, (ii) Alterations made by Tenant, or (iii) a breach by Tenant of any of the provisions of this Lease. Subject to the provisions of **Article 12**, any repairs or alterations required to be made by Tenant for compliance with applicable Requirements to the extent required by this **Section 8.1(a)** shall be made at Tenant's expense (1) by Tenant in compliance with **Article 5** if such repairs or alterations are nonstructural and do not affect any Building System and to the extent such repairs or alterations do not affect areas outside the Premises, or (2) by Landlord if such repairs or alterations are structural or affect any Building System or to the extent such repairs or alterations affect areas outside the Premises, provided, however, the foregoing provisions of this **Section 8.1(a)** shall not be construed to require Tenant to perform structural Alterations, unless the same are required due to clauses (i), (ii), or (iii) of the immediately preceding sentence. If Tenant obtains knowledge of any failure to comply with any Requirements applicable to the Premises, Tenant shall give Landlord prompt notice thereof. Subject to the provisions of **Article 25** , Tenant hereby agrees to indemnify Landlord for any actual costs, loss, injury, expense or fees (including reasonable attorneys' fees) incurred by reason of such non-compliance 11 If Tenant's occupancy of the Premises, based on Tenant's pro-rata share of any partial floor of a Building that it occupies violates the density requirements set forth in the existing TCO or Certificate of Occupancy for such Building for any full floor or the portion of such floor that it occupies, then Tenant shall either (i) modify the Building's TCO or Certificate of Occupancy, as the case may be, to permit such occupancy, or (ii) take all action necessary to put the Premises in compliance with such density requirements (i.e., if the TCO or Certificate of Occupancy permits 100 persons on a floor and Tenant occupies one-half of such floor, then Tenant shall not be permitted to have more than 50 people occupy such floor). Attached to this Lease as **Schedule "D "** is a copy of the current Certificates of Occupancy for the Buildings.

(b) **Hazardous Materials** . Tenant shall not cause (or permit by persons under Tenant's reasonable control to cause): (i) any Hazardous Materials to be brought into the Building, (ii) the storage or use of Hazardous Materials in or about the Building or the Premises (subject to the second sentence of this **Section 8.1[b]** ), any manner other than in full compliance with any Requirements, or (iii) the escape, disposal or release of any Hazardous Materials within or in the vicinity of the Building. Nothing herein shall be deemed to prevent Tenant's use and storage of any Hazardous Materials customarily used in the ordinary course of Permitted Use, provided such use is in accordance with all Requirements. Tenant shall be responsible, at its expense, for all matters directly or indirectly based on, or arising or resulting from the presence of Hazardous Materials in the Building which is caused or permitted by a Tenant Party.

Tenant shall provide to Landlord copies of all communications received by Tenant with respect to any Requirements relating to Hazardous Materials, and/or any claims made in connection therewith. Landlord or its agents may perform non-invasive environmental inspections of the Premises at any time upon not less than three (3) Business Days' notice to Tenant (except in the case of an emergency, in which case the inspection may be performed without advance notice to Tenant); provided, that any such access by Landlord and/or its agents shall be subject to all the terms and conditions of this Lease, including using commercially reasonable efforts to minimize any interference with the conduct of Tenant's business in the Premises.

(c) **Landlord's Compliance**. Subject to the performance of Tenant's Action Items, Landlord represents that on the Commencement Date the Premises and the Buildings shall be in compliance with all Requirements (as hereinafter defined), having jurisdiction thereof where applicable. Landlord, at its cost and expense, shall comply with (or cause to be complied with) all Requirements applicable to the Buildings which are not the obligation of Tenant, to the extent that non-compliance (i) would impair Tenant's use and occupancy of the Premises for the Permitted Uses (as opposed to Tenant's particular manner of use of the Premises), or (ii) would threaten the health and safety of Tenant and its employees, in either case other than to a de minimis extent, or (iii) would impair Tenant's ability to perform any Alteration including, without limitation, Tenant's Initial Installations).

(d) **Landlord's Insurance**. Tenant shall not cause or permit any action or condition that would (i) invalidate or conflict with Landlord's insurance policies provided the same shall be commercially reasonable, (ii) violate applicable rules, regulations and guidelines of the Fire Department, Fire Insurance Rating Organization or any other authority having jurisdiction over the Building, (iii) cause an increase in the premiums of fire insurance for the Building over that payable with respect to Comparable Buildings (unless Tenant pays such increase), or (iv) result in Landlord's insurance companies' refusing to insure the Building or any property therein in amounts and against risks as reasonably determined by Landlord (any of the foregoing, an "**Adverse Insurance Condition**"). Landlord hereby acknowledges and agrees that the mere use and occupancy of the Premises by Tenant for the Permitted Use shall not, in and of itself, constitute an Adverse Insurance Condition. If fire insurance premiums for the Building increase as a result of Tenant's failure to comply with the provisions of this **Section 8.1**, and Landlord shall provide reasonable proof thereof, Tenant shall promptly cure such failure and shall reimburse Landlord for the increased fire insurance premiums paid by Landlord as a result of such failure by Tenant.

(e) **Certain Violations**. If the existence of any violations of Requirements noted of record against the Buildings (other than any such violations created by any Tenant Party or which will be cured by Tenant by the performance of the Initial Installations, at no additional cost to Tenant other than a de minimis amount), shall delay (or prevent) Tenant from obtaining any governmental permits, consents, approvals or other documentation required by Tenant (each "**Adverse Violation**") for (A) the performance of any Initial Installation and/or any subsequent Alterations or (B) the lawful occupancy of any portion of the Premises upon completion of any Initial

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Installations therein, then, (i) upon the giving of notice by Tenant to Landlord of such prevention or delay and of the applicable violations, Landlord shall promptly commence and thereafter diligently prosecute to completion the cure and removal of record of such violations and, in the case of the Initial Installations, the Rent Commencement Date shall be extended for the period of such prevention or delay. Landlord hereby represents that as of the date hereof, Landlord has not received any notice from any governmental agency of any violation of Requirements relating to the Premises or the Building that would constitute an Adverse Violation. Without limiting the generality of the foregoing, Landlord acknowledges and agrees that Requirements shall include all local and governmental regulations, codes, rules or laws of any governmental authority having or asserting jurisdiction over, and to the extent applicable to, the Building and the Premises including, but not limited to The Americans With Disabilities Act, Local Law 26 of the City of New York and NFPA 101 (Code for Safety to Life) and the Federal Occupational Safety and Health Act of 1970 (as amended).

**Section 8.2 Tenant Fire and Life Safety; Sprinkler** . If pursuant to New York City code requirements any modifications and/or alterations be made or any additional equipment be supplied in connection with the sprinkler system or fire alarm and life-safety system serving the Buildings by reason of Tenant's business, or any Alterations performed by Tenant, or the location of the partitions in the Premises, or Tenant's Property, or other contents of the Premises, Landlord (to the extent outside of the Premises) or Tenant (to the extent within the Premises) shall make such modifications and/or Alterations, and supply such additional equipment, in either case at Tenant's cost and expense.

**Section 8.3 Landlord Fire and Life Safety; Sprinkler** . Landlord shall maintain, repair and replace, if necessary, at Landlord's sole cost and expense, the Building Systems situated outside of the Premises, including the main sprinkler valves and risers, base building fire alarm systems and devices. In addition, Landlord shall also provide sufficient points of connection and fire alarm infrastructure capable of unlimited expansion with the addition of data gathering panels (DGP) provided by Tenant as required to satisfy Tenant's fire alarm requirements within the Premises, in compliance with all applicable New York City code Requirements. Any modification to the base Building infrastructure shall be at Landlord's sole cost and expense, unless such modification is necessitated by reason of Tenant's Alteration(s) (other than Tenant's Initial Installations), negligence or willful misconduct. In connection with Tenant's performance of any Alterations (including the Initial Installations), Tenant shall not be required, but shall be permitted, to perform daily drain-downs of the sprinkler system, at Tenant's cost and expense in accordance with all applicable Requirements.

## **ARTICLE 9**

### **SUBORDINATION**

**Section 9.1 Subordination and Attornment** . (a) This Lease shall be subject and subordinate to all Mortgages and Superior Leases; provided, that Tenant's agreement to subordinate this Lease to any particular Superior Lease or Mortgage is

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conditioned upon the applicable Mortgagee or Lessor executing and delivering to Tenant an agreement to the effect that, inter alia, if there shall be a foreclosure of its Mortgage or termination of a Superior Lease, such Mortgagee or Lessor will not make Tenant a party defendant to such foreclosure, evict Tenant, disturb Tenant's possession under this Lease, or terminate or disturb Tenant's leasehold estate or rights or privileges hereunder provided no event of default beyond the expiration of any applicable notice and cure period hereunder has occurred and is continuing hereunder, and such agreement shall contain substantive provisions that are no less favorable to Tenant than the substantive provisions contained in form of agreement annexed hereto as **Exhibit F** (any such agreement, or any agreement of similar import, from a Mortgagee or Lessor, being hereinafter called a "SNDA"). Tenant's receipt of a SNDA with substantive provisions that are no less favorable to Tenant than the substantive provisions contained in form of agreement annexed hereto as **Exhibit "G"** and made a part hereof is a condition precedent to Tenant's subordination of its rights under, and interests in, this Lease, and Tenant's obligation to subordinate its rights under, and interests in, this Lease at any time during the Term is excused until the foregoing condition is satisfied in each respective instance. Any Superior Lease to which this Lease is subordinate will not vitiate the rights of Tenant hereunder or impose additional obligations other than to a de minimis extent regarding administrative type obligations of and upon Tenant.

(b) If a Lessor or Mortgagee or any other person or entity shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or the delivery of a deed, then subject to the terms of the applicable SNDA, Tenant shall attorn to and recognize such successor landlord as Landlord under this Lease.

**Section 9.2 Mortgage or Superior Lease Defaults .** Any Mortgagee may elect that this Lease shall have priority over the Mortgage and, upon notification to Tenant by such Mortgagee; this Lease shall be deemed to have priority over such Mortgage, regardless of the date of this Lease. In connection with any financing of the Real Property, Tenant shall consent to any reasonable modifications of this Lease requested by any lending institution, provided such modifications do not (x) increase the Rent, or (y) increase the other obligations, or adversely affect the rights, of Tenant under this Lease or diminish Landlord's obligations, or increase Landlord's rights, under this lease, except to a de minimis extent. Upon notice to Tenant from any Mortgagee or Lessor that Landlord's right to collect Rent has been revoked, Tenant shall be authorized to pay Rent to such Mortgagee or Lessor, as the case may be, and any such payments shall be in satisfaction of the obligation hereunder to pay the same to Landlord. Tenant shall have no obligation to verify the accuracy of any such notice from any Mortgagee or Lessor.

**Section 9.3 Tenant's Termination Right .** As long as any Superior Lease or Mortgage exists, then subject to the terms of the applicable SNDA, Tenant shall not seek to terminate this Lease by reason of any breach, act, or omission of Landlord's obligations hereunder until (a) Tenant shall have given notice of such act or omission to all Lessors and/or Mortgagees of whom Tenant has been given notice together with their respective addresses, and (b) a reasonable period of time (which shall not be more

than sixty (60) days following the date by which Landlord shall have been required to cure such default under this Lease) shall have elapsed following the giving of notice of such default and the expiration of any applicable notice or grace periods (unless such act or omission is not capable of being remedied within a reasonable period of time), during which period such Lessors and/or Mortgagees shall have the right, but not the obligation, to remedy such act or omission and thereafter diligently proceed to so remedy such act or omission. If any Lessor or Mortgagee elects to remedy such act or omission of Landlord by giving notice thereof to Tenant within ten (10) days of Tenant's notice, then Tenant shall not seek to terminate this Lease so long as such Lessor or Mortgagee is proceeding with reasonable diligence to affect such remedy.

**Section 9.4 Provisions**. The provisions of this **Article 9** shall (a) inure to the benefit of any Lessor or Mortgagee and any successor thereto, and (b) notwithstanding that, as a matter of law, this Lease may terminate upon the termination of any such Superior Lease or foreclosure of such Mortgage.

**Section 9.5 Current Lender**. Landlord represents to Tenant that, as of the date of this Lease (a) there are no Superior Leases and (b) the only Mortgage is a Mortgage held by Natixis Real Estate Capital LLC (" **Current Lender** "). Landlord shall, within ninety (90) days from date of this Lease (the " **SNDA Outside Date** "), deliver to Tenant, a Subordination, Non-disturbance and Attornment Agreement from the Current Lender, for the benefit of Tenant, in substantially the form annexed hereto as **Exhibit "G"** and made a part hereof (the " **Natixis SNDA** "). Notwithstanding anything to the contrary contained herein, if Landlord shall fail to deliver the Natixis SNDA to Tenant by the SNDA Outside Date, then Tenant shall have the right to terminate this Lease by delivering notice of such election to Landlord at any time prior to the Natixis SNDA being furnished to Tenant, in which case, this Lease shall terminate as of the date set forth in such notice and Landlord shall immediately return to Tenant the Advance Rent and Letter of Credit.

## ARTICLE 10

### SERVICES

**Section 10.1 Electricity**. (a) Landlord shall furnish and make available to the Premises, at the electrical closets located on each floor of the Premises as more particularly set forth on **Exhibit "A"** annexed hereto, electricity service to the Premises for the operation of Tenant's electrical systems and equipment in the Premises, at a capacity of not less than a load of six (6) watts per usable foot of the Premises on a demand load basis (excluding all base Building HVAC) (the " **Basic Capacity** "). The useable square footage of the Premises is set forth on **Schedule "G"** annexed hereto. Landlord shall on, or before, the Commencement Date, at its cost and expense, install (i) a "real-time" metering and monitoring system in the Adams Street Premises and in the Prospect Street Premises, which monitoring system shall permit Tenant to obtain current information with respect to its consumption and monthly information and billing on the cost of electricity furnished to the Premises. Landlord shall provide a minimum of one Submeter (as hereinafter defined) per electric closet at the main disconnect in each

closet. Tenant, at Tenant's option and at Tenant's sole cost, may direct Landlord to also install Submeters on individual components of Tenant's electrical equipment, including the monitoring of consumption and demand of lighting, equipment power and supplemental air conditioning equipment. The monitoring system and its associated software will permit Tenant to review metering measurements remotely through Tenant's data connection. Subject to Landlord's reasonable approval, Tenant shall, at its cost and expense, have the right to redistribute the electrical capacity being furnished to the Premises amongst the floors of the Premises. Notwithstanding anything to the contrary contained herein, Landlord shall, at Tenant direction, contract directly with one or more utility providers of Tenant's choosing to furnish sustainable sources of utilities for the Adams Street Building, and Tenant shall be responsible to pay the incremental out-of-pocket cost incurred by Landlord in connection with obtaining any such service as set forth on documentation provided by Landlord reasonably evidencing same.

(b) **Submetering.** Landlord shall, at its sole cost and expense, prior to the Commencement Date furnish, install and connect submeters ("Submeters") at the Adams Street Premises, and at the Prospect Street Premises, in order to (i) measure and record and provide printouts of the measurement of the demand and consumption of electric current serving the Premises during each month (or other billing period reasonably determined by Landlord) occurring during the Term of this Lease, and (ii) ascertain Tenant's consumption of electricity in kilowatt hours (herein called "KWH"), by time of day, if applicable, and demand in kilowatts (herein called "KW") for each month (or other billing period reasonably determined by Landlord). Notwithstanding anything to the contrary contained herein, in no event shall any Building Systems (other than any air-conditioning units and domestic water heaters that exclusively service the Premises) be on Tenant's Submeters; it being understood and agreed that other than has otherwise heretofore expressly set forth, Landlord shall, at its sole cost and expense, pay all electrical charges relating to the use of Building Systems. Tenant shall, at its cost and expense, maintain the Submeters throughout the Term. Where more than one Submeter measures the service of Tenant in a particular Building, such meters shall be connected by Landlord to a so-called "totalizer" or "coincidental demand meter" for that Building furnished and installed by Landlord at Landlord's expense so that Tenant's aggregate demand for the Adams Street Premises, and the Prospect Street Premises, as the case may be, shall be measured and billed to Tenant with the same effect as if Tenant's aggregate demand for the entire Adam Street Premises and the Prospect Street Premises, as the case may be, were measured by a single meter. The costs incurred in connection with the installation and connection of the Submeters to such totalizer or coincidental demand meter shall be borne by Landlord. Tenant shall effective the Commencement Date, pay to Landlord, but no more frequently than monthly, an amount determined for each billing period by applying the KWH and KW shown on the Submeters to the rates pursuant to which Landlord purchases electric current for the Building from the utility and alternate provider, if applicable, during the particular billing period, including therein any taxes, fuel adjustment charges, surcharges, demand charges, energy charges, time-of-day charges, rate adjustment charges and other impositions of any nature payable by Landlord (billed, in each case, on the same basis upon which Landlord shall be billed) (herein called "**Landlord's**

**Rate**"). If consumption or demand is billed at different rates depending on different subdivisions or categories of the rate schedule, then Tenant's KWH consumption and KW demand shall be billed at Landlord's Rate per KW or KWH (as the case may be) for such subdivision or category (e.g., KWH consumption is currently billed at different rates on the utility provider's transmission and distribution invoices depending on the time of day of consumption and accordingly Tenant's KWHs shall be applied separately to the rates applicable to the period in which each KWH of Tenant's consumption was consumed). Tenant shall pay all actual reasonable out of pocket costs incurred by Landlord to read such Submeters and to calculate the amounts billed to Tenant hereunder, which costs shall be commercially reasonable. If any tax is imposed upon Landlord's receipts from the sale or resale of electricity to Tenant, Tenant shall pay such tax if and to the extent permitted by law as if Tenant were the ultimate consumer of such electricity; it being understood and agreed that Landlord shall register as a "reseller" of electricity. Bills for such amounts shall be rendered to Tenant at such times as Landlord may elect, but not more frequently than monthly and at least thirty (30) days prior to the due date thereof. Landlord shall not terminate electricity service to the Premises until replacement metering is in place and operational.

(c) **Direct Metering**. Tenant may elect to obtain and pay for Tenant's entire separate supply of electric current by direct application to and arrangement with the public utility company servicing the Buildings ("**Direct Electric Service**"). Tenant acknowledges and agrees that in the event Tenant elects to obtain Direct Electric Service to either the Adams Street Premises and/or the Prospect Street Premises prior to the Adams Street Premises Commencement Date, Prospect Street Premises Commencement Date, or the Adams Street Premises Rent Commencement Date or the Prospect Street Rent Commencement Date, as the case may be, that such election to obtain Direct Electric Service shall not affect the occurrence of any of the foregoing dates. Landlord will permit its electric feeders, risers and wiring serving the general lighting and power within the Buildings to be used by Tenant to the extent available and safely capable of being used for such purpose. Landlord shall (at no cost or expense) cooperate with Tenant in connection with Tenant's obtaining direct electric service, and shall reasonably promptly execute and deliver any applications, reports or related documents as may be requested by Tenant in connection therewith, provided that Tenant shall reimburse Landlord, as Additional Rent, for the reasonable out-of-pocket costs and expenses incurred by Landlord in connection with such cooperation within thirty (30) days after demand therefor, accompanied by reasonably satisfactory documentation of such costs and expenses.

(i) Any additional risers, feeders, electrical meters or other equipment or service proper or necessary to supply Tenant's electrical requirements in connection with obtaining Direct Electric Service, upon written request of Tenant, will be installed by Landlord, at the sole cost and expense of Tenant, if in Landlord's reasonable judgment, the same will not cause permanent damage or injury to the Buildings or the Premises, or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense.

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(ii) In no event shall Tenant use or install any fixtures, equipment or machines the use of which in conjunction with other fixtures, equipment and machines in the Premises would result in consumption of electricity in excess of the Basic Capacity, and upon notice from Landlord that Tenant is exceeding the Basic Capacity, Tenant shall disconnect such of its installations as are necessary so that Tenant will no longer be exceeding the Basic Capacity (as such Basic Capacity may be redistributed pursuant to the last sentence of this **Section 10.1(a)** ).

(iii) Tenant covenants and agrees that at all times its use of electric current shall never exceed the Basic Capacity (as same may be redistributed pursuant to the last sentence of **Section 10.1(a)** ).

(iv) Landlord shall not be liable or responsible in any way to Tenant for any loss, damage or expense which Tenant may sustain or incur if either the quantity or character of electric energy is changed by the utility provider or is no longer available or suitable for Tenant's requirements except to the extent caused by the negligence or willful misconduct of Landlord and/or Landlord's Parties. Tenant shall furnish, install and replace, as required and at its own cost and expense, all lighting fixtures, tubes, lamps, bulbs, ballasts and outlets required in the Premises. All such fixtures, tubes, lamps, bulbs, ballasts and outlets so installed shall become Landlord's property upon the expiration or sooner termination of this Lease. Tenant shall at all times comply with the rules and regulations of the utility company supplying electricity to the Building.

(d) Tenant shall at all times comply with the rules and regulations of the utility company supplying electricity to the Buildings. Tenant shall not use any electrical equipment which, in Landlord's reasonable judgment, would exceed the Basic Capacity. If Landlord determines that Tenant's electrical requirements exceed the Basic Capacity (as such Basic Capacity may be redistributed pursuant to the last sentence of **Section 10.1(a)** ) which necessitates the installation of any additional risers, feeders or other electrical distribution equipment (collectively, "**Electrical Equipment**"), or if Tenant provides Landlord with evidence reasonably satisfactory to Landlord of Tenant's need for electricity in excess of the Basic Capacity and requests that additional Electrical Equipment be installed, Landlord shall, at Tenant's cost and expense, install such additional Electrical Equipment, provided that Landlord (subject to the next sentence), in its sole reasonable judgment, determines that (i) such installation is practicable, (ii) such additional Electrical Equipment is permissible under applicable Requirements, and (iii) the installation of such Electrical Equipment will not cause permanent damage to the Buildings or the Premises, cause or create a hazardous condition, entail excessive or unreasonable alterations, interfere with or limit electrical usage by other tenants or occupants of the Buildings or exceed the limits of the switchgear or other facilities serving the Buildings, or require power in excess of that available from the utility serving the Buildings. Notwithstanding anything to the contrary in the previous sentence, Landlord confirms to Tenant that the Buildings are capable, at a commercially reasonable cost, of providing power to the Premises of not less than Basic Capacity and at least substantially consistent with the power required for the Permitted Uses conducted in Comparable Buildings; and so long as Tenant's power requirements do not exceed such standard, the conditions described in clauses "i," "ii,"

and “iii” of the previous sentence shall be deemed satisfied. Landlord shall make available additional power for Tenant’s use. Landlord shall reasonably determine as asbestos free conduit path for Tenant to access such additional power, and Tenant shall pay Landlord, as Additional Rent, all costs shall be determined in accordance with the formula set forth in **Section 10.1(b)** above for such additional power. Tenant shall provide Landlord with reasonable access, upon reasonable prior notice (except in the case of an emergency in which case no notice shall be required) to any elevator machine rooms located within the Premises. Landlord shall use all reasonable efforts not to unreasonably interfere with the conduct of Tenant’s ordinary business at the Premises with respect to such access.

(e) Any rebates paid to or discounts or other benefits received by Landlord or Landlord’s Affiliates from Consolidated Edison (or any other utility or governmental entity providing such rebates or discounts) as the result of energy-saving fixtures and equipment installed in the Premises by Tenant or as a result of the furnishing electricity to Tenant or otherwise related to Tenant’s occupancy shall be paid to Tenant by Landlord promptly after receipt by Landlord thereof. Landlord shall cooperate with Tenant in connection with applying to Consolidated Edison (or any other utility or governmental entity providing such rebates or discounts) for such rebates or discounts, but Landlord shall incur no cost or expense in connection with such cooperation unless Tenant agrees to reimburse Landlord for such monies.

**Section 10.2 Elevators**. Subject to the provisions of this **Section 10.2**, Landlord shall provide, (i) with respect to the Adams Street Building, the exclusive use (subject however to the use thereof by Landlord, including for purposes of completing its finish work; provided that Tenant shall have priority use thereof during the period that Landlord and Tenant are performing construction activities) of a minimum of four (4) passenger elevators (inclusive of the Dual Use Elevator) servicing the Adam Street Premises, twenty-four (24) hours per day, three hundred sixty-five (365) days per year, and (ii) with respect to the Prospect Street Building, the non-exclusive use of a minimum of three (3) passenger elevators servicing the Prospect Street Premises twenty-four (24) hours per day, three hundred sixty-five (365) days; provided, that, subject to emergency and/or required maintenance, Landlord may take one or more passenger elevators out of service to the extent necessary during any such emergency or a reasonable period of time required to perform such maintenance (but not more than one elevator may be taken out of service during any one time for the purpose of regularly scheduled repairs and maintenance). Landlord shall, at no charge, provide at least one freight elevator serving the Premises available upon Tenant’s prior request, on a non-exclusive “first come, first serve” basis with other tenants of the Building, on all Business Days from 8:00 a.m. to 10:00 p.m. Monday through Friday and from 9:00 a.m. to 5:00 p.m. on Saturdays (collectively, “**Business Hours**”); it being understood and agreed for the avoidance of doubt, that notwithstanding anything to the contrary contained in **Section 10.5** or elsewhere in this Lease, Tenant, at no charge, shall have the use of the dual use passenger and freight elevator #4 (“**Dual Use Elevator**”) being installed in the Adams Street Building to replace the current existing freight elevator as part of Landlord’s Pre-Commencement Base Building Work, twenty-four (24) hours per day, three hundred sixty-five (365) days per year subject to emergency and required

shutdowns for repairs and maintenance as set forth above (i.e., there shall be no overtime charge for freight in the Adams Street Building). Tenant may use the Dual Use Elevator for passenger or freight purposes, including transporting pets; it being understood and agreed that Tenant shall be permitted to bring pets, including dogs, into the Adams Street Building and Adams Street Premises. Landlord shall furnish Tenant with ten (10) Business Days advance notice of any regularly scheduled maintenance of the elevators.

**Section 10.3 Heating, Ventilation and Air Conditioning . Heating, Ventilation and Air Conditioning .** Landlord shall furnish to the Premises heating, ventilation and air-conditioning (“HVAC”) in accordance with the Design Standards set forth on **Schedule “C”** annexed hereto and made a part hereof, during Business Hours (except for Observed Holidays [as hereinafter defined]). Landlord shall have access, at reasonable times and upon reasonable prior notice (except in the case of an emergency, in which case notice shall not be required) to all air-cooling, fan, ventilating and machine rooms and electrical closets and all other mechanical installations of Landlord in or in proximity to the Premises (collectively, “**Mechanical Installations**”), and Tenant shall not construct partitions or other obstructions (which partitions or obstructions are not subject to Landlord’s prior approval in accordance with the provision of **Article 5**), which may interfere other than to a de minimis extent with Landlord’s access thereto or the moving of Landlord’s equipment to and from the Mechanical Installations. No Tenant Party shall at any time enter the Mechanical Installations or tamper with, adjust, or otherwise affect such Mechanical Installations. Landlord shall not be responsible if the HVAC System fails to provide cooled or heated air, as the case may be, to the Premises in accordance with the Design Standards by reason of (i) any equipment installed by, for or on behalf of Tenant, which has an electrical load in excess of the average electrical load and human occupancy factors for the HVAC System as designed, or (ii) any improper rearrangement of partitioning or other Alterations made or performed by, for or on behalf of Tenant, or (iii) Tenant failing to keep all of the operable windows in the Premises closed whenever the HVAC System is in operation or as and when required by any Requirement. Tenant shall cooperate with Landlord and shall abide by all rules and regulations which Landlord may reasonably prescribe for the proper functioning and protection of the HVAC System. Notwithstanding anything to the contrary contained herein, Tenant shall have the right to control Tenant’s VAV boxes and finned tube radiators.

**Section 10.4 Overtime HVAC .** There shall be no charge to Tenant for the furnishing of HVAC to the Premises during Business Hours. If Tenant desires any such services during times other than Business Hours (“**Overtime Periods**”), then Tenant shall deliver notice to the Building office (which may be oral or sent by email to the attention of Landlord’s Building representative, Robert Israel, whose phone and email address (which may be changed by Landlord on prior written notice to Tenant) are respectively: (718) 663-2221, [risrael@rfr.com](mailto:risrael@rfr.com)) requesting such services (i) at least six (6) hours prior to the time that Tenant desires such service to be provided if such service is desired on Monday through Friday, and (ii) at least twelve (12) hours in advance of the time that Tenant desires such service to be provided if such service is desired on weekends and/or Observed Holidays; provided, however, that Landlord shall

use reasonable efforts to arrange such service on such shorter notice as Tenant shall provide. The current rate for HVAC during Overtime Periods at the Buildings is \$200.00 per hour. HVAC charges during Overtime Periods shall only be subject to increases based on the actual percentage increase in Landlord's actual cost for such service, as reasonably demonstrated by Landlord. If more than one tenant within the same HVAC zone as Tenant requests Overtime Period HVAC service for the same period(s) of time, then the cost of such service shall be equitably apportioned among all such tenants (including Tenant).

**Section 10.5 Overtime Freight Elevators and Heating .** There shall be no charge to Tenant for the furnishing of any freight elevator service or heating service to the Premises other than during Overtime Periods. If Tenant desires any such services during Overtime Periods, Tenant shall deliver notice (which may be oral or by email to the attention of Landlord's Building representative, Robert Israel, whose phone and email address (which may be changed by Landlord on prior written notice to Tenant) are (718) 663-2221, [risrael@rfr.com](mailto:risrael@rfr.com)) to the Dumbo Heights Campus office requesting such services (i) at least six (6) hours prior to the time that Tenant desires such service to be provided if such service is desired on Monday through Friday, and (ii) at least twelve (12) hours in advance of the time that Tenant desires such service to be provided if such service is desired on weekends and/or Observed Holidays; provided, however, that Landlord shall use reasonable efforts to arrange such service on such shorter notice as Tenant shall provide. Except as expressly set forth in **Section 10.2**, if Landlord furnishes freight elevator or heating service during Overtime Periods, Tenant shall pay to Landlord the cost thereof at the rates hereinafter set forth. The current rate for freight elevator service and heating service during Overtime Periods at the Buildings is \$125.00 per hour, and \$200.00 per hour, respectively, Overtime freight elevator charges and costs for any other services during Overtime Periods shall only be subject to increases based on the actual percentage increase in Landlord's actual cost for such service, as reasonably demonstrated by Landlord. Notwithstanding the foregoing to the contrary, provided Tenant shall not then be in default beyond notice and any applicable grace period of any of the terms and conditions of this Lease on its part to be performed, Tenant shall, at no additional charge, be entitled to use the Prospect Street Building's freight elevators during Overtime Periods comprising one hundred (100) hours in the aggregate (" **Overtime Use** "); (provided, however that Tenant's Overtime Use of the Prospect Street Building's freight elevator shall be subject to, and conditioned upon, Landlord not incurring any cost or expense in connection with such Overtime Use) in connection with the performance of Tenant's Initial Installations and move-in to the Premises.

**Section 10.6 Cleaning .** Landlord shall, at its cost and expense, cause the Common Areas of the Premises to be cleaned five (5) days per week, substantially in accordance with the standards set forth in **Exhibit "D"**, using materials and methods which are consistent with "environmentally friendly" criteria. Tenant shall, at its cost and expense, be responsible to supply cleaning services to the Premises including, without limitation, such portions of the Premises used for (i) the storage, preparation, service or consumption of food or beverages, (ii) for an exhibition area, (iii) mailroom, storage, or a shipping room, or substantially similar purposes, (iv) private bathrooms, showers or exercise facilities. Tenant's cleaning contractor shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed.

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**Section 10.7 Water .** Landlord shall provide hot and cold water in the core lavatories on each floor of the Premises. Landlord shall provide reasonable quantities of cold water service to the existing wet columns located in the Premises. In the event Tenant desires that hot water be provided to portions of the Premises in addition to the core lavatories, then Tenant, at its cost and expense, shall install a hot water heater, in accordance with the provisions of **Article 5**, to provide such additional hot water. In the event Tenant consumes water at the Premises in excess of typical lavatory and pantry use, Landlord, shall, at Tenant's cost and expense, install a water meter(s) in the Premises to measure Tenant's consumption of such excess water at the Premises. Landlord shall bill Tenant, on a monthly basis, for Tenant's actual use of Tenant's consumption of water in excess of typical lavatory and pantry use. If Tenant requires water in connection with any purpose that is not typical office use, other than those set forth above, Tenant shall pay for the cost, if any, of bringing such additional water to the Premises and Landlord shall, at Tenant's reasonable cost and expense, install a meter to measure the Tenant's consumption of such excess water. Tenant shall be responsible for all reasonable costs associated with the maintenance, repair and replacement, if any, of the hot water heater and meter(s) as provided above.

**Section 10.8 Refuse Removal .** Landlord shall, at its cost and expense, in conformity with its sustainability efforts at the Buildings, provide refuse carting removal services at the Buildings for the carting of ordinary office refuse and rubbish, incidental to the Permitted Use (excluding any refuse from Tenant's Food Service Facilities). Tenant shall pay to Landlord, Landlord's reasonable charge, either (i) in connection with the carting of any refuse from Tenant's Food Service Facilities, or (ii) to the extent that the refuse generated by Tenant exceeds the refuse customarily generated by general office tenants. Tenant shall dispose of all refuse in areas specifically and reasonably designated by Landlord only, and shall not dispose of any refuse in the Common Areas, and if Tenant does so, Tenant shall be liable for Landlord's reasonable charge for the removal of such refuse.

**Section 10.9 Condenser Water .** Tenant shall, at its cost and expense, be permitted to install independent supplemental water-cooled air conditioning units (" **Tenant's Supplemental Units** ") in Tenant's equipment rooms, subject to the provisions of **Article 5** including, without limitation, the requirement to obtain Landlord's prior approval thereto, which approval shall not be unreasonably withheld. Landlord shall provide ten (10) tons of condenser water for each full floor then comprising the Premises to a condenser water riser for connection for supplemental cooling at each of the Adams Street Premises and the Prospect Street Premises in connection with Tenant's Supplemental Units (24 hours per day, 7 days per week, and 365 days per year). Tenant shall pay Landlord an annual charge for such condenser water throughout the term of this Lease, which charge is \$450.00 per ton (which charge shall not be imposed for any "standby" or redundant" air conditioning units), payable annually in advance in a lump sum initially for the remainder of the first calendar year of this Lease at the same time that Tenant makes its first payment of Fixed Rent hereunder

and thereafter for each calendar year at the same time that Tenant makes its first payment of Fixed Rent in such calendar year, and shall be payable whether or not Tenant utilizes such amount of condenser water. Notwithstanding the foregoing to the contrary, Tenant shall have the right to reduce or increase the number of tons of condenser water which it desires by providing Landlord with notice of its desire to either reduce or increase the amount condenser water to be provided to the Premises, in no event shall Tenant give such notice to Landlord later than the date that is the later of (i) eighteen (18) months immediately following the date of this Lease, or (ii) the expiration of the first cooling season that Tenant is in occupancy of the Premises for the conduct of its business. In the event Tenant desires to increase the number of tons of condenser water to be provided to the Premises, such increase shall be subject to the availability of such additional condenser water at the Building, provided, however, in no event shall the aggregate amount of condenser to be provided to the Premises (the initial amount of ten 10 tons for each full floor comprising the Premises (which ten (10) tons per floor can be distributed and redistributed among the floors of the Premises within a given Building as desired by Tenant to satisfy its occupancy requirements) together with any additional amount of condenser water) exceed Tenant's Proportionate Share of the rentable square footage comprising the respective Building. After that deadline, Landlord shall nevertheless reasonably endeavor to accommodate any such request by Tenant, subject however to capacity constraints and reasonable reservations for the remainder of the Building. There shall be no charge for tapping into the Buildings' water condenser system, and Landlord shall provide a valved and capped outlet on each floor of the Premises.

**Section 10.10 Telecommunications**. Landlord shall provide dark fiber connection within each of the Buildings through a single provider ("Landlord's Fiber Provider"). Landlord's Fiber Provider shall (i) manage all telecommunications connectivity for the Buildings, (ii) contract directly with Tenant in order to provide connectivity through any provider or end user that Tenant desires. Landlord to date has not entered into any agreement(s) with any telecom providers for the Buildings. Landlord represents and covenants that Landlord's Fiber Provider shall have a completed and operational redundant network architecture in place at the Buildings that is consistent with all of Landlord's Fiber Provider collateral (i.e., "lit fiber") no later than August 1, 2015. Landlord shall enter into right of way agreement with television service provider allowing Tenant to procure television distribution services. Additionally, Landlord shall provide space to accommodate two (2) Tenant-provided 4" conduit interconnections between the Adams Street Premises and Prospect Street Premises for Tenant exclusive use in a location and manner reasonably acceptable to Landlord. Landlord hereby acknowledges and represents that any such agreements shall conform to the telecommunication standards adopted by the Landlord for the Buildings to accommodate high tech tenants, and that the same shall be on Landlord's standard form of such agreement. Notwithstanding anything to the contrary contained herein, subject to Unavoidable Delays if either (1) Landlord's Fiber Provider fails to furnish service to one or more of the Buildings for more than twenty-four (24) consecutive hours and/or (2) Landlord's Fiber Provider fails on a chronic basis to satisfy service level requirements provided for in the Landlord's Fiber Provider's service level agreement (SLA) with the Buildings, then in any such case, Tenant shall have the right to designate

and engage a telecommunications service provider of Tenant's choosing, and Landlord shall grant access to the Buildings to any such telecommunications service provider designated by Tenant (or any sub lessee of Tenant) for purposes of providing telecommunications services to Tenant (or such sub lessee of Tenant) independent of Landlord's Fiber Provider (i.e., Tenant will not have to use Landlord's Fiber Provider's infrastructure). Landlord confirms that the Buildings have sufficient available riser space to accommodate additional telecommunications providers for the Premises, and Landlord will make a reasonable amount of such space available to Tenant and its telecommunications providers without charge for purposes of such installations.

**Section 10.11 Service Interruptions** . (a) Subject to the provisions of **Section 10.11(b)** below, Landlord reserves the right to suspend any service when necessary, by reason of Unavoidable Delays, accidents or emergencies, or for Restorative Work which, in Landlord's commercially reasonable judgment, are necessary or appropriate until such Unavoidable Delay, accident or emergency shall cease or such Restorative Work is completed and Landlord shall not be liable for any interruption, curtailment or failure to supply services. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises as a result of any such interruption, curtailment or failure of or defect in such service, or change in the supply, character and/or quantity of electrical service, and to restore any such services, remedy such situation and minimize any interference with Tenant's business. Subject to the provisions of **Section 10.11(b)** below, the exercise of any such right or the occurrence of any such failure by Landlord shall not constitute an actual or constructive eviction, in whole or in part, entitle Tenant to any compensation, abatement or diminution of Rent, relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or any Indemnitees by reason of inconvenience to Tenant, or interruption of Tenant's business, or otherwise. Landlord shall provide Tenant with 30 days advance written notice of any scheduled electric shutdowns, or if unscheduled, such advance notice as is practicable under the circumstances.

(b) Except as expressly set forth herein, Landlord shall not be liable in any way to Tenant for any failure, defect or interruption of, or change in the supply, character and/or quantity of electric service furnished to the Premises (including pursuant to **Section 10.15** ) for any reason, nor shall there be any allowance to Tenant for a diminution of rental value, nor shall the same constitute an actual or constructive eviction of Tenant, in whole or in part, or relieve Tenant from any of its Lease obligations, and no liability shall arise on the part of Landlord by reason of inconvenience, annoyance or injury to business whether electricity or gas is provided by public or private utility or by any electricity generation system owned and operated by Landlord. Notwithstanding anything to the contrary contained in this Lease with the exception of **Articles 11 and 12** relating to casualty and condemnation, respectively, if without the fault or neglect of Tenant or any person claiming through or under Tenant, all or any portion of the Premises is rendered Untenantable for a period of five (5) consecutive Business Days after Tenant shall have notified Landlord of such Untenantability (which notice, for purposes of this **Section 10.11(b)** , may be verbal, provided that Tenant confirms such verbal notice by a notice given in accordance with **Article 22** within twenty-four (24) hours after the giving of such verbal notice), by reason

of any stoppage or interruption of any Essential Service required to be provided by Landlord under this Lease or the failure by Landlord to perform any of Landlord's obligations hereunder, but excluding by reason of a casualty or other Unavoidable Delay or Tenant Delay and Tenant is not in occupancy of the portion of the Premises so affected, then for the period commencing on the day Tenant notifies Landlord that such portion of the Premises became so Untenantable until such portion of the Premises is no longer Untenantable, Fixed Rent and Additional Rent shall be appropriately abated, on a per rentable square foot basis, with respect only to such portion of the Premises that is Untenantable. “**Untenantable**” means that Tenant (or any other permitted user) shall be unable to use the Premises or the applicable portion thereof for the conduct of its business in the manner in which such business is ordinarily conducted, and shall not be using or in occupancy of the Premises or the applicable portion thereof. If Tenant shall be entitled to such reduction of Fixed Rent and Additional Rent as aforesaid and such reduction shall accrue before the Rent Commencement Date shall occur, then commencing with the Rent Commencement Date, Tenant shall be entitled to a credit against the Fixed Rent and Additional Rent becoming due in an amount equal to the amount of such reduction. “**Essential Service**” shall mean (a) HVAC service, (b) electrical service, (c) elevator service, (d) water and sewer, and (e) legal compliance to the extent Tenant is prevented from operating its business in the Premises but only if such legal compliance is the obligation of Landlord hereunder.

**Section 10.12 Building Security / Lobby Desk.** Landlord shall, at its cost and expense, provide reasonable protection and security services and security personnel, seven (7) days per week, twenty-four (24) hours per day, at the Buildings, comparable to that which the owners of Comparable Buildings (as hereinafter defined) would provide. Landlord shall, at Landlord's cost and expense, as part of Landlord's Post-Commencement Base Building Work, provide certain Building security systems and equipment as set forth on **Schedule “C”** at each of the Buildings. Tenant may, at its cost and expense, subject to, and conditioned upon any Permitted Tenant then satisfying the Minimum Lobby Desk Leasing Requirement with respect to a particular Building, at its election maintain a lobby/reception desk in the lobby of the applicable Building(s). Any such lobby/reception desk may, at Tenant's election, be manned by contractors or employees of Tenant, at Tenant's expense, subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant may, at its cost and expense, design and install its own security and protection systems with respect to the Premises which are compatible with the Building security system so as to enable Tenant to utilize a single security/access cards, subject to (i) first obtaining Landlord's reasonable prior approval for such systems and (ii) complying with the provisions of **Article 5** in connection therewith. Without limiting the foregoing, (1) with respect to the Adams Street Building, Landlord shall permit, at Tenant's sole cost and expense, the installation of dedicated access control card readers in the lobby turnstiles that interface with Tenant's access control system (i.e., a second set of card readers), (2) Landlord shall furnish Tenant with the ability to view (but not control the operation or positioning of) in a remote location [in the Premises] on a real time basis the feed from the video surveillance cameras located in the lobby of the Building and elevator cabs (3) Tenant shall have the ability to control elevator cab access utilizing Landlord provided card readers located in the elevator cabs, and (4) the Building's

exterior swinging doors shall be equipped, at a minimum, with (x) door position switches, (y) fail secure electrified locking hardware (electronically unlocked) with mechanical key override and integral request to exit functioning, and (z) prepare door for card reader (wall or mullion install TBD by Landlord's architect). Landlord shall have no obligation with respect to the installation, maintenance, repair or replacement, if necessary, of Tenant's security and protection systems. For purposes hereof, the term "**Minimum Lobby Desk Lease Requirement**" shall mean (i) with respect to the Adams Street Premises, the leasing by a Permitted Tenant of not less than five (5) full floors in the Adams Street Building, and (ii) with respect to the Prospect Street Premises, the leasing by a Permitted Tenant of not less than five (5) full floors in the Prospect Street Building. During the performance of Tenant's Initial Installations, Tenant shall have sole responsibility for providing construction security at the Adams Street Building.

**Section 10.13 Signage.** (a) Provided a Permitted Tenant then occupies, and thereafter continues to occupy, not less than five (5) full floors at the Adams Street Building (the "**Adams Street Minimum Occupancy Threshold**"), then Tenant shall have the exclusive right to install an identification sign on the exterior or the roof of Adams Street Building, including flag and/or blade signage ("**Tenant's Exterior Sign[s]**"), if available, and allowable by New York City zoning regulations and building codes, as well as in separate locations within the lobby of the Adam Street Building and at the elevator banks of the Adam Street Building, subject to obtaining Landlord prior written approval as to the size, color, materials and method of installation of Tenant's Exterior Sign(s), which approval shall not be unreasonably withheld, conditioned or delayed. Tenant's Exterior Signs shall neither be subordinate in location nor smaller in size to any other tenant in the Buildings; it being understood and agreed that the foregoing is not intended to vitiate Tenant's right to exclusivity (with the exception of retail storefront signage) to exterior signage at the Adams Street Building). Landlord hereby approves the locations for Tenant's Exterior Signs set forth on **Exhibits H-1, H-2 and H-3** hereof. Provided that Tenant then occupies, and thereafter continues to occupy not less than fifty (50%) of the rentable office square footage of the Prospect Street Building (the "**Prospect Street Minimum Occupancy Threshold**"), Tenant shall have the non-exclusive right to install Tenant's Exterior Sign(s) on the exterior or the roof of Prospect Street Building ("**Tenant's Roof Sign[s]**"), if available, and allowable by New York City zoning regulations and building codes, as well as Tenant's Interior Signs (as hereinafter defined) in separate locations within the lobby of the Prospect Street Building and at the elevator banks of the Prospect Street Building, subject to obtaining Landlord approval as to the size, color, materials and method of installation of such Tenant's Exterior Sign(s), which approval shall not be unreasonably withheld. Landlord's consent shall not be required for the installation of any Tenant identification signs located on floors of the Premises that are entirely leased to Tenant, including the elevator lobbies thereof as long as such signage is not visible from the outside of the Buildings ("**Tenant's Interior Signs**"). Tenant's Exterior Signs and Tenant's Interior Signs are, from time to time collectively referred to as "**Tenant's Signs**". Tenant hereby acknowledges and agrees that Landlord shall have no liability in connection with Tenant's Signs and shall have no obligation whatsoever in connection with the maintenance, repair or replacement, if necessary of the same, which shall be the sole obligation of Tenant. Notwithstanding the foregoing to the contrary, Landlord shall

maintain, repair and remove at the end of the Term, as the same may be extended, or upon the early termination of this Lease, Tenant's Roof Sign(s) and Tenant shall pay to Landlord, the commercially reasonable costs incurred by Landlord in connection therewith as Additional Rent, within twenty (20) days from the date of Landlord's delivery to Tenant of a commercially reasonable bill therefore. Except as provided in the immediately previous sentence, unless otherwise directed by Landlord, in writing, Tenant shall, at its cost and expense, on, or before, the Expiration Date, as the same may be extended, or early termination of this Lease, remove all Tenant Signs and repair any damage to the Buildings and/or the Premises caused by such removal. Landlord is not aware of any current restrictions imposed by the Landmark's Commission which would affect Tenant's installation of any Tenant Exterior Signs. Landlord shall cooperate with Tenant (at no cost or expense to Landlord) in connection with Tenant's proposed landscaping plan for the development of the "hill" (which is currently owned by the City of New York) located directly across from the Adams Street Building.

(b) Notwithstanding anything to the contrary contained herein but subject to the penultimate sentence of this **Section 10.13(b)**, (i) for so long a Permitted Tenant satisfies the Adams Street Minimum Occupancy Threshold, Landlord shall not permit any signage (including a flag) of any Top Tier Tenant's Competitors on the exterior of the Adams Street Building, (ii) for so long a Permitted Tenant occupies not less than seventy-five (75%) of the rentable office square footage of the Adams Street Building, Landlord shall not permit any signage (including a flag) of any Second Tier Tenant's Competitors on the exterior of the Adams Street Building, (iii) for so long as a Permitted Tenant satisfies the Prospect Street Minimum Occupancy Threshold, Landlord shall not permit the signage (including a flag) of any Tenant Competitor on the exterior of the Prospect Street Building, and (iv) for so long a Permitted Tenant occupies not less than seventy-five (75%) of the rentable office square footage of the Prospect Street Building, Landlord shall not permit any signage (including a flag) of any Second Tier Tenant's Competitors on the exterior of the Prospect Street Building. Notwithstanding the forgoing, in no event shall Landlord shall permit any signage (including a flag) of any Top Tier Tenant's Competitors on the exterior of the Adams Street Building and/or the Prospect Street Building during the first four (4) years of the Term. In no event shall the restrictions set forth in this **Section 10.13(b)** prohibit Landlord from entering into a lease for space in the Buildings with any Tenant Competitor.

**Section 10.14 Fire Staircases.** Tenant shall have the right to have its employees and guests use the fire staircases (the "Fire Staircase [s]"), which connect contiguous full floors of the Premises, as a convenience staircase(s), subject to the Rules and Regulations and provided Tenant shall obtain and keep in full force the insurance set forth in **Section 11.1(a) (i) - (vi)** with respect to the Fire Staircase(s). In the event Tenant elects to use the fire staircases as provided above, Tenant, at its cost and expense, shall comply with all Requirements for such use. Tenant shall, at its cost and expense, install an internal security system with respect to Tenant's use of the fire staircases, which security system shall be installed in accordance with the provision of **Article 5** including, without limitation, obtaining Landlord's prior written approval thereto, which approval shall not be unreasonably withheld, conditioned or delayed and provided

such security system shall be tied into the Building's security system and Class E system. Tenant hereby agrees, at its cost and expense, prior to installing any such fire staircase security system, to obtain (with Landlord's reasonable cooperation to the extent necessary, but at no cost or expense to Landlord) any and all necessary approvals and permits from all applicable Governmental Authorities. To the extent required, Tenant shall apply to the Department of Buildings of the City of New York for its approval of Tenant's fire staircase security system and shall obtain any necessary permits therefrom for such work. In the event Tenant shall not cure any violation of a Requirement related to Tenant's use of the Fire Staircase(s) as convenience stairs within the prescribed time for such cure as provided in this **Section 10.14**, Landlord may, if Tenant has not after receiving notice of such violation cured the same within the time permitted under applicable Requirements, cure such violation and Tenant hereby agrees to pay all penalties, costs, expenses and fees (including reasonable attorneys' fees) incurred by Landlord in connection therewith. Tenant shall maintain and repair, if necessary, the Decorative Alterations, the fire doors leading to and from fire staircases utilized by Tenant, and the security system installed by Tenant as hereinabove provided and shall keep the portion of the fire staircases utilized by Tenant clean and in an orderly fashion and shall paint the same once per year. Notwithstanding the terms of **Section 5.1**, Tenant shall not make any Decorative Alterations in the fire staircases, including, but not limited to, painting and installing upgraded lighting in compliance with Requirements, without Landlord's consent, not be unreasonably withheld, conditioned or delayed.

**Section 10.15 Shaft Space**. Landlord shall, at no additional rent or other charge to Tenant, provide Tenant with (i) an unobstructed, hazardous materials free, secure pathway from the "Meet me Room" in each of the Buildings to the Tenant's shaft space ("Shaft Space"), in each of the Adams Street Premises and the Prospect Street Premises, and (ii) a pro-rata share of available Shaft Space within the Buildings, from the Premises to the roof of the Buildings for Tenant's telecommunications equipment. Landlord shall make available for Tenant's use two (2) separate five (5) inch sleeves from the Meet me Rooms to each floor of the Premises. Landlord hereby represents that (i) there shall be two (2) separate points of entry into each Building throughout the Term, as the same may be extended, and (ii) the amount of Tenant's Shaft Space shall be proportionately increased if Tenant shall elect to increase the size of the Premises in accordance with any rights or options granted to Tenant under this Lease. At Tenant's request, Landlord shall take all reasonable steps to allow a service provider selected by Tenant to provide service to the Buildings for Tenant, subject to the Buildings' standard review and approval process, which approval shall not be unreasonably withheld, conditioned or delayed. In the event Tenant desires to install any risers, conduit or telecommunications equipment, Tenant shall install the same in accordance with the provisions of Article 5 including, without limitation, obtaining Landlord's written approval of Tenant's plans and specifications showing the installations to be made by Tenant therein, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall permit Tenant, throughout the Term, as the same may be extended to have a right of access through the Common Areas and other tenant spaces in the Building as may be reasonably necessary, to install, service, maintain and repair cables, conduits, risers, piping, and other installations running through the Buildings for which

Tenant is permitted or required to install, service, maintain and repair, provided, to the extent required under the terms and conditions of such other tenant's lease, Landlord shall use commercially reasonable efforts to obtain such other tenant's permission for such access, and Tenant shall (a) provide Landlord and the tenant whose space is affected with reasonable prior written notice of the need for such access, (b) schedule such access so as not to unreasonably interfere with the such tenant's business or inconvenience other tenants or occupants of the Buildings and (c) repair any damage to the Buildings the Common Areas or the accessed space arising out of such access. Tenant may require shaft space for exhaust of a "woodworking" shop, at Tenant's cost and expense]. Landlord reserves the right, as Landlord deems necessary or desirable, to access Tenant's Shaft Space in connection changes, alterations, additions, improvements, repairs or replacements to the Building and Building Systems.

**Section 10.16 Kitchen and Cafeteria.** Tenant shall, at its cost and expense, have the right to construct a full cafeteria as well as an executive dining area or more casual seating areas for employee use only in either the Adams Street Premises or the Prospect Street Premises (the "Food Service Facilities"), in accordance with, and subject to, the provisions of Article 5. In addition, if the installation of the Food Services Facilities requires (i) the reinforcement of certain portions of the flooring of the Premises, as determined in the sole discretion of Landlord's structural engineer for the Buildings, then Tenant first shall submit to Landlord detail plans and specifications for the performance of such flooring reinforcement work, which plans and specifications shall be subject to, and conditioned upon, Landlord's and Landlord's structural engineer's prior written approval, exercised in their sole discretion, or (ii) the issuance of a Public Assembly Permit or modification of the TCO or Certificate of Occupancy for the Adams Street Building or the Prospect Street Building, as the case may be, Tenant shall, at its cost and expense, obtain and maintain the same in accordance with applicable requirements. In connection with the installation of the Food Services Facilities, the kitchen exhaust, make up air, additional electrical capacity, domestic water, sanitary natural gas riser and other associated utilities shall be constructed by Tenant either as part of Tenant's Initial Installations or as a subsequent Tenant Alteration. Landlord shall cooperate with Tenant (at no additional cost or expense to Landlord) in connection with Tenant's installation of Food Service Facilities and/or obtaining any required governmental approvals and/or permits, including any modification to the TCO or Certificate of Occupancy or the issuance of a public assembly permit.

**Section 10.17 Louvers.** Tenant shall, at its cost and expense, have the right to install a commercially reasonable number of louvers for Tenant's general exhaust and outside air intake requirements (the "Louvers") at the Premises, at locations approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Any Louvers to be installed at the Premises, shall be installed in accordance with terms and conditions of Article 5. Landlord shall furnish outside air or fresh air to the Premises via the base Building Systems.

**Section 10.18 Building Services/Access.** Tenant shall have access to the Premises seven (7) days per week, twenty-four (24) hours per day, subject to

Unavoidable Delay (as hereinafter defined) and police emergency. Landlord shall throughout the Term, as the same may be extended, maintain the Buildings in a manner consistent with the standard of Comparable Buildings, and shall provide all of the services expressly set forth in this Lease (i.e., heating and air conditioning, elevator service, security, repairs and maintenance, Building directory and cleaning of the Common Areas) in the manner and to the extent required hereunder.

**Section 10.19 Emergency Power.** Tenant shall be permitted to install a diesel powered backup generator (“**Tenant’s Back-up Generator**”) at the Premises subject to, and conditioned upon, (i) prior written approval of the size and type of Tenant’s Back-up Generator, which approval shall not be unreasonably withheld, and (ii) the installation of Tenant’s Back-up Generator in compliance with **Article 5**. Landlord shall, at no additional cost or expense to Tenant, provide space, which space shall be determined in Landlord’s sole discretion, on the roof of the Adams Street Building and/or the roof of the Prospect Street Building for installation of Tenant’s back-up Generator. Landlord shall, at Tenant’s cost and expense, make emergency power available to the Premises for Tenant’s reasonable emergency power requirements to support Tenant reasonable life safety requirements and shall allow Tenant to tap into the Building’s life safety generator to support Tenant’s reasonable emergency lighting requirements. In connection with the forgoing, Landlord shall permit Tenant to connect into the Buildings’ risers via the electrical closets on each floor of the Premises and Landlord shall furnish 35 KW demand of emergency power spread evenly between the building’s emergency lighting. Tenant shall, at its cost and expense, pay for all riser, connections and tap in costs in order to connect to the Building’s life safety generator and Tenant’s Back-up Generator.

**Section 10.20 Loading Docks.** Tenant shall have priority use of the loading dock at the Adams Street Building. With respect to the loading dock servicing the Prospect Street Building, Tenant use thereof shall be shared with other occupants of the Prospect Street Building on a first-come, first-serve basis.

**Section 10.21 Roof Deck.** Provided that a Permitted Tenant shall then be leasing (A) either or both of the 8<sup>th</sup> and/or 9<sup>th</sup> floors of the Adams Street Building, Tenant, at no additional cost or expense, shall have the exclusive use of the 8<sup>th</sup> floor roof deck (the “**8<sup>th</sup> Floor Roof Deck**”) at the Adams Street Building and/or (B) the 5<sup>th</sup> floor of the Adams Street Building, Tenant, at no additional cost or expense, shall have the exclusive use of the 5<sup>th</sup> floor terraces and deck (the “**5<sup>th</sup> Floor Roof Deck**”; the 5<sup>th</sup> Floor Roof Deck and 8<sup>th</sup> Floor Roof Deck may hereinafter be individually or collectively referred to as the “**Roof Deck**”) at the Adams Street Building. Landlord shall, at no additional cost and expense, cooperate with Tenant in the design and selection of materials for Tenant’s build-out of the Roof Deck, which build-out shall be at Tenant’s sole cost and expense. Landlord hereby represents that, (i) the floor load of the Roof Deck is 100 pounds live load, and (ii) currently there is no elevator service to the Roof Deck, and (iii) a new base building air-handler shall be installed on the 8<sup>th</sup> Floor Roof Deck, in a location substantially similar to the location set forth on Landlord’s current plans for such installation, as indicated on the plan annexed hereto as **Schedule 3**. Tenant hereby acknowledges and agrees that (x) Tenant shall incorporate the Roof

Deck in all of Tenant's applicable insurance policies required under this Lease, and (y) Tenant shall, at its cost and expense, ensure that use of the Roof Deck is at all times during the Term, in compliance with all Requirements then having jurisdiction thereof including, without limitation, the TCO or Certificate of Occupancy for the Adams Street Building; provided, that, Landlord shall deliver the Roof Deck to Tenant in compliance with all applicable Requirements, including the installation of a railing or the raising of the parapet wall which prior to the performance thereof. Landlord shall consult with Tenant thereon; it being understood and agreed that Landlord shall not be obligated to bring the Roof Deck into compliance with any Requirement applicable to Tenant's particular use thereof, and (z) in the event Tenant desires to perform any Alterations (" **Roof Deck Alterations** ") on, or to, the Roof Deck, such Roof Deck Alterations shall be at Tenant's sole cost and expense, and shall be subject to, and conditioned upon, (1) prior to commencing any Roof Deck Alterations, Tenant shall provide temporary waterproofing of the Roof Deck in order to maintain a watertight condition during the performance of any Roof Deck Alterations, and (2) the performance of all Roof Deck Alterations in compliance with the terms and conditions of **Article 5**, including, without limitation, obtaining Landlord's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed and (3) the performance of all Roof Deck Alterations by Landlord's approved roofing contractor only. If, in connection with, or as a result of, the Roof Deck Alterations, a new roof is required to be installed at the 8<sup>th</sup> Floor Roof Deck, Tenant shall, pay to Landlord, an amount equal to the cost of providing and installing such new roof, which new roof shall have a commercially reasonable warranty, as Additional Rent hereunder, within thirty (30) days from the date of Tenant's receipt of Landlord's bill therefore, and (vii) Tenant shall, at its cost and expense, maintain, repair and replace, if necessary, all Roof Deck Alterations, and (viii) Landlord shall, at its cost and expense, maintain, repair and replace, if necessary, the Roof Deck except for any Roof Deck Alterations and any maintenance, repairs and replacements required as a result of the Roof Deck Alterations which shall be Tenant's responsibility and (ix) Landlord shall have no obligation or liability whatsoever in connection with the Roof Deck Alterations including, without limitation, the installation, maintenance, repair or removal of the same, and/or Tenant's use of the Roof Deck, (x) Landlord shall have no obligation or liability whatsoever in connection with the installation, use, operation, maintenance, repair, or replacement, if any, of Tenant's Elevator (as hereinafter defined), except if the same is necessitated as a result of Landlord's gross negligence or willful misconduct, and (xi) Tenant shall, at Tenant's cost and expense, as part of Tenant's Initial Installations and in accordance with the terms and conditions of **Article 5** including, without limitation obtaining Landlord's consent thereto, which consent shall not be unreasonably withheld, have the right to install a hydraulic elevator (" **Tenant's Elevator** ") at the Adams Street Building which shall access the 8<sup>th</sup> Floor Roof Deck.

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## ARTICLE 11

### INSURANCE; PROPERTY LOSS OR DAMAGE

**Section 11.1 Tenant's Insurance .** (a) Tenant, at its expense, shall obtain and keep in full force and effect during the Term:

(i) a policy of commercial general liability insurance on an occurrence basis against claims for personal injury, bodily injury, death and/or property damage occurring in or about the Buildings, under which Tenant is named as the insured and Landlord, Landlord's Agent and any Lessors and any Mortgagees whose names have been furnished to Tenant are named as additional insureds (the " **Insured Parties** " ). Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of the Insured Parties. The minimum limits of liability applying exclusively to the Premises shall be a combined single limit with respect to each occurrence in an amount of not less than \$10,000,000.00; provided, however, that Landlord shall retain the right to require Tenant to increase such coverage from time to time (but no more often than every four (4) years) to that amount of insurance which in Landlord's reasonable judgment is then being customarily required by landlords for similar office space in Comparable Buildings and provided further that the requirement with respect to limits may be satisfied by a combination of primary and umbrella policies. The self -insured retention for such policy shall not exceed \$75,000;

(ii) insurance against loss or damage by fire, and such other risks and hazards as are insurable under then available standard forms of "Special Form Causes of Loss" or "All Risk" property insurance policies with extended coverage, insuring Tenant's Property and all Alterations and improvements to the Premises (including the Initial Installations) to the extent such Alterations and improvements exceed the cost of the improvements typically performed in connection with the initial occupancy of tenants in the Buildings (" **Building Standard Installations** "), for the full insurable value thereof or replacement cost thereof, having a deductible amount, if any, not in excess of \$100,000;

(iii) during the performance of any Alteration, until completion thereof, Builder's Risk insurance on an "all risk" basis and on a completed value form including a Permission to Complete and Occupy endorsement, for full replacement value covering the interest of Landlord and Tenant (and their respective contractors and subcontractors) in all work incorporated in the Building and all materials and equipment in or about the Premises;

(iv) Workers' Compensation Insurance, as required by law;

(v) such other insurance in such amounts as Landlord or the Mortgagee then holding a Mortgage on the Building may reasonably require from time to time; provided such other insurance in such amounts is then being customarily required by landlords for similar office space in Comparable Buildings and provided further that the requirement with respect to limits may be satisfied by a combination of primary and umbrella policies; and

(vi) Business Interruption Insurance coverage for a period of at least twelve (12) months.

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(b) All insurance required to be carried by Tenant shall be (i) non-cancellable and/or no material change in coverage shall be made thereto unless the Tenant receives thirty (30) days' (ten [10] days in the case of cancellation for non-payment of premiums) prior notice of the same, by certified mail, return receipt requested, and upon Tenant's receipt of same, Tenant shall furnish notice thereof to Landlord, and (ii) effected under valid and enforceable policies issued by reputable insurers qualified to do business in the State of New York and rated in Best's Insurance Guide, or any successor thereto as having a "Best's Rating" of "A-" or better and a "Financial Size Category" of at least "VII" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial rating as Landlord may at any time reasonably consider appropriate.

(c) On or prior to the Commencement Date, Tenant shall deliver to Landlord appropriate policies or certificates of insurance ("Certificate[s] of Insurance, including evidence of waivers of subrogation required to be carried pursuant to this **Article 11** and that the Insured Parties are named as additional insureds (the "**Policies**"). Evidence of each renewal or replacement of the Policies shall be delivered by Tenant to Landlord at least one (1) day prior to the expiration of the Policies. In lieu of the Policies, Tenant may deliver to Landlord a certification from Tenant's insurance company (on the form currently designated "Accord 27" (Evidence of Property Insurance) and "Accord 25-S" (Certificate of Liability Insurance), or the equivalent, provided that the Certificate of Insurance indicates as to Tenant's commercial general liability policy that the Insured Parties are named as additional insureds, which certification shall be binding on Tenant's insurance company. A copy of the form of the Certificate of Insurance acceptable to Landlord is annexed hereto as **Schedule "E"** and made a part hereof,

(d) Landlord shall (i) keep the Buildings insured against damage and destruction by fire, vandalism, and other perils under "all risk" property insurance, which coverage shall be no less than the full replacement cost thereof, and (ii) maintain a policy of commercial general liability insurance for claims for personal injury, death and/or property damage occurring in or about the Buildings; both as to (i) and (ii) above, consistent with the insurance requirements of any Mortgage then affecting the Building, and if there is no Mortgage, then consistent with coverage maintained by prudent owners of Comparable Buildings.

(e) Tenant shall have the right to satisfy its obligations under **Section 11.1(a)** by means of any so-called blanket policy or policies of insurance covering the Premises and other premises of Tenant or its Affiliates; provided that each such policy shall in all respects comply with **Section 11.1(a)** and shall specify that the portion of the total coverage of such policy that is allocated to the Premises is in the amounts required pursuant to **Section 11.1(a)** and shall provide that the amount of coverage afforded thereunder with respect to the Premises shall not be reduced below the limits required hereunder by claims thereunder against such other premises.

**Section 11.2 Waiver of Subrogation**. Landlord and Tenant shall each procure an appropriate clause in or endorsement to any property insurance covering the

Building or the Premises, as the case may be, and personal property, fixtures and equipment located therein, wherein the insurer waives subrogation or consents to a waiver of right of recovery, and Landlord and Tenant agree not to make any claim against, or seek to recover from, the other for any loss or damage to its property or the property of others resulting from fire or other hazards. For purposes of this waiver, any deductible with respect to a party's insurance shall be deemed covered by and recoverable by such party under valid and collectable policies of insurance. Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible for, (i) damage to any Above Building Standard Installations, (ii) Tenant's Property, and (iii) any loss suffered by Tenant due to interruption of Tenant's business.

**Section 11.3 Restoration** . (a) If any of the Buildings or the Premises are damaged by fire or other casualty, the damage shall be repaired by Landlord with reasonable dispatch and continuity, at Landlord's expense, to substantially the condition of the Buildings and Premises prior to the damage (" **Landlord's Restoration Obligation** "), but Landlord shall have no obligation to repair or restore (i) Tenant's Property, or (ii) except as provided in **Section 11.3(b)** , any Alterations or improvements to the Premises to the extent such Alterations or improvements are in excess of Landlord's Base Building Work, if any (" **Above Building Standard Installations** "). So long as no Tenant Event of Default then exists and is continuing in the payment or performance of its obligations under this **Section 11.3** , and provided Tenant timely delivers to Landlord either Tenant's Restoration Payment (as hereinafter defined) or the Restoration Security (as hereinafter defined) or Tenant expressly waives any obligation of Landlord to repair or restore any of Tenant's Above Building Standard Installations, then until the restoration of the Premises is Substantially Completed or would have been Substantially Completed but for any Tenant Delay, Fixed Rent, Tenant's Tax Payment shall be reduced in the proportion by that area of the part of the Premises which is not usable (or accessible), and is not used by Tenant bears to the total area of the Premises, and Fixed Rent shall be reduced on a floor by floor basis in the same manner. If more than fifty (50%) of the rentable square footage of the Premises shall be inaccessible, the Premises shall be deemed to be wholly unusable. This **Article 11** constitutes an express agreement governing any case of damage or destruction of the Premises or the Building by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, which provides for such contingency in the absence of an express agreement, and any other law of like nature and purpose now or hereafter in force, shall have no application in any such case.

(b) Subject to Tenant's right to elect to release Landlord from such obligation pursuant to the next succeeding sentence of this **Section 11.3 (b)** , as a condition precedent to Landlord's obligation to repair or restore any of Tenant's Above Building Standard Installations, Tenant shall (i) pay to Landlord upon demand a sum (" **Tenant's Restoration Payment** ") equal to the amount, if any, by which (A) the then market cost, as estimated by a reputable independent contractor designated by Landlord, of repairing and restoring all Alterations and Initial Installations in the Premises to their condition prior to the damage, exceeds (B) the then market cost of restoring the Premises with Building Standard Installations, or (ii) furnish to Landlord security (the " **Restoration Security** ") in form and amount reasonably acceptable to

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Landlord to secure Tenant's obligation to pay all costs in excess of restoring the Premises with Building Standard Installations. If Tenant shall not deliver to Landlord either (1) Tenant's Restoration Payment or the Restoration Security, as applicable, or (2) a waiver by Tenant, in form reasonably satisfactory to Landlord, of all of Landlord's obligations to repair or restore any of the Above Building Standard Installations, in either case within fifteen (15) days after Landlord's demand therefore, Landlord shall have no obligation to restore any Above Building Standard Installations and Tenant's abatement of Fixed Rent, Tenant's Tax Payment and Tenant's Operating Payment shall cease when the restoration of the Premises (other than any Above Building Standard Installations) is Substantially Complete, and Landlord has notified Tenant thereof.

**Section 11.4 Landlord's Termination Right**. Notwithstanding anything to the contrary contained in **Section 11.3**, if (i) the Adams Street Building shall be seventy-five (75%) percent or more damaged or destroyed by fire or other casualty such that the completion of Landlord's Restoration Obligation requires more than eighteen (18) months to complete, (or) (ii) the Adams Street Building shall be so damaged or destroyed by fire or other casualty that Landlord's Restoration Obligation requires the expenditure of more than forty (40%) percent of the full insurable value of the Adams Street Building immediately prior to the casualty (in the case of (i), (ii) or (iii), as estimated by a reputable contractor, registered architect or licensed professional engineer designated by Landlord subject to Tenant's approval, which approval Tenant shall not unreasonably withhold, condition or delay (herein called "**Landlord's Expert**"), then in either of such events, Landlord may, not later than sixty (60) days following the date of the damage, terminate this Lease by notice to Tenant. If this Lease is so terminated, (v) the Term shall expire upon the 30<sup>th</sup> day after such notice is given, (w) Tenant shall vacate the Premises, (x) Tenant's liability for Rent shall cease as of the date of the damage, (y) any prepaid Rent for any period after the date of the damage shall be refunded by Landlord to Tenant, and (z) if the lease is so terminated, Landlord shall return to Tenant the Letter of Credit together with a letter addressed to the Issuing Bank acknowledging that Landlord has no further right to draw thereon. Notwithstanding anything to the contrary contained in **Section 11.3**, if the Prospect Street Building shall be so damaged that, in Landlord's reasonable opinion, substantial alteration, demolition, or reconstruction of the Prospect Street Building shall be required (whether or not the Premises are so damaged or rendered untenantable), then Landlord may, not later than sixty (60) days following the date of the damage, terminate this Lease with respect to the Prospect Street Premises only by notice to Tenant, provided that if the Prospect Street Premises are not damaged, Landlord may not terminate this Lease respecting the Prospect Street Premises unless Landlord similarly terminates the leases of other tenants in the Prospect Street Building aggregating at least seventy-five (75%) percent of the portion of the Building occupied immediately prior to such damage (excluding any rentable area leased by Landlord or its Affiliates). If this Lease as it relates to the Prospect Street Premises is so terminated, (v) the Term shall expire upon the 30<sup>th</sup> day after such notice is given, (w) Tenant shall vacate the Prospect Street Premises, and surrender the same to Landlord, (x) Tenant's liability for Rent with respect to the Prospect Street Premises shall cease as of the date of the damage, (y) any prepaid Rent for the Prospect Street Premises for any period after the date of the damage shall be refunded by Landlord to Tenant, and (z) there shall be a proportionate reduction in the Letter of Credit.

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**Section 11.5 Tenant's Termination Right** . If the Premises or a portion thereof shall be rendered untenantable due to damage or destruction to the Building, and if Landlord elects or shall be obligated to restore the Premises, Landlord shall, within sixty (60) days following the date of the damage, cause Landlord's Expert to give notice (the " **Restoration Notice** ") to Tenant of the date by which such contractor or architect estimates the restoration of the Premises (excluding any Above Building Standard Installations) shall be Substantially Completed. If thirty-three percent (33%) or more of the rentable area of the Premises shall be damaged by casualty and such date, as set forth in the Restoration Notice, is more than twelve (12) months from the date of such damage, then Tenant shall have the right to terminate this Lease by giving notice (the " **Termination Notice** ") to Landlord not later than thirty (30) days following delivery of the Restoration Notice to Tenant. If Tenant delivers a Termination Notice, this Lease shall be deemed to have terminated as of the date of the giving of the Termination Notice, in the manner set forth in the second sentence of **Section 11.4** . Notwithstanding anything to the contrary contained in this **Section 11.5** , if thirty-three percent (33%) or more of the rentable area of the Premises shall be damaged by casualty and the Restoration Notice set forth in **Section 11.5** provides (a) for an estimated date of completion that is less than twelve (12) months from the date of the casualty and the restoration of the Premises is not Substantially Completed within twelve (12) months from the date of the casualty (as such time period may be extended for Unavoidable Delay not to exceed 60 days), or (b) for an estimated date of completion that is more than twelve (12) from the date of the casualty and Tenant did not deliver a Termination Notice with respect thereto, but the restoration of the Premises is not Substantially Completed within forty-five (45) days following the estimated date of completion in such Restoration Notice, then, in either of such events, Tenant shall have a right, upon sixty (60) days prior written notice to Landlord to give a Termination Notice as a result thereof and, unless Landlord Substantially Completes such restoration within the foregoing sixty (60) day period, the Lease shall be terminated in the manner provided in the second sentence of **Section 11.4** . For purposes of this **Section 11.5** and **Section 11.6** , the Premises shall be deemed "untenantable" if Tenant shall be precluded from accessing or using such affected portion of the Premises as Tenant reasonably determines, in good faith, is required for the conduct of Tenant's ordinary business (provided however, that if Landlord believes in good faith, that Tenant's determination that the Premises are "entirely untenantable" is then unreasonable, such dispute shall be resolved in accordance with arbitration as set forth in **Section 11.8** below). In the event that a portion of any floor of the Premises is rendered untenantable and in Tenant's good faith judgment Tenant cannot use the tenantable portion of such floor for the conduct of Tenant's ordinary business and Tenant ceases the operation of its business within the entire floor, such entire floor shall be deemed to be untenantable.

**Section 11.6 Final Twenty-Four Months** . Notwithstanding anything in this **Article 11** to the contrary, if any damage during the final twenty-four (24) months of the Term, as the same may be extended, renders the Premises all or partially wholly untenantable, and the restoration of the Premises is not Substantially Completed or

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capable of being Substantially Completed within six (6) months from the date of the casualty, either Landlord or Tenant may terminate this Lease by notice to the other party within thirty (30) days after the occurrence of such damage and this Lease shall expire on the thirtieth (30<sup>th</sup>) day following the date of such notice.

**Section 11.7 Landlord's Liability .** Any Building employee to whom any property shall be entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to such property and neither Landlord nor its agents shall be liable for any damage to such property, or for the loss of or damage to any such property of Tenant by theft or otherwise. None of the Insured Parties shall be liable for any injury or damage to persons or property or interruption of Tenant's business in each case resulting from fire or other casualty, any damage caused by other tenants or persons in the Building or by construction of any private, public or quasi-public work, or any latent defect in the Premises or in the Building (except that Landlord shall be required to repair the same to the extent provided in **Article 6** ). Unless otherwise set forth herein, no penalty shall accrue for delays which may arise by reason of adjustment of fire insurance proceeds on the part of Landlord or Tenant, or for any Unavoidable Delays arising from any repair or restoration of any portion of the Building, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of any such repair or restoration.

**Section 11.8 Expedited Arbitration .** In the event of any dispute under this Lease with respect to (a) any circumstance under **Articles 2, 5, 11 or 13** where Landlord agreed not to unreasonably withhold, condition and/or delay its consent, and Tenant claims that Landlord has in fact unreasonably withheld, conditioned or delayed consent, (b) Tenant's determination that Tenant cannot reasonably conduct its ordinary course of business solely in that portion of the Premises that is "untenantable" pursuant to **Section 11.5 or Section 11.6**, (c) the determination of Tenant's Restoration Payment pursuant to **Section 11.3(b)**, (d) whether Landlord has Substantially Completed Landlord's Base Building Work or any restoration of the Premises, (e) whether any particular items of Landlord's Base Building Work are Punch List Items, then either party shall have the right to submit such dispute to arbitration in the City of New York under the Expedited Procedures provisions of the Commercial Arbitration Rules of the American Arbitration Association pursuant to a submission effected within ten (10) Business Days after notice of the existence of the dispute. The arbitrators conducting such arbitration shall be bound by the provisions of this Lease and shall not have the power to add to, subtract from, or otherwise modify such provisions. Each arbitrator shall be a qualified, disinterested and impartial person who shall have had at least ten (10) years of commercial office real estate experience in the County of New York and is then employed in a calling connected with the matter of the dispute. Each party hereunder shall pay its own costs, fees and expenses in connection with any arbitration or other action or proceeding brought under this **Section 11.8**, and the expenses and fees of the arbitrators selected shall be shared equally by Landlord and Tenant. Notwithstanding anything contrary contained in this Lease, Landlord and Tenant agree that (i) the arbitrators may not award or recommend any damages to be paid by either party and (ii) in no event shall either party be liable for, nor shall either party be entitled to recover, any damages in any such arbitration. Judgment upon any award rendered

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in any arbitration held pursuant to this Section shall be final and binding upon Landlord and Tenant, whether or not a judgment shall be entered in any court, and each of Landlord and Tenant hereby consents to the entry of such judgment by any court of competent jurisdiction.

**Section 11.9 Tenant Insurance Proceeds** . In the event Tenant terminates this Lease by reason of casualty as provided in this **Article 11** , Tenant shall, as a condition to the effectiveness of such termination, first assign to Landlord a portion of Tenant's insurance proceeds sufficient to restore the damaged portion of the Premises to a "vanilla box" condition.

## ARTICLE 12

### EMINENT DOMAIN

#### **Section 12.1 Taking .**

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

(b) **Partial Taking** . Upon a Taking of only a part of a Building or the Premises then, except as hereinafter provided in this **Article 12** , this Lease shall continue in full force and effect, provided that from and after the date of the vesting of title, Fixed Rent and Tenant's Proportionate Share, Tenant's Tax Payment and Tenant's Operating Payment shall be modified to reflect the reduction of the Premises and/or the Building as a result of such Taking.

(c) **Landlord's Termination Right** . Whether or not the Premises are affected, Landlord may, by notice to Tenant, within sixty (60) days following the date upon which Landlord receives notice of the Taking of all or a substantial portion of the Prospect Street Building or the Prospect Street Premises, terminate this Lease as it relates to the Prospect Street Premises only, provided that Landlord elects to terminate leases (including this Lease) affecting at least seventy-five percent (75%) percent of the office rentable area of the Prospect Street Building (excluding any rentable area leased by Tenant, Landlord or their respective Affiliates), in which case from and after the date of the vesting of title, Fixed Rent, Tenant's Proportionate Share and Tenant's Tax Payment shall be modified to reflect the termination of the Lease with respect to the Prospect Street Premises as a result of such Taking. If the part of the Real Property taken contains fifty percent (50%) or more of the total area of the Adams Street Building, then Landlord may terminate this Lease by giving notice thereof to Tenant within sixty (60) days following the date on which Landlord receives notice of such Taking.

(d) **Tenant's Termination Right** . If the part of the Real Property so taken contains more than twenty (20%) percent of the total area of the Premises (or less

than 20% of the total area of the Premises, if in Tenant's reasonable opinion the remaining portion of the Premises shall not be reasonably sufficient for Tenant to continue the feasible operation of its business in the manner same was conducted prior to the Taking) or if, by reason of such Taking, Tenant no longer has reasonable means of access to all of the Premises, then Tenant may terminate this Lease by notice to Landlord given within sixty (60) days following the date upon which Tenant is given notice of such Taking. If Tenant so notifies Landlord, this Lease shall end and expire upon the sixtieth (60<sup>th</sup>) day following the giving of such notice. If a part of the Premises shall be so taken and this Lease is not terminated in accordance with this **Section 12.1** Landlord, without being required to spend more than it collects as an award, shall restore that part of the Premises not so taken to a self-contained rental unit substantially equivalent (with respect to character, quality, appearance and services) to that which existed immediately prior to such Taking, excluding Tenant's Property and Above Building Standard Installations, provided, however, if Landlord is unable to perform the restoration required hereunder because the same would cost more than the award, Tenant shall have the right to terminate this Lease by notice to Landlord given within sixty (30) days following the date upon which Tenant is notified of such circumstance.

(e) **Apportionment of Rent.** Upon any termination of this Lease pursuant to the provisions of this **Article 12**, Rent, as the same may have been reduced pursuant to **Section 12.1(b)** shall be apportioned as of, and shall be paid or refunded up to and including, the date of such termination.

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

**Section 12.3 Temporary Taking.** If all or any part of the Premises is taken temporarily during the Term for any public or quasi-public use or purpose, Tenant shall give prompt notice to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay all Rent payable by Tenant without reduction or abatement and to perform all of its other obligations under this Lease, except to the extent prevented from doing so by the condemning authority, and Tenant shall be entitled to receive any award or payment from the condemning authority for such use.

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## ARTICLE 13

### ASSIGNMENT AND SUBLetting

#### **Section 13.1 Consent Requirements .**

(a) **No Transfers** . Except as expressly set forth herein, Tenant shall not assign, mortgage, pledge, encumber, or otherwise transfer this Lease, whether by operation of law or otherwise, and shall not sublet, or permit, or suffer the Premises or any part thereof to be used or occupied by others (whether for desk space, mailing privileges or otherwise), without Landlord's prior consent in each instance. Any assignment, sublease, mortgage, pledge, encumbrance or transfer in contravention of the provisions of this **Article 13** shall be void and shall constitute an Event of Default.

(b) **Collection of Rent** . If, without Landlord's consent (unless Landlord's consent is not required hereunder), this Lease is assigned, or any part of the Premises is sublet or occupied by anyone other than Tenant (by operation of law or otherwise), Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the Rent herein reserved. No such collection shall be deemed a waiver of the provisions of this **Article 13**, an acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance of Tenant's covenants hereunder, and in all cases Tenant shall remain fully liable for its obligations under this Lease.

(c) **Further Assignment/Subletting** . Landlord's consent to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's consent to any further assignment or subletting, if such consent is required hereunder. In no event shall any permitted subtenant assign or encumber its sublease or further sublet any portion of its sublet space, or otherwise suffer or permit any portion of the sublet space to be used or occupied by others, except with the consent of Landlord which shall be granted or withheld using the same standards set forth in **Section 13.4**.

**Section 13.2 Tenant's Notice** . If Tenant desires to assign this Lease or sublet all or any portion of the Premises (other than as may be permitted under **Section 13.8** ), Tenant shall give notice thereof to Landlord, which shall be accompanied by (i) a statement reasonably detailing the identity of the proposed assignee or subtenant (" **Transferee** "), the nature of its business and its proposed use of the Premises, and a description of the portion of the Premises to be sublet (in the case of a sublease), (ii) current financial information with respect to the Transferee, including its most recent financial statement, (iii) with respect to an assignment of this Lease or sublet of all or a portion of the Premises, a bona-fide term sheet describing all of the material terms and conditions of the proposed assignment or sublease, and (iv) with respect to a sublet of all or a part of the Premises, a description of the portion of the Premises to be sublet, and a bona-fide term sheet describing all of the material terms and conditions of the proposed sublease (collectively, a " **Transferee Notice** "). A Transferee Notice shall be deemed an irrevocable offer from Tenant to Landlord, whereby Landlord, in its sole discretion may (each, a " **Recapture Option** ") either: (x) sublease, or Landlord's designee may sublease such space (the " **Leaseback Space** ") from Tenant upon the terms and conditions hereinafter set forth (if the proposed transaction is a sublease of all or part of the Premises), (y) terminate this Lease if the proposed transaction is an assignment or a sublease (whether by one sublease or a series of related or unrelated subleases) of all of substantially all of the Premises for substantially the then remainder of the Term (i.e., term of sublease would expire with one (1) year or less remaining in

the Term, which will include the Renewal Term to the extent Tenant has exercised its option with respect thereto or exercises its option with respect thereto contemporaneously with entering into a sublease), or (z) terminate this Lease with respect to the Leaseback Space (if the proposed transaction is a sublease of part of the Premises for substantially the then remainder of the Term as previously described). If Landlord exercises its option to terminate this Lease in the case where Tenant desires either to assign this Lease or sublet (whether by one sublease or a series of related or unrelated subleases) all or substantially all of the Premises for substantially the then remainder of the Term, then, this Lease shall end and expire on the date that such assignment or sublet was to be effective or commence, as the case may be, and the Rent shall be paid and apportioned to such date, and Landlord shall be free to lease the Premises (or any part thereof) to any third party including, without limitation, Tenant's prospective assignee or subtenant. If Landlord exercises its option to terminate this Lease in part in any case where Tenant desires to sublet a portion of the Premises for substantially the remainder of the Term, then, (a) this Lease shall end and expire with respect to such Leaseback Space on the date that the proposed sublease was to commence; and (b) from and after such date the Rent shall be adjusted, based upon the proportion that the rentable area of the Premises remaining bears to the total rentable area of the Premises; and (c) Tenant shall pay to Landlord, upon demand, the costs incurred by Landlord in physically separating such portion of the Premises from the balance of the Premises and in complying with any laws and requirements of any public authorities relating to such separation. Any such Recapture Options may only be exercised by Landlord by notice to Tenant at any time within thirty (30) days after such notice has been given by Tenant to Landlord; and during such thirty (30) day period Tenant shall not assign this Lease nor sublet such space to any person. If Landlord does not exercise its Recapture Option as set forth above, then Landlord shall be deemed to have waived its right of recapture under this **Section 13.2** with respect thereto, and provided the proposed assignment or sublease complies with the conditions set forth in **Section 13.4** below, Landlord's consent to the proposed assignment or subletting shall not be unreasonably withheld, conditioned or delayed in accordance with said **Section 13.4**.

**Section 13.3** If Landlord exercises its option to sublet the Leaseback Space, such sublease to Landlord or its designee (as subtenant) shall be at the rentals set forth in the Transferee Notice, and shall be for the same term as that of the proposed subletting, and such sublease shall provide that:

- (a) it shall be expressly subject to all of the covenants, agreements, terms, provisions and conditions of this Lease except such as are irrelevant or inapplicable, and except as otherwise expressly set forth to the contrary in this Section;
- (b) it shall be upon the same terms and conditions as those contained in the Transferee Notice, except such as are irrelevant or inapplicable and except as otherwise expressly set forth to the contrary in this Section;
- (c) it shall give the sublessee the unqualified and unrestricted right, without Tenant's permission, to assign such sublease or any interest therein and/or to

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sublet the Leaseback Space or any part or parts of the Leaseback Space and to make any and all changes, alterations, and improvements in the space covered by such sublease at no cost or liability to Tenant and if the proposed sublease will result in all or substantially all of the Premises being sublet for substantially the remainder of the Term as previously described, grant Landlord or its designee the option to extend the term of such sublease for the balance of the term of this Lease less one (1) day, in which case Tenant shall have no obligation to remove and/or restore any Specialty Alterations;

(d) any assignee or further subtenant, of Landlord or its designee, may, at the election of Landlord, be permitted to make alterations, decorations and installations in the Leaseback Space or any part thereof and shall also provide in substance that any such alterations, decorations and installations in the Leaseback Space therein made by any assignee or subtenant of Landlord or its designee may be removed, in whole or in part, by such assignee or subtenant, at its option, prior to or upon the expiration or other termination of such sublease provided that such assignee or subtenant, at its expense, shall repair any damage and injury to that portion of the Leaseback Space so sublet caused by such removal;

(e) (i) the parties to such sublease expressly negate any intention that any estate created under such sublease be merged with any other estate held by either of said parties, (ii) any assignment or subletting by Landlord or its designee (as the subtenant) may be for any purpose or purposes that Landlord, in Landlord's uncontrolled discretion, shall deem suitable or appropriate, (iii) Tenant, at Tenant's cost and expense, shall and will at all times provide and permit reasonably appropriate means of ingress to and egress from the Leaseback Space so sublet by Tenant to Landlord or its designee, (iv) Landlord, at Tenant's expense, may make such alterations as may be required or deemed necessary by Landlord to physically separate the Leaseback Space from the balance of the Premises and to comply with any laws and requirements of public authorities relating to such separation, (v) that at the expiration of the term of such sublease, Tenant will accept the Leaseback Space in its then existing condition, subject to the obligations of the sublessee to make such repairs thereto as may be necessary to preserve the Leaseback Space in good order and condition (and, if applicable, remove alterations made thereto by Landlord or its sublessee and restore the Leaseback Area to its previous condition if, and to the extent, the subtenant would have the obligation to remove alterations made by or on behalf of the subtenant at the end of the sublease term and restore the Leaseback Area to its previous condition). If Landlord exercises its option to sublet the Leaseback Space, Landlord shall indemnify and save Tenant harmless from all obligations under this Lease as to the Leaseback Space only during the period of time it is so sublet;

(f) performance by Landlord, or its designee, under a sublease of the Leaseback Space shall be deemed performance by Tenant of any similar obligation under this Lease and any default under any such sublease shall not give rise to a default under a similar obligation contained in this Lease, nor shall Tenant be liable for any default under this Lease or deemed to be in default hereunder if such default is occasioned by or arises from any act or omission of the tenant under such sublease or is occasioned by or arises from any act or omission of any occupant holding under or pursuant to any such sublease; and

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(g) Notwithstanding anything to contrary contained herein, Tenant shall have no obligation, at the expiration or earlier termination of the term of this Lease, to remove and/or restore any alteration, installation or improvement made in the Leaseback Space by Landlord or made by or on behalf of any such assignee or further subtenant of Landlord or its designee except to the extent same was expressly set forth as the obligation of Tenant in the Transferee Notice.

**Section 13.4 Conditions to Assignment/Subletting .** (a) If Landlord does not exercise Landlord's option provided under **Section 13.2**, and provided no Event of Default then exists and is continuing, Landlord's consent to the proposed assignment or subletting shall not be unreasonably withheld, conditioned or delayed and shall be granted or denied within the thirty (30) day period referred to in **Section 13.2**, provided that if Landlord fails to respond to a Transferee Notice, within the thirty (30) day period referred to in **Section 13.2**, Tenant shall then send to Landlord a second Transferee Notice, and if Landlord fails to respond to such second Transferee Notice within five (5) Business Days from the date of Landlord's receipt of such second Transferee Notice, the proposed assignment or sublease shall be deemed to be approved if all of the following conditions are satisfied:

(i) in Landlord's reasonable judgment, the Transferee is engaged in a business or activity, and the Premises will be used in a manner, which (1) is in keeping with the then standards of the Building, and (2) does not violate any restrictions set forth in this Lease;

(ii) the Transferee is reputable with sufficient financial means (and Landlord, in evaluating such financial means, shall take into account, in addition to all other relevant factors, the security deposit posted hereunder) to perform all of its obligations under this Lease;

(iii) if Landlord has comparable space available in the Dumbo Heights Campus that is then available (or will become available within six (6) months of the delivery of the initial Transferee Notice) for a comparable term, neither the Transferee nor any Affiliate of the Transferee is then an occupant of the Dumbo Heights Campus. For purposes of this clause (iii) and clause (iv) below, the term "comparable space" shall mean space of similar size (no variance of more than 5%) and condition;

(iv) If Landlord has comparable space available in the Dumbo Heights Campus that is then available for a comparable term, the Transferee is not a person or entity (or an Affiliate of a person or entity) with whom Landlord is then or has been within the prior six (6) months actively negotiating in connection with the rental of comparable space in the Building;

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(v) there shall be not more than two (2) subtenants on any single floor of the Premises at any one time (if a portion of the Premises shall consist of multiple floors);

(vi) Tenant shall, reimburse Landlord for all reasonable third party out-of-pocket expenses incurred by Landlord in connection with such assignment or sublease, including any investigations as to the acceptability of the Transferee and all legal costs reasonably incurred in connection with the granting of any requested consent;

(vii) Tenant shall not list the Premises to be sublet or assigned with a broker, agent or other entity at a rental rate less than the Fixed Rent at which Landlord is then offering to lease other comparable space in the Building (Landlord shall respond promptly to any request by Tenant for such rental rate); provided, however, that the foregoing shall not prevent Tenant from subleasing any portion of the Premises at a rental rate lower or higher than Landlord is offering to lease comparable space in the Building; and

(viii) the Transferee shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity, regardless of whether the Transferee agrees to waive such diplomatic or sovereign immunity, and shall be subject to the service of process in, and the jurisdiction of the courts of, the City and State of New York;

(b) With respect to each and every subletting and/or assignment approved by Landlord under the provisions of this Lease:

(i) the form of the proposed assignment or sublease shall be reasonably satisfactory to Landlord;

(ii) no sublease shall be for a term ending later than one day prior to the Expiration Date (as same may be extended pursuant to the terms hereof);

(iii) if an Event of Default occurs and is continuing prior to the effective date of such assignment or subletting, then Landlord's consent thereto, if previously granted, shall be revoked upon notice to Tenant unless and until such Event of Default shall be cured by Tenant; and

(iv) Except for Landlord's subletting pursuant to **Section 13.3**, each sublease shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate; and upon the termination of this Lease prior to the Expiration Date, Tenant and each subtenant shall be deemed to have agreed that Tenant has hereby assigned to Landlord, and Landlord may, at its option, accept such assignment of, all right, title and interest of Tenant as sublandlord under such sublease, together with all modifications, extensions and renewals thereof then in effect and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not (unless otherwise set forth in an SNDA be (A) liable for any previous act or omission of Tenant under such sublease (except with respect to any act or omission which continues after such attornment), (B)

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subject to any counterclaim, offset or defense not expressly provided in such sublease, which theretofore accrued to such subtenant against Tenant, (C) bound by any previous modification of such sublease not consented to by Landlord or by any prepayment of more than one month's rent (unless actually received by Landlord), (D) bound to return such subtenant's security deposit, if any, except to the extent Landlord shall receive actual possession of such deposit and such subtenant shall be entitled to the return of all or any portion of such deposit under the terms of its sublease, or (E) obligated to make any payment to or on behalf of such subtenant, or to perform any work in the subleased space or the Building, or in any way to prepare the subleased space for occupancy, beyond Landlord's obligations under this Lease. The provisions of this **Section 13.4(b)(iv)** shall be self-operative, and no further instrument shall be required to give effect to this provision, provided that the subtenant shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such subordination and attornment.

**Section 13.5 Binding on Tenant; Indemnification of Landlord** . Notwithstanding any assignment or subletting or any acceptance of rent by Landlord from any Transferee, Tenant shall remain fully liable for the payment of all Rent due and for the performance of all the covenants, terms and conditions contained in this Lease on Tenant's part to be observed and performed, and any default under any term, covenant or condition of this Lease by any Transferee or anyone claiming under or through any Transferee shall be deemed to be a default under this Lease by Tenant. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any and all Losses resulting from (i) any claims that may be made against Landlord by the Transferee or anyone claiming under or through any Transferee where Landlord withheld its consent to the proposed transaction, or (ii) any claims that may be made against Landlord by any brokers or other persons or entities claiming a commission or similar compensation in connection with the proposed assignment or sublease, irrespective of whether Landlord shall give or decline to give its consent to any proposed assignment or sublease, or if Landlord shall exercise its option to terminate under this **Article 13** .

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

**Section 13.7 Profits** . (a) If Tenant enters into any assignment or sublease permitted hereunder or consented to by Landlord (but not any transaction described in **Section 13.8** ), Tenant shall, within sixty (60) days of Landlord's consent to such assignment or sublease, deliver to Landlord a list which sets forth the amount of: (i) the commercially reasonable industry standard third-party brokerage fees paid by Tenant in such transaction, (ii) any free rent to be provided under such sublease, (iii) any tenant improvement work allowance or any construction costs paid or to be paid in connection with such transaction and, in the case of any sublease, any actual costs incurred by Tenant in separately demising the sublet space, and (iv) any other costs and expenses

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reasonably incurred by Tenant in connection with such assignment or sublease that are so-called zero period costs other than commissions which may be deducted when paid), including advertising costs (collectively, “**Transaction Costs**”), together with a list of all of Tenant’s Property to be transferred to such Transferee. Tenant shall deliver to Landlord reasonable evidence of the payment of any Transaction Costs within sixty (60) days after the same are paid (and if Tenant shall fail to do so, no such fees or costs for which Tenant shall have failed to provide evidence of payment shall qualify as Transaction Costs). In consideration of such assignment or subletting, Tenant shall pay to Landlord:

(b) In the case of an assignment, on the effective date of the assignment, fifty (50%) percent of all sums and other consideration paid to Tenant by the Transferee for or by reason of such assignment of Tenant’s leasehold interest herein (including key money, bonus money and any sums paid for services rendered by Tenant to the Transferee in excess of the fair market value for such services and sums paid for the sale or rental of Tenant’s Property, less the then fair market or rental value thereof) after first deducting the Transaction Costs; or

(c) In the case of a sublease, fifty (50%) percent of any consideration payable under the sublease to Tenant by the Transferee which exceeds on a per square foot basis the Fixed Rent and Additional Rent accruing during the term of the sublease in respect of the sublet space (including sums paid for the sale or rental of Tenant’s Property, less the then fair market value or rental value thereof) after first deducting the Transaction Costs, which Transactional Costs shall be deducted when paid. The sums payable under this clause shall be paid by Tenant to Landlord monthly as and when paid by the subtenant to Tenant but only after deducting all Transaction Costs, and profit, if any, has been realized.

**Section 13.8 Transfers**. (a) Affiliates. If Tenant is a legal entity, the transfer (by one or more transfers), directly or indirectly, by operation of law or otherwise, of a majority of the stock or other beneficial ownership interest in Tenant or, of all or substantially all of the assets of Tenant (collectively “Ownership Interests”) shall be deemed a voluntary assignment of this Lease provided, however, that the provisions of **Section 13.2** shall not apply to, and Landlord’s consent shall not be required with respect to the transfer of Ownership Interests in Tenant if and so long as the stock of Tenant is publicly traded on a nationally recognized stock exchange, including the issuance of new Ownership Interests either by way of an initial or other “public offering”. For purposes of this Article, the term “transfers” shall be deemed to include (x) the establishment of a new fund, or otherwise, which results in a majority of the Ownership Interests in Tenant being held by a person or entity which does not hold a majority of the Ownership Interests in Tenant on the date hereof, (y) except as provided below, the sale of all or substantially all of Tenant’s assets, and (z) except as provided below, the merger or consolidation or conversion of Tenant into or with another business entity. Notwithstanding anything to the contrary contained in this Article 13, Landlord’s consent shall not be required and the provisions of **Section 13.2** shall not apply to transactions with a business entity into or with which Tenant is merged or consolidated or converted or to which all or substantially all of Tenant’s assets or a majority of the Ownership

Interests of Tenant are transferred (any of the foregoing, a “**Successor Entity**”), and shall also not apply to a transfer or issuance of Ownership Interests of Tenant so long as (i) such transfer or other transaction was made for a legitimate independent business purpose and not for the principal purpose of transferring this Lease and, in the case of a merger or consolidation only, (ii) the Successor Entity has a tangible net worth computed in accordance with generally accepted accounting principles consistently applied that is at least equal to twenty (20) times the amount of Fixed Rent then payable hereunder (the “**Successor Net Worth Threshold**”) or if the Successor Entity’s tangible net worth is less than the Successor Net Worth Threshold, then same shall be deemed to be satisfied if the security deposit is increased by an amount equal to one (1) month of the then Fixed Rent payable hereunder multiplied by the difference between (x) 20, and (y) the actual tangible net worth of the Successor Entity expressed as a multiple of then then annual Fixed Rent payable hereunder (e.g., if the Successor Entity tangible net worth was equal to 18 times the then annual Fixed Rent, then the security deposit would be increased by 2 months of the then monthly Fixed Rent), and (iii) proof satisfactory to Landlord of such net worth is delivered to Landlord at least five (5) Business Days prior to the effective date of any such transaction (or promptly upon Landlord’s request), (iv) any such transfer shall be subject and subordinate to all of the terms and provisions of this Lease, and (v) Tenant (except in the event of a merger where Tenant is not the surviving entity or a sale of all or substantially all of Tenant’s assets) shall remain fully liable for all obligations to be performed by Tenant under this Lease. Tenant may also, upon prior notice to Landlord, but without the provisions of **Sections 13.2 or Section 13.4** being applicable, permit any Affiliate of Tenant to accept an assignment of this Lease or sublet all or part of the Premises, provided such sublease may continue for so long as such entity remains an Affiliate of Tenant. Any such sublease shall not be deemed to relieve, release, impair or discharge any of Tenant’s obligations hereunder. Notwithstanding the foregoing, Tenant shall have no right to assign this Lease or sublease all or any portion of the Premises pursuant to this **Section 13.8** if Tenant is in default of any of the terms and conditions of this Lease on its part to be performed hereunder, either at the time (x) it delivers a Transferee Notice, or (y) the effective date of the proposed assignment or sublease.

(b) **Applicability**. The limitations and rights set forth in this Section **13.8** shall apply to Transferee(s) of this Lease, and any transfer by any such entity in violation of this **Section 13.8** shall be a transfer in violation of **Section 13.1**.

(c) **Modifications**. Any modification, amendment or extension of a sublease shall be deemed a sublease for the purposes of **Section 13.1** hereof.

**Section 13.9 Assumption of Obligations**. No assignment of this Lease shall be effective unless and until the Transferee executes, acknowledges and delivers to Landlord an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee (a) assumes Tenant’s obligations under this Lease and (b) agrees that, notwithstanding such assignment or transfer, the provisions of **Section 13.1** hereof shall be binding upon it in respect of all future assignments and transfers.

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**Section 13.10 Tenant's Liability** . The joint and several liability of Tenant and any successors-in-interest of Tenant and the due performance of Tenant's obligations under this Lease shall not be discharged, released or impaired by any agreement or stipulation made by Landlord, or any grantee or assignee of Landlord, extending the time, or modifying any of the terms and provisions of this Lease, or by any waiver or failure of Landlord, or any grantee or assignee of Landlord, to enforce any of the terms and provisions of this Lease, provided, however, the predecessor tenant shall not be liable with respect to any agreement or stipulation which shall increase the obligations of Tenant under this Lease.

**Section 13.11 Initial Sublease** . Notwithstanding anything to the contrary contained herein, Tenant shall have the right to enter into an initial sublease of up to one (1) full floor of the Premises in one (but not both) of the Buildings, subject to all the terms and conditions of this Article 13 other than the Recapture Options set forth in **Sections 13.2 and 13.3** and sharing of Profits set forth in **Section 13.7** .

**Section 13.12 Lease Disaffirmance or Rejection** . If at any time after an assignment by Tenant named herein, this Lease is not affirmed or is rejected in any bankruptcy proceeding or any similar proceeding, or upon a termination of this Lease due to any such proceeding, Tenant named herein, upon request of Landlord given after such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord), shall (a) pay to Landlord all Rent and other charges due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant," enter into a new lease of the Premises with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the Expiration Date, at the same Rent and upon the then executory terms, covenants and conditions contained in this Lease, except that (i) the rights of Tenant named herein under the new lease shall be subject to the possessory rights of the assignee under this Lease and the possessory rights of any persons or entities claiming through or under such assignee or by virtue of any statute or of any order of any court, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant named herein with due diligence, and (iii) such new lease shall require Tenant named herein to pay all Rent which, had this Lease not been so disaffirmed, rejected or terminated, would have become due under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant named herein defaults in its obligations to enter into such new lease for a period of ten (10) days after Landlord's request, then, in addition to all other rights and remedies by reason of default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant named herein as if it had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

**Section 13.13 Desk Sharing** . Notwithstanding anything to the contrary set forth herein, Tenant, upon at least ten (10) days prior notice to Landlord, may, without Landlord's consent, permit certain consultants, strategic partners, clients, advisors, other professionals, or other third parties (collectively, "**Desk Sharing**"

**Entities** ") to occupy desk space comprising not more than a total of fifteen (15%) percent of the rentable square footage then comprising the Premises, in the aggregate, for purposes incidental to the Permitted Uses under this Lease, provided, (i) such Desk Sharing Entities have and continue to have an ongoing professional or business relationship with Tenant, (ii) shall not have any rights hereunder (other than to occupy such space in the Premises subject to and in accordance with this **Section 13.13** ), (iii) shall such occupancy create a landlord/tenant relationship or any privity with the Landlord, (iv) each occupancy shall be expressly subject to all of the obligations of Tenant under this Lease other than the obligation to pay rent, (v) such Desk Sharing Entities are expressly prohibited from assigning, subletting, pledging or otherwise transferring its rights in the Premises; and (vi) Tenant shall receive no rent, payment or other consideration in connection with such occupancy in respect of such space other than rent payments (in no event greater per rentable square foot than the Fixed Rent and Additional Rent payable hereunder per rentable square foot). The rights of Tenant under this **Section 13.13** shall not in any manner relieve Tenant of its obligations arising under this Lease.

## ARTICLE 14

### ACCESS TO PREMISES

**Section 14.1 Landlord's Access** . (a) Landlord, Landlord's agents and utility service providers servicing the Building may erect, use and maintain concealed ducts, pipes and concealed conduits in and through the Premises provided such use does not cause the usable area of the Premises to be reduced other than to a de minimis extent. Landlord shall promptly repair any damage to the Premises caused by any work performed pursuant to this **Article 14** . The foregoing is not intended to vitiate the provisions of **Section 6.3** or **Section 10.11(c)**.

(b) Landlord, any Lessor or Mortgagee and any other party designated by Landlord and their respective agents shall have the right to enter the Premises at all reasonable times, upon reasonable notice (which notice may be oral) except in the case of emergency in which case any limitation on the number of entries and/or advance notice shall not be required, to examine the Premises, to show the Premises to prospective purchasers, Mortgagees, Lessors or during the last eighteen (18) months of the Term, tenants and their respective agents and representatives or others and to perform Restorative Work to the Premises or the Building.

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

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(d) Subject to emergency and police conditions and the provisions of **Section 10.11(a)** and **Section 26.16** hereof, Tenant (and Tenant's assignees, sub lessees, invitees, licensees, and employees) shall, during the term of this Lease, have access to the Premises twenty-four (24) hours per day seven (7) days per week.

(e) Except in the case of an emergency, Landlord shall endeavor to comply with Tenant's reasonable security measures when entering the Premises.

**Section 14.2 Building Name**. Landlord has the right at any time to change the name, number or designation by which the Building is commonly known. Notwithstanding anything to the contrary contained herein, (i) for so long a Permitted Tenant satisfies the Adams Street Minimum Occupancy Threshold, Landlord shall not name the Adams Street Building nor the Dumbo Heights Campus after a Tenant Competitor, and (ii) for so long as a Permitted Tenant satisfies the Prospect Street Minimum Occupancy Threshold, Landlord shall not name the Prospect Street Building nor the Dumbo Heights Campus after a Tenant Competitor.

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

## **ARTICLE 15**

### **DEFAULT**

**Section 15.1 Tenant's Defaults**. Each of the following events shall be an "**Event of Default**" hereunder:

(a) Tenant fails to pay when due any installment of Rent and such default shall continue for five (5) days after notice of such default is given to Tenant; or

(b) Tenant fails to observe or perform any other term, covenant or condition of this Lease and such failure continues for more than thirty (30) days (ten [10] days for any failure by Tenant to use and occupy the Premises for a use that is not a Permitted Use) after notice by Landlord to Tenant of such default, or if such default (other than any failure by Tenant to use and occupy the Premises for a use that is not a Permitted Use) is of a nature that it cannot be completely remedied within thirty (30) days, failure by Tenant to commence to remedy such failure within said thirty (30) days, and thereafter diligently prosecute to completion all steps necessary to remedy such default; or

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(c) if Landlord applies or retains any part of the security held by it hereunder, and Tenant fails within five (5) days after notice by Landlord to Tenant to (i) deposit with Landlord the amount so applied or retained by Landlord, or (ii) provide Landlord with (x) a replacement Letter of Credit (as hereinafter defined), in the full amount required hereunder, or (y) a modification of the Letter of Credit which reinstates the amount so applied or retained; or

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

(e) a court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a trustee, receiver or liquidator of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof. Upon the occurrence and during the continuance of any one or more of such Events of Default, Landlord may, at its sole option, give to Tenant three (3) days' notice of cancellation of this Lease (or of Tenant's possession of the Premises), in which event this Lease and the Term (or Tenant's possession of the Premises) shall terminate (whether or not the Term shall have commenced) with the same force and effect as if the date set forth in the notice were the Expiration Date stated herein; and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable for damages as provided in this **Article 15**.

## **Section 15.2 Landlord's Remedies .**

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

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

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

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

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

### **Section 15.3 Landlord's Damages .**

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

(i) Tenant shall pay to Landlord all items of Rent when due and payable under this Lease by Tenant to Landlord;

(ii) Landlord may retain all monies, if any, paid by Tenant to Landlord, whether as prepaid Rent, a security deposit or otherwise, which monies, to the extent not otherwise applied to amounts due and owing to Landlord, shall be credited by Landlord against any damages payable by Tenant to Landlord;

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

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

(b) **Reletting** . If the Premises or any part thereof, shall be relet together with other space in the Buildings, the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this **Section 15.3** . Tenant shall not be entitled to any rents collected or payable under any reletting, whether or not such rents exceeds the Fixed Rent reserved in this Lease. Nothing contained in **Article 15** shall be deemed to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages by any Requirement, or of any sums or damages to which Landlord may be entitled in addition to the damages set forth in this **Section 15.3** , except that, in no event, shall either Landlord or Tenant be liable to other or anyone claiming through or under other for consequential or punitive damages.

**Section 15.4 Interest** . If any payment of Rent is not paid when due, interest shall accrue on such payment, from the date such payment was due until paid at the Interest Rate. Such interest and late charges are separate and cumulative and are in addition to and shall not diminish or represent a substitute for any of Landlord's rights or remedies under any other provision of this Lease.

**Section 15.5 Other Rights of Landlord** . If Tenant fails to pay any Additional Rent when due, Landlord, in addition to any other right or remedy, shall have the same rights and remedies as in the case of a default by Tenant in the payment of Fixed Rent. If Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to

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designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any items Landlord sees fit, regardless of any request by Tenant.

## ARTICLE 16

### **LANDLORD'S RIGHT TO CURE; FEES AND EXPENSES**

If an Event of Default occurs and is continuing, Landlord, without waiving such default, may perform the obligations giving rise thereto at Tenant's expense (a) immediately, and without advance notice, in the case of emergency or if the default (i) materially interferes with the use by any other tenant of the Building, (ii) materially interferes with the efficient operation of the Building, (iii) results in a violation of any Requirement, or (iv) results or will result in a cancellation of any insurance policy maintained by Landlord or (b) in any other case if such default continues after ten (10) Business Days from the date Landlord gives notice of Landlord's intention to perform the defaulted obligation (provided Tenant is not the diligently prosecuting the cure of the same). All actual out of pocket costs and expenses incurred by Landlord in connection with any such performance by it and all actual out of pocket costs and expenses, including reasonable counsel fees and disbursements, incurred by Landlord as a result of any default by Tenant under this Lease or in any action or proceeding (including any unlawful detainer proceeding) brought by Landlord or in which Landlord is a party to enforce any obligation of Tenant under this Lease and/or right of Landlord in or to the Premises, shall be paid by Tenant to Landlord within ten (10) Business Days of Tenant's receipt of a reasonably substantiated invoice therefore, with interest thereon at the Interest Rate from the date incurred by Landlord. Except as expressly provided to the contrary in this Lease, all costs and expenses which, pursuant to this Lease are incurred by Landlord and payable to Landlord by Tenant, and all charges, amounts and sums payable to Landlord by Tenant for any property, material, labor, utility or other services which, pursuant to this Lease or at the request and for the account of Tenant, are provided, furnished or rendered by Landlord, shall become due and payable by Tenant to Landlord within ten (10) Business Days after receipt of Landlord's invoice for such amount.

## ARTICLE 17

### **NO REPRESENTATIONS BY LANDLORD; LANDLORD'S APPROVAL**

**Section 17.1 No Representations** . Except as expressly set forth herein, Landlord and Landlord's agents have made no warranties, representations, statements or promises with respect to the Buildings, the Real Property or the Premises and no rights including, without limitation, any development rights, easements or licenses are acquired by Tenant by implication or otherwise. Tenant is entering into this Lease after full investigation and is not relying upon any statement or representation made by Landlord not embodied in this Lease.

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**Section 17.2 No Money Damages** . Wherever in this Lease Landlord's consent or approval is required, if Landlord refuses to grant such consent or approval, whether or not Landlord expressly agreed that such consent or approval would not be unreasonably withheld, Tenant shall not make or exercise, and Tenant hereby waives, any claim for money damages (including any claim by way of set-off, counterclaim or defense) and/or any right to terminate this Lease based upon Tenant's claim or assertion that Landlord unreasonably withheld or delayed its consent or approval. Tenant's sole remedy shall be to bring an action or proceeding (or arbitration pursuant to **Section 11.8** ) to enforce such provision, by specific performance, injunction or declaratory judgment. In no event shall Landlord be liable for, and Tenant, on behalf of itself and all other Tenant Parties, hereby waives any claim for, any indirect, consequential or punitive damages, including loss of profits or business opportunity, arising under or in connection with this Lease.

**Section 17.3 Reasonable Efforts** . Except as expressly set forth in this Lease, "reasonable efforts" by Landlord shall not include an obligation to employ contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses of any extraordinary nature unless (i) Tenant requests same reasonably in advance in a notice to Landlord and reimburses Landlord for the actual, incremental, reasonable, out-of-pocket costs in connection therewith, as Additional Rent, within thirty (30) days after delivery of an invoice therefore, (ii) failure to perform such work on an overtime basis would have material adverse effect on Tenant's ability to conduct its business in all or a portion of the Premises.

## ARTICLE 18

### END OF TERM

**Section 18.1 Expiration** . Upon the expiration or other termination of this Lease, Tenant shall quit and surrender the Premises to Landlord vacant, broom clean and in good order and condition, ordinary wear and tear and damage from casualty excepted, and Tenant shall remove all of Tenant's Property (other than any wiring or cabling between the basement of the Building and the Premises between the floors or under the floors of the Premises or above any hung ceilings designated by Landlord for use by Tenant or a future tenant of the Building) and any Specialty Alterations as may be required pursuant to **Section 5.3** .

**Section 18.2 Holdover Rent** . Landlord and Tenant recognize that Landlord's damages resulting from Tenant's failure to timely surrender possession of the entire Premises may be substantial, may exceed the amount of the Rent payable hereunder, and will be impossible to accurately measure. Accordingly, if possession of the entire Premises is not surrendered to Landlord on the Expiration Date or sooner termination of this Lease, in addition to any other rights or remedies Landlord may have hereunder or at law, Tenant shall pay to Landlord for each month (or any portion thereof) during which Tenant holds over in the Premises after the Expiration Date or sooner termination of this Lease, a sum equal to the Applicable Percentage times the Rent payable under this Lease for the last full calendar month of the Term. To the extent the duration of

Tenant's holdover exceeds thirty (30) days, then Tenant shall be liable for any and all actual damages incurred by Landlord by reason of Tenant's holdover at the Premises, including, without limitation, (x) Landlord's loss of the benefit of the bargain by reason of its inability to enter into a new lease with a new tenant for the Premises due to Tenant's holdover at the Premises, and (y) any and all damages including, without limitation, consequential and/or special damages which Landlord may suffer by reason of Tenant's holdover at the Premises. No holding-over by Tenant, nor the payment to Landlord of the amounts specified above, shall operate to extend the Term hereof. No holding-over by Tenant, nor the payment to Landlord of the amounts specified above, shall operate to extend the Term hereof. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Premises after the Expiration Date or sooner termination of this Lease, and no acceptance by Landlord of payments from Tenant after the Expiration Date or sooner termination of this Lease shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this **Section 18.2**. "Applicable Percentage" means (i) 150% for the first thirty (30) days of such holdover, and (ii) 200% thereafter.

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

## ARTICLE 19

### QUIET ENJOYMENT

Provided this Lease is in full force and effect, Tenant may peaceably and quietly use and enjoy the Premises without hindrance by Landlord or any person lawfully claiming through or under Landlord, subject to the terms and conditions of this Lease and to all Superior Leases and Mortgages.

## ARTICLE 20

### NO SURRENDER; NO WAIVER

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

**Section 20.2 No Waiver** . The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules and Regulations, shall not be construed as a waiver or relinquishment for the future performance of such obligations of this Lease or the Rules and Regulations, or of the right to exercise such election but the same shall continue and

remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of any Rent payable pursuant to this Lease or any other sums with knowledge of the breach of any covenant of this Lease on the part of Tenant shall not be deemed a waiver of such breach. The payment by Tenant of any Rent payable pursuant to this Lease or any other sums with knowledge of the breach of any covenant of this Lease on the part of Landlord shall not be deemed a waiver of such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than a payment on account of the earliest stipulated Rent, or as Landlord may elect to apply such payment, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

## **ARTICLE 21**

### **WAIVER OF TRIAL BY JURY; COUNTERCLAIM**

**Section 21.1 Jury Trial Waiver . LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR THE ENFORCEMENT OF ANY REMEDY WITH RESPECT TO THIS LEASE ANY STATUTE, EMERGENCY OR OTHERWISE.**

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

## **ARTICLE 22**

### **NOTICES**

Except as otherwise expressly provided in this Lease, all consents, notices, demands, requests, approvals or other communications given under this Lease shall be in writing and shall be deemed sufficiently given or rendered if delivered by hand either to the Premises or to Tenant's address as set forth in **Article 1** (provided a signed receipt is obtained) or if sent by registered or certified mail (return receipt requested) or by a nationally recognized overnight delivery service making receipted deliveries, addressed to Landlord and Tenant as set forth in **Article 1**, and to any Mortgagee or Lessor who shall require copies of notices and whose address is provided in advance to Tenant in writing, or to such other address(es) as Landlord, Tenant or any Mortgagee or Lessor may designate as its new address(es) for such purpose by notice

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given to the other in accordance with the provisions of this **Article 22**. Any such approval, consent, notice, demand, request or other communication shall be deemed to have been given on the date of receipted delivery, refusal to accept delivery or when delivery is first attempted but cannot be made due to a change of address for which no notice is given.

## **ARTICLE 23**

### **RULES AND REGULATIONS**

All Tenant Parties shall observe and comply with the Rules and Regulations as set forth on **Schedule “E”** annexed hereto and made a part hereof, which Rules and regulations may be supplemented or amended, from time to time. Landlord reserves the right, from time to time, to adopt additional Rules and Regulations and to amend the Rules and Regulations then in effect; provided, however, that such additional Rules and Regulations shall not adversely affect Tenant’s rights or obligations hereunder, other than to a de minimis extent, and provided, further that in the event of any conflict between such additional Rules and Regulations and the terms of this Lease, the terms of this Lease shall prevail. Nothing contained in this Lease shall impose upon Landlord any obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease against any other tenant at the Buildings, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, visitors or licensees, provided that Landlord shall enforce any of the Rules and Regulations against Tenant in a non-discriminatory fashion.

## **ARTICLE 24**

### **BROKER**

Landlord has retained Landlord’s Agent as leasing agent in connection with this Lease and Landlord will be solely responsible for any fee that may be payable to Landlord’s Agent. Landlord agrees to pay a commission (“**Tenant’s Broker’s Commission**”) to Tenant’s Broker pursuant to a separate agreement (the “**Brokerage Agreement**”). Each of Landlord and Tenant represents and warrants to the other that neither it nor its agents have dealt with any broker in connection with this Lease other than Landlord’s Agent and Tenant’s Broker. Landlord and Tenant each hereby agree to indemnify, defend, protect and hold the other harmless from and against any and all Losses which the other may incur by reason of the above representation made by the indemnifying party being false.

## **ARTICLE 25**

### **INDEMNITY**

**Section 25.1 Tenant’s Indemnity**. Tenant shall not do or permit to be done any act or thing upon the Premises or the Building which may subject Landlord to any liability or responsibility to a third party for injury, damages to persons or property or to

any liability by reason of any violation of any Requirement, and shall use all commercially reasonable efforts to exercise such control over the Premises as to fully protect Landlord against any such liability. Subject to the mutual waivers set forth in **Section 11.2**, Tenant shall indemnify, defend, protect and hold harmless Landlord and each of the Indemnitees from and against any and all Losses, resulting from any third party claims (i) against the Indemnitees arising from any negligence or willful misconduct of any Tenant Parties or, (ii) against the Indemnitees arising from any accident, injury or damage whatsoever caused to any person or to the property of any person and occurring in or about the Premises, except to the extent attributable to the negligence or willful misconduct of Landlord, or its employees, agents, contractors, licensees or invitees (collectively, “**Landlord Parties**”), or (iii) against the Indemnitees resulting from any breach, violation or nonperformance of any covenant, condition or agreement of this Lease on the part of Tenant to be fulfilled, kept, observed or performed. Nothing in this Section shall be interpreted to make Tenant liable for any occurrence that is covered by any property insurance policy that this Lease requires Tenant or Landlord to obtain. Landlord shall give notice to Tenant of all claims against Landlord for which Tenant has an indemnification obligation; (a) Tenant shall have the right to assume the entire control of the defense thereof and Landlord shall cooperate therewith (b) not settle any such claims without the consent of Tenant; and (c) Landlord shall be defended by counsel designated by Tenant’s insurance carrier or reasonably chosen by Tenant. The provisions set forth in this **Section 25.1** shall not be deemed to impose any indemnification obligations or liabilities for any Losses other than those directly related to the Premises or this Lease and, in no event, shall Tenant be liable to Landlord or anyone claiming through or under Landlord for consequential or punitive damages.

**Section 25.2 Landlord’s Indemnity.** Subject to the mutual waivers set forth in **Section 11.2**, Landlord shall indemnify, defend and hold harmless Tenant and Tenant Parties from and against all Losses incurred by Tenant arising from and to the extent attributable to the negligence or willful misconduct of, or breach of this Lease by, Landlord or any Landlord Parties and, in no event, shall Landlord be liable to Tenant or anyone claiming through or under Tenant for consequential or punitive damages.

**Section 25.3 Defense and Settlement.** If any claim, action or proceeding is made or brought against any Indemnitee, for which the provisions of **Section 25.1** or **25.2** apply, then upon demand by an Indemnitee, Landlord or Tenant, as the case may be, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the Indemnitee’s name (if necessary), by attorneys approved by the Indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed (attorneys for Tenant’s or Landlord’s insurer, as the case may be, shall be deemed approved for purposes of this **Section 25.3**). Notwithstanding the foregoing, an Indemnitee may retain, at its own expense, its own attorneys to participate or assist in defending any claim, action or proceeding involving potential liability in excess of the amount available under Tenant’s liability insurance carried under **Section 11.1** for such claim. If Landlord or Tenant, as the case may be, fails to diligently defend or if there is a legal conflict or other conflict of interest, then Landlord or Tenant, as the case may be, may retain separate counsel at the other party’s expense. Notwithstanding anything herein

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contained to the contrary, Landlord or Tenant, as the case may be, may direct the Indemnitee to settle any claim, suit or other proceeding provided that (a) such settlement shall involve no obligation on the part of the Indemnitee, (b) any payments to be made pursuant to such settlement shall be paid in full exclusively by the indemnitor at the time such settlement is reached, (c) such settlement shall not require the Indemnitee to admit any liability, and (d) the Indemnitee shall have received an unconditional release from the other parties to such claim, suit or other proceeding.

## ARTICLE 26

### MISCELLANEOUS

**Section 26.1 Delivery .** This Lease shall not constitute an offer and shall not bind the parties hereto in any manner whatsoever until (a) Tenant has duly executed and delivered duplicate counterparts to Landlord, and (b) Landlord has executed and delivered one fully executed counterpart to Tenant. This Lease may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**Section 26.2 Transfer of Real Property .** Landlord's obligations under this Lease shall not be binding upon the Landlord named herein after the sale, conveyance, assignment or transfer (collectively, a " **Transfer** ") by such Landlord (or upon any subsequent landlord after the Transfer by such subsequent landlord) of its interest in the Buildings, and in the event of any such Transfer, Landlord (and any such subsequent landlord) shall be entirely freed and relieved of all covenants and obligations of Landlord hereunder arising from and after the date of Transfer, but only from and after the date that the transferee of Landlord's interest (or that of such subsequent landlord) in the Buildings, shall have assumed in writing, in a document delivered to Tenant, all obligations under this Lease arising from and after the date of Transfer, and responsibility for any security deposit or letter of credit posted by Tenant under this Lease.

**Section 26.3 Limitation on Liability .** The liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest in the Buildings and Tenant shall not look to any other property or assets of Landlord or the property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee or agent of Landlord (collectively, the " **Parties** ") in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations; and none of the Parties shall be personally liable for the performance of Landlord's obligations under this Lease.

**Section 26.4 Entire Document .** This Lease (including any Exhibits referred to herein and all supplementary agreements provided for herein) contains the entire agreement between the parties and all prior negotiations and agreements are merged into this Lease. All of the Exhibits attached hereto are incorporated in and made a part of this Lease, provided that in the event of any inconsistency between the terms and provisions of this Lease and the terms and provisions of the Exhibits hereto, the terms and provisions of this Lease shall control.

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**Section 26.5 Governing Law** . This Lease shall be governed in all respects by the laws of the State of New York.

**Section 26.6 Unenforceability** . If any provision of this Lease, or its application to any person or entity or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such provision to any other person or entity or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

**Section 26.7 Lease Disputes** . (a) Except as otherwise expressly provided that any dispute hereunder may be submitted for resolution by either party to arbitration, the parties agree that all disputes arising, directly or indirectly, out of or relating to this Lease, and all actions to enforce this Lease, shall be dealt with and adjudicated in the state courts of the State of New York or the federal courts for the Southern District of New York and for that purpose hereby expressly and irrevocably submits itself to the jurisdiction of such courts. Tenant agrees that so far as is permitted under applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Lease, or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon it in any such court.

(b) To the extent that Tenant has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Tenant irrevocably waives such immunity in respect of its obligations under this Lease.

**Section 26.8 Landlord's Agent** . Unless Landlord delivers notice to Tenant to the contrary, Landlord's Agent is authorized to act as Landlord's agent in connection with the performance of this Lease, and Tenant shall be entitled to rely upon correspondence received from Landlord's Agent. Tenant acknowledges that Landlord's Agent is acting solely as agent for Landlord in connection with the foregoing; and neither Landlord's Agent nor any of its direct or indirect partners, members, managers, officers, shareholders, directors, employees, principals, agents or representatives shall have any liability to Tenant in connection with the performance of this Lease, and Tenant waives any and all claims against any and all of such parties arising out of, or in any way connected with, this Lease, or the Buildings.

**Section 26.9 Estoppel** . (a) Within fifteen (15) days following request from Landlord, any Mortgagee or any Lessor, Tenant shall deliver to Landlord a statement executed and acknowledged by Tenant, in form reasonably satisfactory to Landlord, (a) stating the Commencement Date, the Rent Commencement Date and the Expiration

Date, and that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (b) setting forth the date to which the Fixed Rent and any Additional Rent have been paid, together with the amount of monthly Fixed Rent and Additional Rent then payable, (c) stating whether or not, to Tenant's knowledge, Landlord is in default under this Lease, and, if Landlord is in default, setting forth the specific nature of all such defaults, (d) stating the amount of the security, if any, under this Lease, (e) stating whether there are any subleases or assignments affecting the Premises, (f) stating the address of Tenant to which all notices and communications under the Lease shall be sent, and (g) responding to any other matters reasonably requested by Landlord, such Mortgagee or such Lessor, and customary to such statement. Tenant acknowledges that any statement delivered pursuant to this **Section 26.10 (a)** may be relied upon by any purchaser or owner of the Building, or all or any portion of Landlord's interest in the Building, or by any Mortgagee, or assignee thereof or by any Lessor, or assignee thereof.

(b) Within fifteen (15) days following request from Tenant, Landlord shall, not more than two (2) times in any consecutive twelve (12) month period, deliver to Tenant a statement executed and acknowledged by Landlord, in form reasonably satisfactory to Tenant, (a) stating the Commencement Date, the Rent Commencement Date to this **Section 26.10(b)** may be relied upon by any prospective or actual, sublessee of any portion of the Premises or any assignee of this Lease, or permitted transferee or Successor Entity. and the Expiration Date, and that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (b) setting forth the date to which the Fixed Rent and any Additional Rent have been paid, together with the amount of monthly Fixed Rent and Additional Rent then payable, (c) stating whether or not, to Landlord's knowledge, Tenant is in default under this Lease, and, if Tenant is in default, setting forth the specific nature of all such defaults, (d) stating the amount of the security, if any, under this Lease, and (e) responding to any other matters reasonably requested by Tenant, and customary to such statement. Landlord acknowledges that any statement delivered pursuant

**Section 26.10 Certain Interpretational Rules**. For purposes of this Lease, whenever the words "include", "includes", or "including" are used, they shall be deemed to be followed by the words "without limitation" and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Lease shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question. The captions in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof.

**Section 26.11 Parties Bound**. The terms, covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided in this Lease, to their respective legal representatives, successors, and assigns.

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**Section 26.12 Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together will constitute one and the same instrument. The signature page of any counterpart of this Lease may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart of this Lease identical thereto except having an additional signature page executed by the other party to this Lease attached thereto. Any counterpart of this Lease may be delivered via facsimile, email or other electronic transmission, and shall be legally binding upon the parties hereto to the same extent as originals.

**Section 26.13 Survival .** All obligations and liabilities of Landlord or Tenant to the other which accrued before the expiration or other termination of this Lease, and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease. Without limiting the generality of the foregoing, the rights and obligations of the parties with respect to any indemnity under this Lease, and with respect to any Rent and any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease subject to the express limitation set forth in **Section 7.4** .

**Section 26.14 Adjacent Excavation; Shoring.** If construction shall be performed upon land adjacent to the Real Property, Tenant shall, upon reasonable prior notice, afford to the person or entity causing or authorized to cause such construction license to enter upon the Premises for the purpose of doing such work as such person or entity shall deem reasonably necessary to preserve the wall of the Building from injury or damage and to support the same. In connection with such license, Tenant shall have no right to claim any damages or indemnity against Landlord, or diminution or abatement of Rent, provided that Tenant shall continue to have access to the Premises and is capable of conducting its operations therein.

**Section 26.15 No Development Rights.** Tenant acknowledges that it has no rights to any development rights, air rights or comparable rights appurtenant to the Real Property and Tenant consents, without further consideration, to any utilization of such rights by Landlord. Tenant shall promptly execute and deliver any instruments which may be requested by Landlord, including instruments merging zoning lots, evidencing such acknowledgment and consent. The provisions of this **Section 26.15** shall be construed as an express waiver by Tenant of any interest Tenant may have as a "party in interest" (as such term is defined in Section 12-10 of Zoning Lot of the Zoning Resolution of the City of New York) in the Real Property.

**Section 26.16 Prevailing Party .** Notwithstanding anything to the contrary contained in this Lease, if either Landlord or Tenant institutes a suit against the other for violation of or to enforce any covenant, term or condition of this Lease, the prevailing party (as determined by a court of competent jurisdiction after final judgment) shall be entitled to reimbursement of all of its costs and expenses from the non-prevailing party, including, without limitation, reasonable attorneys' fees.

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**Section 26.17 Memorandum of Lease.** Tenant shall not record this Lease, but may record a memorandum hereof in the form annexed hereto as **Exhibit I**.

**Section 26.18 Sustainability Measures/LEED Certification .** Landlord shall, at its sole cost and expense, use commercially reasonable efforts to obtain LEED certification for the Buildings. Irrespective of whether or not Landlord obtains LEED certification or any LEED rating, Landlord shall, at its cost and expense, perform the work set forth on **Schedule “F”** attached hereto. Furthermore, Landlord and Tenant shall cooperate with each other in efforts to obtain the points set forth on **Schedule “F”** annexed to so as to achieve a higher LEEDS rating for the Buildings.

## ARTICLE 27

### SECURITY

**Section 27.1** Tenant shall, upon Tenant’s execution of this Lease, deliver to Landlord a clean, irrevocable and unconditional letter of credit (the “**Letter of Credit**”), in the amount stated in **Article 1**, as a security deposit for the performance by Tenant of the provisions of this Lease. It is expressly understood and agreed that the aforesaid security deposit is not an advance rental deposit and may not be applied to the last month’s minimum rent, nor is the security deposit a measure of Landlord’s damages in the event of Tenant’s default. Notwithstanding the foregoing, upon Tenant’s execution of this Lease, in lieu of the Letter of Credit, Tenant may deposit cash security with Landlord in an equivalent amount on a temporary basis until such time as Tenant has obtained the Letter of Credit. Tenant shall use commercially reasonable efforts to obtain the Letter of Credit as expeditiously as possible following the execution of this Lease, and contemporaneous with the delivery of same to Landlord, Landlord shall return the cash security to Tenant.

**Section 27.2 The Letter of Credit shall:**

(i) be in the form attached hereto as **Exhibit “G”** and made a part hereof.

(ii) be addressed to Landlord.

(iii) be issued in a form and substance acceptable to Landlord by a federally insured financial institution which is acceptable to Landlord in Landlord’s sole discretion, with minimum assets of Ten Billion Dollars (\$10,000,000,000.00) (the “**Minimum Assets**”), with either a location in New York City where such letter of credit can be presented, or otherwise specifically provide that the letter of credit can be presented by facsimile. Landlord hereby approves Silicon Valley Bank as an issuing bank for the Letter of Credit.

(iv) be freely transferable without fee to Landlord or approval of the issuer, and Tenant shall: (x) cooperate with Landlord in obtaining an amendment or replacement of the Letter of Credit to reflect any such change in beneficiary under the Letter of Credit; and (y) pay the cost thereof to the extent the issuer charges for such change in beneficiary.

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(v) be for a term of one (1) year, subject to automatic one (1) year extensions so that the Letter of Credit is in effect until a date which is at least sixty (60) days after the scheduled Expiration Date, as same may be extended. Tenant shall, on or before the date which is thirty (30) days prior to the expiration of such Letter of Credit, deliver to Landlord a new Letter of Credit satisfying the foregoing requirements in lieu of the Letter of Credit then being held by Landlord. If the issuer of such existing or new Letter of Credit provides notice of its election to not renew such Letter of Credit for any additional period, Tenant shall be required to deliver a new Letter of Credit on or before the date which is thirty (30) days prior to the expiration of the term of the Letter of Credit then being held by Landlord. If neither a new Letter of Credit nor a renewal of the Letter of Credit is timely delivered to Landlord, then Landlord may (without prejudicing any other right or remedy available to Landlord) draw down the entire Letter of Credit and, until Tenant delivers to Landlord the new Letter of Credit as required by this Lease hold the drawn cash as a Security Deposit pursuant to this Lease.

(vi) be replaced by a new Letter of Credit if the issuing financial institution: (A) has assets which fall below the Minimum Assets; (B) enters into any form of regulatory or governmental proceeding, including, without limitation, any receivership instituted or commenced by the Federal Deposit Insurance Corporation (the “FDIC”); (C) is otherwise declared insolvent, is downgraded by the FDIC, or closes for any reason; (D) intentionally omitted; or (E) in any manner communicates (including, without limitation, communications sent by or on behalf of the FDIC) its unwillingness to honor the terms of the Letter of Credit. If Tenant fails to deliver to Landlord the replacement Letter of Credit within ten (10) Business Days following Landlord’s written demand for same, Landlord shall be entitled to draw down the entire Letter of Credit and, until Tenant delivers to Landlord the replacement Letter of Credit as required by this Lease, hold the drawn cash as a Security Deposit pursuant to this Lease.

(vii) Following a draw by Landlord under the Letter of Credit, at Landlord’s election: (A) be replaced by Tenant within fifteen (15) Business Days after written notice from Landlord by a new Letter of Credit in the Minimum Amount, in which event the Letter of Credit then held by Landlord shall be terminated; or (B) be augmented by Tenant within ten (10) Business Days after written notice from Landlord by an additional Letter of Credit in the amount of a partial draw (the “**Additional Letter of Credit**”) subject to the requirements set forth above, in which event the Letter of Credit then held by Landlord and Additional Letter of Credit shall both be held by Landlord. If Tenant is not able to furnish either of the foregoing within said ten (10) or fifteen (15) Business Day period, as the case may be, then Tenant may deposit a cash security in an equivalent amount pending obtaining such new Letter of Credit or Additional Letter of Credit, which Tenant shall continuously and diligently pursue.

**Section 27.3** In the event Tenant defaults beyond the expiration of applicable notice and cure period in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of Fixed Rent or Additional Rent,

Landlord may apply or retain the whole or any part of the Security Deposit so deposited to the extent required for the payment of any Fixed Rent and Additional Rent or any other sum as to which Tenant is in default or for any sum which Landlord may expend by reason of Tenant's default hereunder. If Landlord applies or retains any part of the Security Deposit so deposited, Tenant, within five (5) Business Days of demand, shall deposit with Landlord the amount (i.e., which may be in cash pending obtaining a Letter or Credit or Additional Letter of Credit that Tenant shall continuously and diligently pursue) so applied or retained so that Landlord shall have the full Security Deposit on hand at all times during the Lease Term. In addition to the foregoing, in the event of a termination of this Lease based upon the default of Tenant, or a rejection of this Lease pursuant to the provisions of the Federal Bankruptcy Code, Landlord shall have the right to retain the Security Deposit to cover the full amount of damages and other amounts due from Tenant to Landlord under this Lease. Any amounts so retained by Landlord shall, at Landlord's election, be applied first to any unpaid rent and other charges that were due prior to the filing of the petition for protection under the Federal Bankruptcy Code. Tenant hereby covenants and agrees not to oppose, contest or otherwise interfere with any attempt by Landlord to draw down from said Letter of Credit (and/or Additional Letter of Credit) including, without limitation, by commencing an action seeking to enjoin or restrain Landlord from making such draw.

**Section 27.4** In the event of a sale of the Building, Landlord shall have the right to transfer the Security Deposit to the vendee or lessee and, Landlord shall thereupon be released by Tenant from all liability for the return of such Security Deposit; and Tenant agrees to look to the new Landlord solely for the return of said Security Deposit, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security Deposit to a new Landlord. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the Security Deposit and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

**Section 27.5** Tenant covenants that it will not assign or encumber, or attempt to assign or encumber, the Letter of Credit deposited hereunder as security, and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment, or attempted encumbrance.

**Section 27.6** The use of security, as provided in this Article, shall not be deemed or construed as a waiver of Tenant's default or as a waiver of any other rights and remedies to which Landlord may be entitled under the provisions of this Lease by reason of such default, it being intended that Landlord's rights to use the whole or any part of the security shall be in addition to but not in limitation of any such other rights and remedies; and Landlord may exercise any of such other rights and remedies independent of or in conjunction with its rights under this Article.

**Section 27.7** Within sixty (60) days after the Expiration Date and the vacating of the Premises by Tenant and delivery of the Premises to Landlord in substantially the condition required hereunder, the Letter of Credit or such part thereof that has not been applied to cure any defaults, shall be returned to Tenant.

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**Section 27.8** Tenant shall furnish to Landlord as soon as practicable after the end of Tenant's fiscal year ending December 31, 2015, and in any event within one hundred and fifty (150) days thereafter, financial statements of Tenant, for such year, setting forth in such reasonable detail so that Landlord can readily confirm whether or not the Financial Test has been satisfied for the such fiscal year. If Tenant fails to satisfy the Financial Test for the fiscal year ending December 31, 2015, then the amount of security required to be maintained by Tenant hereunder shall be increased by an amount equal to Two Million Six Hundred Seventy Thousand Three Hundred Thirty and 00/100 (\$2,670,330.00) Dollars (the "Increased Security Amount") so that total security deposit hereunder shall total \$8,010,991.00, and Tenant shall furnish Landlord with a replacement Letter of Credit (or an amendment to the existing Letter of Credit) within ten (10) Business Days following the date that it is determined that the Financial Test was not so satisfied. If at any time following an increase in the Letter of Credit required hereunder resulting from Tenant's failure to satisfy the Financial Test, Tenant thereafter satisfies the Financial Test, then within ten (10) days following the date on which Tenant furnishes Landlord with Tenant's financial statements evidencing that the Financial Test has been satisfied, the security required hereunder shall be reduced to the amount originally required hereunder (i.e., \$5,340,661.00) for the remainder of the Term.

## ARTICLE 28

### OFAC

Neither a Sanctioned Person (as hereinafter defined) nor Sanctioned Entity (as hereinafter defined) will benefit directly or indirectly through this Lease. Landlord and Tenant each hereby respectively covenant and warrant that:

- (i) it is not directly or indirectly controlled by a Sanctioned Entity or a Sanctioned Person.
- (ii) it, nor any of its subsidiaries (a) is a Sanctioned Person, (b) has more than an insubstantial portion of its assets located in Sanctioned Entities, or (iii) derives more than an insubstantial portion of its operating income from investments in, or transactions with, Sanctioned Persons or Sanctioned Entities. OFAC means The Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"). "Sanctioned Entity" means: (a) an agency of the government of; (b) an organization directly or indirectly controlled by; or (c) a person resident in a country that is subject to a country sanctions program administered and enforced by OFAC described or referenced at OFAC's website <http://www.ustreas.gov/offices/enforcement/ofac/> or as otherwise published from time to time. "Sanctioned Person" means a person named on the list of Specially Designated Nationals maintained by OFAC available at or through OFAC's web site <http://www.ustreas.gov/offices/enforcement/ofac/> or as otherwise published from time to time.

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## ARTICLE 29

### ICAP

**Section 29.1** (i) Landlord shall, at Landlord's sole cost and expense, prepare and submit its application for the granting of the New York State Tax Law and the Administrative Code of the City of New York, the Industrial and Commercial Abatement Program ("ICAP") tax benefits, at the earliest possible date that any such application may be submitted pursuant to the ICAP. Landlord has prior to the date hereof submitted its preliminary application for the ICAP to the appropriate governmental authority. Landlord shall apply for and use all commercially reasonable efforts to pursue the maximum tax abatement benefits available pursuant to the ICAP program over the longest period of time that is possible. In connection with the application process, Landlord shall, at Landlord's sole cost and expense, hire or engage any and all experts or consultants reasonably needed to allow for the full and proper completion and submission of the ICAP application.

(ii) To the extent required by Landlord (with the parties hereby acknowledging that most if not all of the abatement attributable to the ICAP abatement program for the Building will be derived from the Work), Tenant shall, at no out-of-pocket expense to Tenant, cooperate with Landlord in good faith in connection with the preparation of the application for the ICAP Abatement, including supplying all available information related to Tenant to prepare the application or other forms required to be filed in order to obtain the benefit of the ICAP Abatement, and to execute and deliver all documents, instruments, applications or both forms which may be reasonably necessary in connection therewith.

(iii) Once the ICAP application has been submitted by Landlord, Landlord shall use all commercially reasonable efforts to pursue such application process and upon Tenant's request shall keep Tenant reasonably informed throughout the process and shall promptly provide Tenant with copies of any mailings, notices or decisions received with respect to such process.

(iv) Once the ICAP Abatement shall have been obtained, and thereafter during the Term, Landlord and Tenant shall, in a diligent and timely manner, comply with all of their respective requirements with respect to maintaining and preserving the ICAP Abatement including Tenant furnishing Landlord with all required information necessary for Landlord to duly and timely file all necessary reports, statements and schedules required to maintain the ICAP Abatement in full force and effect. Nothing contained in this **Article 29** shall obligate Tenant to take any action or file any report, statement or schedule with respect to the Work. Additionally, nothing contained in this **Article 29** shall obligate Tenant to take any action or incur any expense beyond what is required of Tenant under and pursuant to the ICAP program so as to allow Landlord to provide required access to the Premises and submit required data and information known only to Tenant in order for Landlord to preserve and maintain the ICAP benefits.

(v) Throughout the term of the ICAP abatement neither Landlord nor Tenant shall knowingly engage in any act or conduct which will jeopardize or void the abatement.

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Notwithstanding anything to the contrary contained in this **Article 29**, in the event that Landlord and Tenant are, despite diligent and good faith efforts, unable to obtain the ICAP Abatement as provided herein on the initial attempt, this Lease shall nevertheless remain in full force and effect and the Landlord and Tenant shall continue to diligently and in good faith pursue the ICAP Abatement.

**Section 29.2** (a) It is further understood and agreed that (in order to enable Landlord to comply with certain requirements of the ICAP Abatement):

Tenant (and/or its contractors and subcontractors) agrees to report to Landlord the nature of its business, the number of workers permanently engaged in employment in the Premises, the nature of each worker's employment (i.e., job classification or job title) and the New York City residency of each worker (and the names and addresses of such residents if required by New York City for verification) and Tenant will require that a clause similar to this be contained in any sublease, passing to the benefit of Tenant and of Landlord, if any sublease of all or a portion of the Premises is made;

Tenant (and/or its contractors and subcontractors) shall cooperate with Landlord, and Tenant (and/or its contractors and subcontractors) will supply such information and comply with such reporting requirements as Landlord advises Tenant are reasonably necessary to comply with the ICAP Abatement to the extent relating to the Premises, including, but not limited to: (a) such information concerning subleases (including a rent roll with respect thereto); and (b) the filing of employment reports and other such forms with the Division of Labor Services. The parties will assist each other in connection with maintaining eligibility under the ICAP Abatement.

Tenant agrees to provide reasonable access to the Premises by employees and agents of the Department of Finance of the City of New York, the Division of Labor Services or any such other agency, at all reasonable times; and

Tenant shall not be required to pay taxes or charges which become due or otherwise relieve or indemnify Landlord from any personal liability arising under the Administrative Code of the City of New York, in either case because of the willful neglect or fraud by Landlord in connection with the obligations of Landlord with respect to the ICAP Abatement program, except where imposition of such taxes, charges or liability is occasioned by actions of Tenant in violation of this Lease or failure to meet its obligations with respect to the ICAP Abatement program.

This Lease is subject to the provisions of (i) Local Law 67 and the Rules and Regulations promulgated thereunder, which requires compliance with the Minority and Women Owned Business Enterprise Program by including at least three (3) NYC Certified Minority and/or Women Owned Businesses in each of their trade categories,

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and document all outreach and responses via the submission of the ICAP MWBE Compliance Report, and (ii) the provisions of Executive Order Nos. 50 (1980) and 100 (1986) and the Rules and Regulations promulgated thereunder, as the same may, from time to time, be amended. To the extent required, all Alterations (including, but not limited to, Tenant's Initial Installations) must be done in strict compliance with ICAP and the filing of employment reports and other such forms with the Division of Labor Services. The parties will assist each other in connection with maintaining eligibility under ICAP.

## ARTICLE 30

### MUNICIPAL INCENTIVES

Landlord shall, at no cost or expense, cooperate with Tenant in obtaining any municipal incentives in connection with this Lease and the Premises that for which Tenant may qualify (collective “**Benefits**”) including the execution and filing of any documentation that may be required for the receipt of such Benefits and/or for any such Benefits to be paid by Landlord to Tenant, as hereinafter provided; provided that such Benefits shall have no adverse impact upon Landlord, the Premises, the Buildings and/or the Dumbo Heights Campus. Landlord further agrees that Tenant shall be entitled to one hundred percent (100%) of such Benefits that Landlord or the Premises shall receive, if any, solely as a result of Tenant’s use of the Premises or any Alterations performed by, or on behalf of Tenant (except for Landlord’s Base Building Work for which Landlord shall receive such Benefits), whether during the Term or prior thereto. Such cooperation by Landlord shall include, without limitation, the execution of any necessary or appropriate modification to this Lease, if and to the extent any such approval shall be required and shall not adversely affect any of the rights or benefits of Landlord or increase the obligations or liabilities of Landlord under this Lease (except to a de minimis administrative extent, Landlord hereby agreeing that the obligation to provide notices to the City or State of New York or to any such agency, utility or provider shall in and of itself constitute a de minimis obligation). Tenant agrees that to the extent that Landlord shall incur any reasonable out-of-pocket expense in connection with such cooperation (including, without limitation, reasonable legal and other professional fees and all reasonable costs incurred in obtaining State and City tax rulings regarding any such Benefits transaction), Tenant shall reimburse Landlord for such expense as Additional Rent hereunder. Notwithstanding anything to the contrary contained in this **Article 30**, in the event that Tenant is unable to obtain any Benefits, this Lease shall not be affected thereby and nevertheless remain in full force and effect.

## ARTICLE 31

### OPTIONS TO RENEW

**Section 31.1** So long as Tenant is not then in monetary or material non-monetary default of any of the terms and conditions of this Lease on its part to be performed after notice and the expiration of any applicable cure period both at the commencement of a Renewal Term (as hereinafter defined) and at the time Tenant

exercises its option for such Renewal Term, then any Permitted Tenant, at its option (a “ **Renewal Option** ”), shall have the right to extend the Expiration Date of this Lease as follows: (i) with respect to the Adams Street Premises only, (x) if a Permitted Tenant elects to renew the Term with respect to the Adams Street Premises only, for not less than five (5) contiguous full floors at the Adams Street Premises (of which not less than three (3) full floors are occupied by Permitted Tenant), provided such contiguous floors either begin with the 2<sup>nd</sup> floor or the 9<sup>th</sup> floor only, both at commencement of the Renewal Term(s) and at the time Tenant exercises such Renewal Option(s), Tenant shall then have the right to renew the Term with respect to the Adams Street Premises only, for two (2) additional consecutive periods of five (5) years each, (y) if a Permitted Tenant elects to renew the Term for less than five (5) contiguous full floors, but more than two (2) contiguous full floors at the Adams Street Premises (of which not less than two (2) full floors are occupied by Permitted Tenant), provided such contiguous full floors either begin with the 2<sup>nd</sup> floor or the 9<sup>th</sup> floor only, both at commencement of the Renewal Term and at the time Tenant exercises such Renewal Option, Tenant shall then have the right to renew the Term with respect to the Adams Street Premises only, for one (1) additional period of five (5) years, and (z) if Tenant desires to renew the Term with respect to the Adams Street Premises only, and the Permitted Tenant is in occupancy of two (2) or less full floors at the Adams Street Premises, both at the time that Tenant desires to exercise such Renewal Option and on the intended commencement of the Renewal Term, Tenant shall not then have a Renewal Option under this **Section 31.1** with respect to the Adams Street Premises only, and (ii) with respect to the Prospect Street Premises only, provided Tenant shall have exercised a Renewal Option to renew the term of this Lease for at least the Initial Adams Street Premises, then Tenant shall have the right to renew the Term with respect to the Prospect Street Premises only, for two (2) additional consecutive periods of five (5) years each, (the additional leasing periods set forth in i[x] and [y] and (ii) each, a “ **Renewal Term** ”), commencing on: (i) the date immediate following the Expiration Date or the expiration date of a Renewal Term, as the case may be, through and including the date that is the five (5) year anniversary thereof, provided that, with respect to each of (i) and (ii), Tenant gives Landlord notice (a “ **Renewal Notice** ”) of its exercise of such option not less than eighteen (18) months prior to the Expiration Date or the expiration date of a Renewal Term, as the case may be, with TIME OF THE ESSENCE, which Renewal Notice shall be irrevocable; provided, that such period within which Tenant may exercise the Renewal Option shall be tolled during the duration of any cure period available to Tenant to remedy a monetary or material non-monetary default, if any, after notice. If Landlord does not receive Tenant’s Renewal Notice prior to such date(s), then Tenant shall have no further rights under this **Article 31**, and this **Article 31** shall be of no further force or effect.

**Section 31.2** Each Renewal Term shall be upon all of the same terms, covenants and conditions as are contained in this Lease, except as follows:

- (i) Tenant shall have no further right to extend or renew the term of this Lease except as expressly provided in this **Article 31**.

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(ii) The Fixed Rent for a Renewal Term shall be an amount equal to the Fair Market Rental Value of the Premises for which Tenant desires to renew the Term, as of the date of the Renewal Notice. For purposes herein “ **Fair Market Rental Value for the upcoming Renewal Term for the Premises** ” shall mean the fair market rental value of the applicable Renewal Term for the applicable space based on comparable space for a comparable term in Comparable Buildings as of the date of the Renewal Notice, and shall take into account all relevant factors.

**Section 31.3** Within fifteen (15) days immediately following the delivery of a Renewal Notice by Tenant, Landlord shall deliver to Tenant Landlord’s proposed Fair Market Rental Value for the upcoming Renewal Term for the Premises (“ **Landlord’s Response Notice** ”), which Landlord’s Response Notice shall include the computation of the Fair Market Rental Value for the upcoming Renewal Term for the Premises (“ **Landlord’s Proposal** ”), determined as of the date of Landlord’s Response Notice, determined either on a Net Rental Basis or Gross Rental Basis (as each such term is hereinafter defined), in Landlord’s sole discretion. For purposes of this Lease, (i) Gross Rental Basis shall mean the Fair Market Rental Value for the upcoming Renewal Term for the Premises, on a rentable square foot basis, in an amount equal to (i) the amount of the Fixed Rent and Additional Rent, payable by Tenant during the applicable Renewal Term, plus (ii) the amount of any free rent that Tenant is entitled to during the applicable Renewal Term, plus (iii) the amount of any tenant improvement allowance, which Tenant is entitled to during the applicable Renewal Term; on a per rentable per square foot basis (collectively, “ **Leasing Incentives** ”), and Net Rental Basis shall mean the Gross Rental Basis for the applicable Renewal Term, on a rentable square foot basis, less an amount equal to the Leasing Incentives amortized over the Renewal Term, on a rentable square foot basis, for the applicable Renewal Term.

**Section 31.4** Within fifteen (15) days immediately following the date that Landlord delivers to Tenant Landlord’s Response Notice, TIME BEING OF THE ESSENCE, Tenant shall advise Landlord by written notice (“ **Tenant’s Response Notice** ”), if Tenant accepts Landlord’s proposed Fair Market Rental Value for the upcoming Renewal Term for the Premises set forth in Landlord’s Response Notice, or rejects Landlord’s proposed Fair Market Rental Value for the Upcoming Renewal Term for the Premises; in which case Tenant’s Response Notice shall include Tenant’s proposed Fair Market Rental Value for the upcoming Renewal Term for the Premises (“ **Tenant’s Proposal** ”), calculated as of the date of the Renewal Notice for the upcoming Renewal Term for the Premises, on the same basis as set forth in Landlord’s Response Notice (i.e., on a Net Rental Basis or on a Gross Rental Basis). Should Tenant fail to timely deliver Tenant’s Response Notice to Landlord as provided above, Tenant shall be deemed to not have accepted the terms contained in Landlord’s Response Notice. In the event Landlord’s Proposal and Tenant’s Proposal differ, and the parties fail to agree on the Fair Market Rental Value for the upcoming Renewal Term for the Premises, as of the date of the Renewal Notice, within the two hundred seventy (270) days immediately preceding the Expiration Date or the expiration date of the applicable Renewal Term, as the case may be (the “ **Renewal Term Negotiation Period** ”), then in such event, the Fair Market Rental Value for the upcoming Renewal Term for the Premises shall be determined by either Landlord or Tenant submitting such dispute to arbitration, which arbitration shall be conducted in the manner provided in **Article 32**, and the results of such arbitration shall be conclusive and binding on the parties.

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**Section 31.5** If, for any reason the Fair Market Rental Value for a Renewal Term for the Premises shall not be determined prior to the commencement of such Renewal Term, Tenant, in the meantime, shall pay the monthly installments of Fixed Rent at the then rate payable in the last month of the term immediately preceding the commencement of such Renewal Term. If, the Fair Market Rental Value for a Renewal Term for the Premises as determined by arbitration shall be greater or less than such amount, then within twenty (20) Business Days immediately following the date of the arbitrators decision, the difference between the monthly installments for Fixed Rent actually paid and the monthly installments for Fixed Rent which should have been paid from the commencement of such Renewal Term shall be equitably adjusted and paid by Tenant to Landlord (or credited by Landlord towards Tenant's future monthly installments of Fixed Rent), and thereafter Tenant shall pay the monthly installments of Fixed Rent at the new rate.

**Section 31.6** Following the determination of Fair Market Rental Value for a Renewal Term for the Premises, Landlord and Tenant shall each execute an agreement amending this Lease to reflect the foregoing, but the provisions of this **Article 31** shall be effective with respect to the applicable Renewal Term effective from the commencement of such Renewal Term, whether or not such an amendment is executed.

**Section 31.7** The provisions of this **Article 31** shall apply only to and may only be exercised by a Permitted Tenant.

## ARTICLE 32

### ARBITRATION

**Section 32.1** If Landlord and Tenant shall dispute (i) the Fair Market Rental Value for a Renewal Term for the Premises pursuant to **Article 31**, then Landlord or Tenant shall submit such dispute together with their respective Proposal for resolution to a panel of three (3) arbitrators appointed in accordance the American Arbitration Association Real Estate Valuation Arbitration Proceeding Rules (the "AAA"), or (ii) if Landlord and Tenant shall dispute the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space pursuant to **Article 33**, then Landlord or Tenant shall submit such dispute together with their respective Proposal for resolution to the AAA, or (iii) if Landlord and Tenant shall dispute the ROFO Space Rental Value for the ROFO Space pursuant to **Article 35**, then, Landlord or Tenant shall submit such dispute together with their respective Proposal for resolution to the AAA. The arbitrators shall be qualified, disinterested and impartial, and shall have not less than then (10) years of experience in the Borough of Brooklyn, New York related to the leasing of commercial office space in Comparable Buildings, and the fees of the arbitrator shall be shared equally by Landlord and Tenant. Within fifteen (15) days immediately following the appointment of the

arbitrators, Landlord and Tenant shall attend a hearing before the arbitrators at which hearing each party shall simultaneously submit such party's previously delivered (or deemed delivered) Proposals. The arbitrators shall, within thirty (30) days immediately following such hearing and submission of evidence with respect to (1) the Fair Market Rental Value of a Renewal Term for the Premises, render their decision by selecting either: (a) the Fair Market Rental Value for the upcoming Renewal Term for the Premises set forth in the Proposal submitted by Landlord, or (b) the Fair Market Rental Value for the upcoming Renewal Term for the Premises set forth in the Proposal submitted by Tenant; which, in the judgment of the arbitrators, most nearly reflects the Fair Market Rental Value of the Premises for such Renewal Term for the Premises, and (2) the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space, render their decision by selecting either: (c) the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space set forth in the proposal submitted by Landlord, or (d) or the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space set forth in the proposal submitted by Tenant; which, in the judgment of the arbitrators, most nearly reflects the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space, and (3) the ROFO Space Rental Value, render their decision by selecting either: (e) the ROFO Space Rental Value set forth in the proposal submitted by Landlord, or (f) the ROFO Space Rental Value set forth in the proposal submitted by Tenant; which, in the judgment of the arbitrators, most nearly reflects the ROFO Space Rental Value. The arbitrators shall have no power or authority to select any Fair Market Rental Value for a Renewal Term for the Premises, or any Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space, or any ROFO Space Rental Value, as the case may be, other than the Fair Market Rental Value for a Renewal Term for the Premises as set forth in the Proposal submitted by Landlord or Tenant Proposal, or any Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space other than the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space as set forth in the Proposal submitted by Landlord or Tenant, or any ROFO Space Rental Value other than as set forth in the Proposal submitted by Landlord or Tenant, and the decision of the arbitrator shall be conclusive and binding on the parties. The term "**Proposal**" shall mean, Landlord's or Tenant's, as the case may be, determination of Fair Market Value, Fair Market Value of the 4<sup>th</sup> Floor Option Space and/or ROFO Space Rental Value (collectively, "**FMV Determinations**"), as the case may be, that is submitted to arbitration in accordance with this **Section 32.1**; it being understood and agreed that neither Landlord nor Tenant shall be bound by, nor shall any reference be made to, any prior submission to each other respecting the FMV Determinations. For example, and without limitation, with respect to the Fair Market Rental Value for a Renewal Term, Landlord's Proposal as set forth in **Section 31.3**, and Tenant's Proposal set forth in **Section 31.4**, shall be disregarded.

## ARTICLE 33

### OPTIONS TO EXPAND

**Section 33.1** So long as Tenant is not then in monetary or material non-monetary default of any of the terms and conditions of this Lease on its part to be performed after notice and the expiration of any applicable cure period, is then in occupancy of at least five (5) full floors of the Premises, both on the 4<sup>th</sup> Floor Option Space Inclusion Date (as hereinafter defined) and on the date on which Landlord is to

deliver 4<sup>th</sup> Floor Option Notice (as hereinafter defined), Permitted Tenant, shall have a one (1) time option to lease: (i) the entire 4<sup>th</sup> floor at the Prospect Street Building (the “**4<sup>th</sup> Floor Option Space**”), at any time between March 1, 2020 and March 1, 2022 (the “**Delivery Window**”) for a lease term which shall be coterminous with the Premises (the “**4<sup>th</sup> Floor Expansion Option**”). Landlord shall provide Tenant with twelve (12) months prior notice of the 4<sup>th</sup> Floor Expansion Space Inclusion Date (the “**4<sup>th</sup> Floor Option Notice**”), which 4<sup>th</sup> Floor Option Notice shall state: (i) The rentable square feet comprising the 4<sup>th</sup> Floor Option Space, (ii) Landlord’s reasonable estimation of the date that the 4<sup>th</sup> Floor Option Space will be available for Tenant’s occupancy (the “**4<sup>th</sup> Floor Option Space Occupancy Date**”), which date shall be within the Delivery Window, and (iii) Landlord’s reasonable determination of the fair market value rent for the 4<sup>th</sup> Floor Option Space prevailing as of the date of 4th Floor Option Notice (“**Landlord’s 4<sup>th</sup> Floor Option Space Proposal**”), which fair market value shall take into account the provisions of **Section 33.2 (a) and (e)** below (the “**Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space**”). Tenant shall have thirty (30) days immediately following the date that Landlord delivers to Tenant the 4<sup>th</sup> Floor Option Notice, to exercise the 4<sup>th</sup> Floor Expansion Option for the 4<sup>th</sup> Floor Option Space, TIME BEING OF THE ESSENCE, by giving notice thereof to Landlord (“**Tenant’s 4<sup>th</sup> Floor Option Space Acceptance Notice**”), which notice shall include Tenant’s proposed determination of the minimum amount of the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space, as of the date of the 4<sup>th</sup> Floor Option Notice (“**Tenant’s 4<sup>th</sup> Floor Option Space Proposal**”). In the event Landlord and Tenant cannot agree upon the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space, determined as of the date of the 4<sup>th</sup> Floor Option Notice, within two hundred seventy (270) days immediately preceding the 4<sup>th</sup> Floor Option Space Inclusion Date (the “**4<sup>th</sup> Floor Option Space Negotiation Period**”), then in such event, the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space shall be determined by either Landlord or Tenant submitting such dispute together with both Landlord’s 4<sup>th</sup> Floor Option Space Proposal and Tenant’s 4<sup>th</sup> Floor Option Space Proposal to arbitration, which arbitration shall be conducted in the manner provided in **Article 32**, and the results of such arbitration shall be conclusive and binding on the parties. If for any reason such Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space shall not be determined prior to the 4<sup>th</sup> Floor Option Space Inclusion Date (as hereinafter defined), from and after the 4<sup>th</sup> Floor Option Space Inclusion Date Tenant shall pay the monthly installments of Fixed Rent for the 4<sup>th</sup> Floor Option Space at the rate per square foot then payable by Tenant for the Premises hereunder. If the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space shall be greater or less than the amount paid by Tenant for the 4<sup>th</sup> Floor Option Space following the Option Space Inclusion Date, then within twenty (20) Business Days after the arbitrator’s decision, the difference between the monthly installments for Fixed Rent which was paid as compared to what should have been paid based on the arbitrator’s decision from the 4<sup>th</sup> Floor Option Space Inclusion Date shall be equitably adjusted and paid by Tenant to Landlord (or credited by Landlord towards Tenant’s future monthly installments of Fixed Rent and Additional Rent) and thereafter Tenant shall pay the monthly installments of the new Fixed Rent.

**Section 33.2** Tenant shall take possession of the 4<sup>th</sup> Option Space and Landlord shall deliver possession thereof to Tenant on the later of the 4<sup>th</sup> Floor Option Space

Occupancy Date and the actual date on which Landlord shall have delivered such 4<sup>th</sup> Floor Option Space to Tenant vacant and in broom clean condition (the “**4<sup>th</sup> Floor Option Space Inclusion Date**”). Promptly after the 4<sup>th</sup> Floor Option Space Inclusion Date, Landlord shall deliver to Tenant a Commencement Letter with respect to the 4<sup>th</sup> Floor Option Space, setting forth the 4<sup>th</sup> Floor Option Space Inclusion Date and the Expiration Date. From and after the 4<sup>th</sup> Floor Option Space Inclusion Date such 4<sup>th</sup> Floor Option Space shall automatically be deemed added to and made part of the Prospect Street Premises upon all of the terms, covenants and conditions as are contained in this Lease (except those which by their terms are no longer applicable), except as follows:

- (a) Tenant agrees to accept possession of the 4<sup>th</sup> Floor Option Space in its then “As Is,” vacant and broom clean condition, and Landlord shall not be required to do any work therein to prepare the same for Tenant’s occupancy on, or prior to, the 4<sup>th</sup> Floor Option Space Inclusion Date, or to provide any Landlord Contribution in connection therewith. For purposes of clarification, Landlord and Tenant hereby agree that determination of the Fair Market Rental Value of the 4<sup>th</sup> Floor Option Space shall not take into account any tenant improvement allowance for such space, nor any offset right in connection any tenant improvement allowance for such space.
- (b) **Intentionally Omitted .**
- (c) In the Basic Lease Provisions ( **Article 1** ), with respect to the Option Space only, the term “Tenant’s Proportionate Share” for Taxes shall be the percentage that the rentable square feet of the 4<sup>th</sup> Floor Option Space bears to the agreed upon area of the Prospect Street Building.
- (d) Tenant shall have right to proportionately increase the amount of condenser water delivered to the Prospect Street Premises, in accordance with the provisions of **Section 10.9**, based on the amount of rentable square feet in the 4<sup>th</sup> Floor Option Space to then rentable square footage of the Prospect Street Building.
- (e) Tenant shall not be entitled to any Landlord Contribution or improvement allowances or rent concessions.

**Section 33.3** If Landlord is unable to give Tenant possession of the 4<sup>th</sup> Floor Option Space on the 4<sup>th</sup> Floor Option Space Occupancy Date because of the holding-over of a tenant in such premises, Landlord shall not be subject to any liability for failure to give possession on the 4<sup>th</sup> Floor Option Space Occupancy Date, but the 4<sup>th</sup> Floor Option Space Inclusion Date shall not be deemed to have occurred for any purpose whatsoever until the date that Landlord shall actually deliver possession of the 4<sup>th</sup> Floor Option Space to Tenant in accordance with this Lease. In any event, Landlord shall promptly commence and diligently prosecute holdover proceedings or such other legal proceedings as may be required in order to obtain prompt possession of the 4<sup>th</sup> floor Option Space as promptly thereafter as may be practical. Notwithstanding anything to the contrary contained herein, if Landlord is unable to give possession of the 4<sup>th</sup> Floor Option Space to Tenant by the date that is eight (8) months after the 4<sup>th</sup> Floor Option

Space Occupancy Date, then Tenant shall have the right to elect, by notice delivered to Landlord at any time prior to the date Landlord delivers possession of the 4<sup>th</sup> Floor Option Space to Tenant, to rescind Tenant's 4<sup>th</sup> Floor Option Space Acceptance Notice, in which event such notice shall be rendered void *ab initio* and Tenant shall have no obligation to lease the 4<sup>th</sup> Floor Option Space pursuant to this **Article 33**.

**Section 33.4** The provisions of this Article 33 shall apply only to and may only be exercised by a Permitted Tenant.

## ARTICLE 34

### INITIAL RIGHT OF FIRST OFFER FOR THE 2<sup>ND</sup> AND 3<sup>RD</sup> FLOOR SPACE AT THE PROSPECT STREET BUILDING

So long as Tenant is not then in monetary or material non-monetary default of any of the terms and conditions of this Lease on its part to be performed after notice and the expiration of any applicable cure period both on the date of the 2<sup>nd</sup>/3<sup>rd</sup> Floor Availability Notice and on the 2<sup>nd</sup>/3<sup>rd</sup> Floor Occupancy Date (as each such term is hereinafter defined), if at any time during the Term, as the same may be extended, Landlord receives an offer from an independent third party to lease a portion of the 2<sup>nd</sup> floor, or a portion of the 3<sup>rd</sup> floor, or the entire 2<sup>nd</sup> floor, or the entire 3<sup>rd</sup> floor, or the entire 2<sup>nd</sup> and the entire 3<sup>rd</sup> floor as single unit at the Prospect Street Building (the "**2<sup>nd</sup>/3<sup>rd</sup> Floor Space**") prior to the initial leasing thereof, Landlord shall, within ten (10) Business Days from the date of its receipt of such offer, give notice (the "**2<sup>nd</sup>/3<sup>rd</sup> Floor Availability Space Notice**") to Tenant that the 2<sup>nd</sup>/3<sup>rd</sup> Floor Space is available for lease by Tenant (the "**Initial 2<sup>nd</sup>/3<sup>rd</sup> Floor Space Right of First Offer**"). The 2<sup>nd</sup>/3<sup>rd</sup> Floor Availability Space Notice shall state (i) the number of rentable square feet comprising the 2<sup>nd</sup>/3<sup>rd</sup> Floor Space, which rentable square footage shall be calculated in the same manner that the rentable square footage of the Premises was calculated as of the date hereof, and (ii) the date that Landlord anticipates that the 2<sup>nd</sup>/3<sup>rd</sup> Floor Space shall be available for Tenant's occupancy (the "**2<sup>nd</sup>/3<sup>rd</sup> Floor Occupancy Date**"), which 2<sup>nd</sup>/3<sup>rd</sup> Floor Occupancy Date shall not be less than thirty (30) days immediately following the date that the 2<sup>nd</sup>/3<sup>rd</sup> Floor Availability Space Notice was delivered to Tenant, and (iii) Landlord's reasonable determination of the Fair Market Value Rent (as hereinafter defined) for the 2<sup>nd</sup>/3<sup>rd</sup> Floor Space, determined as of the date of the 2<sup>nd</sup>/3<sup>rd</sup> Floor Availability Space Notice, either on a Net Rental Basis or a Gross Rental Basis, in Landlord's sole discretion. Tenant shall then have a one (1) time right (subject to the provisions of **Article 35**) to lease only the entire 2<sup>nd</sup>/3<sup>rd</sup> Floor Space which is the subject to the 2<sup>nd</sup>/3<sup>rd</sup> Floor Availability Space Notice, by giving Landlord notice of its election to do so (the "**2<sup>nd</sup>/3<sup>rd</sup> Floor Exercise Notice**"), within ten (10) Business Days from the date that Landlord delivers to Tenant the 2<sup>nd</sup>/3<sup>rd</sup> Floor Availability Notice, with TIME OF THE ESSENCE; provided, that such 10-Business Day period shall be tolled during the duration of any cure period available to Tenant to remedy a monetary or material non-monetary default, if any, after notice Tenant's 2<sup>nd</sup>/3<sup>rd</sup> Floor Exercise Notice shall state that Tenant desires to lease the 2<sup>nd</sup>/3<sup>rd</sup> Floor Space in accordance with the terms and conditions set forth in the 2<sup>nd</sup>/3<sup>rd</sup> Floor Availability Notice including, without limitation, the Fair Market Value Rent for the 2<sup>nd</sup> Floor/3<sup>rd</sup> Floor Space set forth therein. In the event

Landlord does not receive the 2<sup>nd</sup> / 3<sup>rd</sup> Floor Exercise Notice within the foregoing ten (10) Business Day period, then Landlord may lease the 2<sup>nd</sup> / 3<sup>rd</sup> Floor Space that was the subject of the 2<sup>nd</sup> / 3<sup>rd</sup> Floor Availability Notice to any other party upon such terms and conditions as Landlord may desire in its sole discretion; it being understood and agreed that notwithstanding anything to the contrary contained herein, and by way of example, if the subject of the 2<sup>nd</sup> / 3<sup>rd</sup> Floor Availability Notice consisted of only the 2<sup>nd</sup> floor, that Tenant's option under this Article 34 would continue to apply to the 3<sup>rd</sup> floor. Notwithstanding anything to the contrary contained in this **Article 34**, no 2<sup>nd</sup> / 3<sup>rd</sup> Floor Exercise Notice shall be effective and binding on Landlord if there are less than eighteen (18) months then remaining in the Term, as the same may be extended. Provided, however, if there are less than thirty-six (36) months, but more than eighteen (18) months, then remaining in the Term, as the same may be extended, then simultaneously with Tenant's giving the 2<sup>nd</sup> / 3<sup>rd</sup> Floor Exercise Notice, Tenant must simultaneously exercise the Renewal Option set forth in **Section 31.1 (i)(x)**, (either, for the first five (5) year Renewal Term, or for the second five (5) year Renewal Term set forth in said subsection, if Tenant had previously exercised its option in said Section for the first five (5) year Renewal Term) for Tenant's 2<sup>nd</sup> / 3<sup>rd</sup> Floor Exercise Notice to be valid.

## ARTICLE 35

### RIGHT OF FIRST OFFER FOR THE 2<sup>ND</sup>, 3<sup>RD</sup>, 7<sup>TH</sup>, 8<sup>TH</sup>, 9<sup>TH</sup> AND 10<sup>TH</sup> FLOORS AT THE PROSPECT STREET BUILDING

**Section 35.1** (a) So long as Tenant is not then in monetary or material non-monetary default of any of the terms and conditions of this Lease on its part to be performed after notice and the expiration of any applicable cure period, is then in occupancy of at least five (5) full floors of the Premises, both at on the date of the ROFO Space Availability Notice and on the ROFO Occupancy Date (as each such term is hereinafter defined), if at any time during the Term, as the same may be extended, Landlord anticipates that all or any portion of any of the 2<sup>nd</sup>, 3<sup>rd</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, or 10<sup>th</sup> floors at the Prospect Street Building, either as a single unit, or in full floor increments only (the " **ROFO Space** "), will become vacant and available for leasing, after the initial leasing thereof, but subject to the provisions of **Subsection 35.1(b)** below, Landlord shall then give Tenant notice (the " **ROFO Space Availability Notice** "), that such ROFO Space is available for lease by Tenant, and Tenant shall have an ongoing right to lease the ROFO Space (the " **Right of First Offer** "), provided that any ROFO Space that Tenant desires to lease pursuant to the Right of First Offer set forth in this **Article 35** shall be in full floor increments only. Any ROFO Space Availability Notice shall state (i) the number of rentable square feet comprising the ROFO Space, which rentable square footage shall be calculated in the same manner that the rentable square footage of the Premises was calculated as of the date hereof, and (ii) the date that Landlord anticipates that the ROFO Space shall be available for Tenant's occupancy (the " **ROFO Space Occupancy Date** "), which ROFO Space Occupancy Date shall not be less than sixty (60) days nor more than one-hundred eighty (180) days immediately following the date that the ROFO Space Availability Notice was delivered to Tenant, and (iii) Landlord's reasonable determination of the ROFO Space Rental Value (as hereinafter

defined) (“**Landlord’s ROFO Space Proposal**”) determined as of the date of the ROFO Space Availability Notice, either on a Net Rental Basis or a Gross Rental basis, in Landlord’s sole discretion (the “**ROFO Space Rental Value**”). Tenant shall then have an going right to lease the ROFO Space, by giving Landlord notice (the “**ROFO Exercise Notice**”) of its election to do so, within twenty (20) Business Days immediately following the date that Landlord delivers to Tenant’s the ROFO Space Availability Notice, with TIME OF THE ESSENCE, which notice shall include Tenant’s proposed determination of the ROFO Space Rental Value if different than Landlord’s ROFO Space Proposal (“**Tenant’s ROFO Space Proposal**”). If Landlord does not receive the Tenant’s ROFO Space Exercise Notice within the foregoing twenty (20) Business Day period, then Tenant shall be deemed to have waived its rights to lease such ROFO Space in such instance, and Landlord may thereafter lease the ROFO Space to any other party upon such terms and conditions as Landlord may deem desirable, its sole discretion accordance with, and subject to, the terms and conditions contained in this **Article 35**, including Landlord’s obligation to re-offer said ROFO Space to Tenant when same may after the leasing of same to a third party become available for leasing; it being understood and agreed that Tenant Right of First Offer is ongoing. In the event Landlord and Tenant cannot agree upon the ROFO Space Rental Value, determined as of the date of the ROFO Space Availability Notice, within forty-five (45) days immediately following the date of the ROFO Space Availability Notice (the “**ROFO Space Negotiation Period**”), then the Fair Market Rental Value of the ROFO Space shall be determined by submission by either Landlord or Tenant, at any time following the expiration of the ROFO Space Negotiation Period, of both Landlord’s ROFO Space Proposal and Tenant’s ROFO Space Proposal to arbitration, which arbitration shall be conducted in the manner provided in **Article 32**, and the results of such arbitration shall be conclusive and binding on the parties. If for any reason such Fair Market Rental Value of the ROFO Space shall not be determined prior to the ROFO Space Inclusion Date (as hereinafter defined), from and after the ROFO Space Inclusion Date Tenant shall pay the monthly installments of Fixed Rent for the ROFO Space at the rate per square foot then payable by Tenant for the Premises hereunder. If the Fair Market Rental Value of the ROFO Space shall be greater or less than the amount paid by Tenant for the ROFO Space following the ROFO Space Inclusion Date, then within twenty (20) Business Days after the arbitrator’s decision, the difference between the monthly installments for Fixed Rent which was paid as compared to what should have been paid based on the arbitrator’s decision from the ROFO Space Inclusion Date shall be equitably adjusted and paid by Tenant to Landlord (or credited by Landlord towards Tenant’s future monthly installments of Fixed Rent and Additional Rent) and thereafter Tenant shall pay the monthly installments of the new Fixed Rent.

(b) Tenant’s rights under this **Article 35** shall only be subject to the rights of any existing tenant(s) whose premises is then part of the ROFO Space to renew or extend the term of its lease (whether pursuant to an option set forth in such lease or otherwise).

**Section 35.2** (a) Tenant shall take possession of the ROFO Space, and Landlord shall deliver possession thereof to Tenant on the later of the ROFO Space Occupancy Date and the actual date on which Landlord shall have delivered such

space to Tenant vacant (the “**Effective Date**”), and from and after the Effective Date the ROFO Space shall automatically be deemed added to and made part of the Premises upon all of the terms, covenants and conditions as are contained in this Lease (except those which by their terms are no longer applicable), except as follows: Tenant agrees to accept possession of the ROFO Space in its then “As Is” condition and Landlord shall not be required to do any work therein to prepare the same for Tenant’s occupancy.

(b) The amount of the Fixed Rent provided in the Basic Lease Terms shall be increased by the amount equal to the ROFO Space Rental Value. If for any reason the ROFO Space Rental Value shall not be determined prior to the Occupancy Date, Tenant, in the meantime, shall pay the monthly installments of Fixed Rent at the rate per square foot payable for Fixed Rent and said Additional Rent set forth in the ROFO Space Availability Notice. If the ROFO Space Rental Value shall be greater or less than the amount paid by Tenant for such space following the ROFO Space Occupancy Date, then within twenty (20) Business Days after the determination of the ROFO Space Rental Value, the difference between the monthly installments for Fixed Rent and Additional Rent which should have been paid from the ROFO Space Occupancy Date shall be equitably adjusted and paid by Tenant to Landlord (or credited by Landlord towards Tenant’s future monthly installments of Fixed Rent and Additional Rent) and thereafter Tenant shall pay the monthly installments of the new Fixed Rent.

(c) In the Basic Lease Terms, with respect to the ROFO Space only, the term (i) “Tenant’s Proportionate Share” for Taxes shall be the percentage that the number of the rentable square feet comprising the ROFO Space bears to the rentable square feet of comprising the Prospect Street Premises, and (ii) the “agreed area” of the Premises shall mean the number of rentable square feet comprising the ROFO Space.

**Section 35.3** If Landlord is unable to give possession to Tenant of the ROFO Space on the ROFO Space Occupancy Date because of the holding-over of the tenant thereof, Landlord shall not be subject to any liability for failure to give possession on the ROFO Space Occupancy Date, but the ROFO Space Occupancy Date shall not be deemed to have occurred for any purpose whatsoever until the date that Landlord shall actually deliver possession of the ROFO Space to Tenant. In any event, Landlord shall promptly commence and diligently prosecute holdover proceedings or such other legal proceedings as may be required in order to obtain prompt possession of the ROFO Space as promptly thereafter as may be practical. Notwithstanding anything to the contrary contained herein, if Landlord is unable to give possession of the ROFO Space to Tenant by the date that is nine (9) months after the ROFO Space Occupancy Date, then Tenant shall have the right to elect, by notice delivered to Landlord at any time prior to the date Landlord delivers possession of the ROFO Space to Tenant, to rescind ROFO Exercise Notice, in which event such notice shall be rendered void *ab initio* and Tenant shall have no obligation to lease the ROFO Space pursuant to this **Article 35**, unless Tenant exercises a subsequent ROFO Exercise Notice with respect to such ROFO Space.

**Section 35.4** Promptly after the ROFO Space Occupancy Date with respect to the ROFO Space, Landlord and Tenant shall execute an amendment of this Lease to

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confirm (a) the Fixed Rent for such space, (b) Tenant's Proportionate Share for Taxes for such space, (c) the Effective Date for the commencement of the term for such space, (d) the rentable square footage of such space, and (e) such other matters as either party may reasonably request, provided, however, that the failure of either party to execute such a writing shall not vitiate the determination of any of the foregoing matters in accordance with the provisions of this **Article 35**.

**Section 35.5** Notwithstanding anything to the contrary contained in this **Article 35**, no Exercise Notice shall be effective and binding on Landlord if there are less than eighteen (18) months then remaining in the Term, as the same may be extended. Provided, however, if there are less than thirty-six (36) months but more than eighteen (18) months then remaining in the Term, as the same may be extended, then simultaneously with Tenant's giving the Exercise Notice, Tenant must simultaneously exercise the Renewal Option set forth in **Section 31.1 (i) (x)**, (either, for the first five [5] year Renewal Term, or for the second five (5) year Renewal Term set forth in said subsection, if Tenant had previously exercised the Renewal for the first five [5] year Renewal Term) for Tenant's ROFO Space Exercise Notice to be valid.

**Section 35.6** The provisions of this **Article 35** shall apply only to and may only be exercised by a Permitted Tenant.

## ARTICLE 36

### TENANT'S SELF HELP RIGHTS

**Section 36.1** To the extent not caused by Tenant or any of Tenant's employees, agents, contractors or other third parties under Tenant's control, if Landlord shall fail to maintain or make a material repair which is the obligation of Landlord under **Section 6.1** above, and the same has or is reasonably and imminently expected to result in a material disruption to Tenant's use and occupancy of the Premises and/or material damage to a material amount of Tenant's Personal Property and/or injury to persons (any of the foregoing, a "Big Problem"), Tenant shall have the right to deliver written notice thereof to Landlord (the "Initial Repair Notice"); it is being understood and agreed that the reference herein to the term "imminent" shall mean not likely to occur until shortly after the end of the cure period granted to Landlord below. The Initial Repair Notice must specifically describe Landlord's failure to so operate, maintain, repair or keep the Building in first-class condition as required in **Section 6.1** above, and the Big Problem that has resulted or is imminent to occur and the action that is reasonably required of Landlord to satisfy the requirements of this Lease with respect to such failure. If, within seven (7) days (or in the case of an emergency, two (2) Business Days) immediately following Landlord's receipt of the Initial Repair Notice, Landlord fails to cure or commence to cure the items specified in the Initial Repair Notice (and diligently pursue such cure thereafter), Tenant may deliver to Landlord a second such notice ("Reminder Repair Notice"). The Reminder Repair Notice must include a copy of the Initial Repair Notice and specify that Tenant will have the rights granted under this **Article 36** if Landlord fails to cure or commence to cure the specified items within five (5) days of Landlord's receipt of the Reminder Repair Notice. If Landlord fails to make

or commence to make (and diligently pursue to completion) the reasonably required repair or necessary action to remedy such condition within five (5) days immediately following the date that Landlord receives the Reminder Repair Notice (or in the case of an emergency, within two (2) Business Days following the date that Landlord receives the Initial Repair Notice), then Tenant may, subject to the terms of this **Article 36**, proceed to take the reasonably required action to remedy such condition with respect to the Premises only (solely on its own behalf and not as the agent of Landlord). Tenant may not take any actions under the terms of this **Article 36** which alters or modifies the Buildings' structure, Buildings' Systems, Common Areas or exterior of the Buildings. Landlord shall reimburse Tenant for Tenant's actual reasonable out-of-pocket costs and expenses in taking actions under this **Article 36** within thirty (30) days immediately following the date that Landlord receives an invoice from Tenant setting forth a reasonably particularized breakdown of such costs and expenses together with reasonable evidence of payment of the same. If Landlord fails to pay such monies to Tenant within the foregoing thirty (30) day period, Tenant shall be entitled offset such amounts against the next installment(s) of Rent due and payable under this Lease and Tenant. Notwithstanding the foregoing to the contrary and prior to any such offset by Tenant, Landlord and Tenant shall be required to first have one meeting and discuss, in good faith, Landlord's failure to timely pay such monies to Tenant, and if Landlord shall dispute (in its sole but good faith discretion) that it owes Tenant such monies, Tenant shall not be entitled to deduct such monies from the next monthly installment(s) Rent due and payable under this Lease unless and until such dispute is resolved (pursuant to arbitration in accordance with **Article 32**) in Tenant's favor (and in such event such offset, if any, shall be in the amount so determined pursuant to such resolution). Tenant agrees to indemnify, defend and hold Landlord and Landlord's Indemnitees harmless against any loss, liability or damage resulting from Tenant's exercise of the self-help rights provided to Tenant in this **Article 36**.

(b) Notwithstanding anything to the contrary contained herein, the provisions of this **Article 36** shall only apply from and after an Ownership Transfer. The term "Ownership Transfer" shall mean any sale that would result in the Kushner Companies or RFR Realty or any of their respective affiliates (each, a "**Principal Entity**") ceasing to own, directly or indirectly, collectively or individually, at least a 50% interest in either (i) Landlord or (i) the Adams Street Building.

SIGNATURES APPEAR ON IMMEDIATELY FOLLOWING PAGE

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IN WITNESS WHEREOF , Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

**117 ADAMS OWNER LLC** ,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

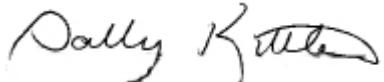
**55 PROSPECT OWNER LLC** ,  
A Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum of Lease as of the    day of May, 2014.

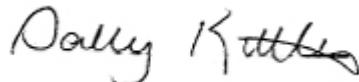
LANDLORD:

**117 ADAMS OWNER LLC** , a Delaware limited liability company



By: \_\_\_\_\_  
Name: Sally Kittles  
Title: Vice President

**55 PROSPECT OWNER LLC** , a Delaware limited liability company



By: \_\_\_\_\_  
Name: Sally Kittles  
Title: Vice President

TENANT:

**ETSY, INC .**,  
a Delaware corporation



By: \_\_\_\_\_  
Name: Kristina Salen  
Title: Chief Financial Officer



By: \_\_\_\_\_  
Name: Kristina Salen  
Title: Chief Financial Officer

**SCHEDULE "A"**  
**FIXED RENT SCHEDULE\***

Adam Street Premises (other than the Lobby Area Space and Storage Area Space)

Period	Per Annum	Per Month
Year 1**	\$ 8,963,298.00	\$746,941.50
Year 2	\$ 9,030,522.74	\$752,543.56
Year 3	\$ 9,098,251.66	\$758,187.64
Year 4	\$ 9,166,488.54	\$763,874.05
Year 5	\$ 9,235,237.21	\$769,603.10
Year 6	\$10,134,436.49	\$844,536.37
Year 7	\$10,210,444.76	\$850,870.40
Year 8	\$10,287,023.10	\$857,251.92
Year 9	\$10,364,175.77	\$863,681.31
Year 10	\$10,441,907.09	\$870,158.92

Storage Area Space

Period	Per Annum	Per Month
Year 1**	\$65,408.00	\$5,450.67
Year 2	\$65,408.00	\$5,450.67
Year 3	\$65,408.00	\$5,450.67
Year 4	\$65,408.00	\$5,450.67
Year 5	\$65,408.00	\$5,450.67
Year 6	\$65,408.00	\$5,450.67
Year 7	\$65,408.00	\$5,450.67
Year 8	\$65,408.00	\$5,450.67
Year 9	\$65,408.00	\$5,450.67
Year 10	\$65,408.00	\$5,450.67

Lobby Area Space

Period	Per Annum	Per Month
Year 1**	\$221,616.00	\$18,468.00
Year 2	\$223,278.12	\$18,606.51
Year 3	\$224,952.71	\$18,746.06
Year 4	\$226,639.85	\$18,886.65
Year 5	\$228,339.65	\$19,028.30
Year 6	\$250,572.20	\$20,881.02
Year 7	\$252,451.49	\$21,037.62
Year 8	\$254,344.88	\$21,195.41
Year 9	\$256,252.46	\$21,354.37
Year 10	\$258,174.36	\$21,514.53

Prospect Street Premises

Period	Per Annum	Per Month
Year 1***	\$1,431,000.00	\$119,250.00
Year 2	\$1,441,732.50	\$120,144.38
Year 3	\$1,452,545.49	\$121,045.46
Year 4	\$1,463,439.58	\$121,953.30
Year 5	\$1,474,415.38	\$122,867.95
Year 6	\$1,617,973.50	\$134,831.12
Year 7	\$1,630,108.30	\$135,842.36
Year 8	\$1,642,334.11	\$136,861.18
Year 9	\$1,654,651.62	\$137,887.63
Year 10	\$1,667,061.50	\$138,921.79

\* For purposes of clarification, (i) in lieu of Tenant's payment of operating expenses or CAM hereunder, the foregoing amounts of annual Fixed Rent (other than with respect to the Storage Area Space) incorporates an increase in the annual Fixed Rent by an amount equal to 0.75% of the amount of annual Fixed Rent payable during the preceding lease year, beginning on the 1<sup>st</sup> anniversary of the Rent Commencement Date and on each successive anniversary thereof, on a compounded basis, and (ii) in the event the Adams Owner, LLC fails to enter into initial leases for at least 50% of the retail premises (the "117 Adams Retail Space Requirement"), in the aggregate, at the Adams Street Premises with tenant(s) that shall provide amenities (i.e., food) to Tenant on, or before, the Rent Commencement Date (subject to Unavoidable Delay or Tenant Delay), the annual Fixed Rent set forth above shall be reduced by an amount equal to 20% of the applicable annual Fixed Rent that would otherwise be payable, for the period commencing on the Rent Commencement Date until the date that the 117 Retail Space Requirement is satisfied.

\*\* Commencing on the Adams Street Premises Rent Commencement Date.

\*\*\* Commencing on the Prospect Street Premises Rent Commencement Date.

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**SCHEDULE “B”**

**List of Approved Contractors**

## **BUILDING SUBCONTRACTOR LIST**

## **GENERAL CONTRACTORS**

Archstone Builders

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## Artisan Construction

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Benchmark Builders

**Benchmark Builders**      \*\*\*      \*\*\*  
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JRM CM

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L&K Partners, Inc.

**E&P Partners, Inc.**

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02050 DEMOLITION

<b>All Star Demolition</b>	Michael Giordanella
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**J M Industries, Inc.** Jim Fauci  
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<b>Liberty Contracting</b>	Monir
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***	***

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<b>NY Industry Demolition</b>	Jack Valenti *** *** *** ***
<b>On Site Demo</b>	Ganesh Suryavanshi *** *** *** ***
<b>Riteway</b>	Tushar or Talal *** *** *** *** *** ***
<b>Silver</b>	Willie *** *** *** ***
<b>Skyline Dismantling</b>	Kevin Fotiadis *** *** *** ***
<b>Statewide Contracting Group Corp</b>	Mike Revello *** *** *** ***
<b>Titan Demolition M/WBE</b>	Carlo Casalino / Genny Rodriguez *** *** *** *** ***
<b>Tri-State Dismantling Corp</b>	James Gildea *** *** *** ***
<b>Waldorf Carting</b>	George Martin *** *** *** *** ***
<b>World Class Demolition</b>	Dennis Halpern *** *** *** ***

**AM Marca Inc**

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Mike Mastroianni

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<b>Apex Construction</b>	John Otto *** *** *** *** *** *** ***
<b>Ashnu International</b>	Nayan Parikh *** *** *** *** ***
<b>Bell Masons</b>	Kevin *** *** ***
<b>Bybrook</b>	Noel *** *** ***
<b>Casino Development</b>	Robert DiSanza *** *** *** ***
<b>Cobra Concrete</b>	John Krpan *** *** *** *** ***
<b>Colgate Restoration</b>	Steve Marku *** *** *** ***
<b>Concrete Industries One</b>	Selman Yalcin *** *** *** ***
<b>Euro-Build</b>	Hector Virata *** *** *** *** ***
<b>Grandline Construction</b>	Naim Agolli *** *** *** ***
<b>Malatesta Paladino</b>	Carmine Malatesta *** *** ***

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Manual Pereira

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**Manny P. Concrete Company**

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<b>Medway</b>	Selman Yalcin *** *** *** ***
<b>Melva Construction Corp</b>	Peter *** *** *** ***
<b>Melvin Construction</b>	Peter/Jeremy *** *** *** *** ***
<b>Profile Builders (Non-Union) / Tangent (Union)</b>	Gary Birdie *** *** *** ***
<b>Shelbourne Construction Corp / South Ferry Development</b>	Gerry Hughes *** *** *** ***
<b>Solid Development Group</b>	Eamon Loughran *** *** *** ***
<b>04000 MASONRY</b>	
<b>AM Marca Inc</b>	Mike Mastroianni *** *** *** ***
<b>Apex Construction</b>	John Otto *** *** *** *** *** ***
<b>Ashnu International</b>	Nayan Parikh *** *** *** ***
<b>Bell Masons</b>	Kevin *** *** ***
<b>Bybrook</b>	Noel

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<b>Concrete Industries One</b>	Selman Yalcin *** *** *** ***
<b>Euro-Build</b>	Hector Virata *** *** *** *** ***
<b>Gibraltar Contracting</b>	Martin Guzman *** *** ***
<b>Grandline Construction</b>	Naim Agolli *** *** *** ***
<b>Hayden (Non Union) / Hudson Valley (Union)</b>	Craig Alper / Mark Dari *** *** *** *** ***
<b>Malatesta Paladino</b>	Carmine Malatesta *** *** *** ***
<b>Melva Construction Corp</b>	Peter *** *** *** ***
<b>Melvin Construction</b>	Peter / Jeremy *** *** *** *** ***
<b>Profile Builders (Non-Union) / Tangent (Union)</b>	Gary Birdie *** *** *** ***
<b>Riggs Construction</b>	Michael Deriggs *** *** *** ***
<b>Solid Development Group</b>	Eamon Loughran *** *** ***

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**USG**

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Zina Estrina

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**05120 STRUCTURAL STEEL**

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**A&E Metal Products**

Dony DiDonato

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\*\*\*  
\*\*\***AGL Industries**

Frank LoFaso

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\*\*\*  
\*\*\*  
\*\*\***Burgess Steel**

Stephanie

\*\*\*  
\*\*\*  
\*\*\*  
\*\*\***Canal Steel**

Bob Saltar

\*\*\*  
\*\*\*  
\*\*\*  
\*\*\***Caribie Corporation**

Linda J. Bautista

\*\*\*  
\*\*\*  
\*\*\*  
\*\*\***H&L Ironworks**

Liam

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\*\*\***Ironworks by YSL**

Marat Lempert

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\*\*\***JCR Steel Services**

Howard

\*\*\*  
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\*\*\***Koenig Iron Works**

Raj (ext. \*\*\*)

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\*\*\***Maspeth Welding**

Jeff Anschlowar

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\*\*\***Pecker Ironworks**

Elliot Pecker

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<b>SL Industries</b>	Sharon Craddock *** *** *** ***
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<b>Summit Steel</b>	Estimating *** *** *** ***
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<b>United Structural Works</b>	Cormach O'Muirithe *** *** *** *** ***
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<b>Winnick Steel Inc</b>	David *** *** *** *** ***
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## **05700 ARCHITECTURAL METAL & GLASS**

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<b>AM Architectural Metal Glass Inc.</b>	Jer Harmon / Owend *** *** *** ***
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<b>The Orchard Group NY</b>	Chris Otterbine *** *** *** *** ***
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<b>Superior Metal &amp; Glass</b>	George *** *** *** ***
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## **06200 MILLWORK**

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<b>Cobra Contracting</b>	Grant Kassap *** *** *** *** ***
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<b>De Jil Systems</b>	Bruce Smith *** *** *** ***
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<b>Finnryan Millwork LLC</b>	Sandra / Gino *** *** ***
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<b>Four Daughters</b>	Tom Jakubiek - Ext ** *** *** *** ***
<b>Highland Organization</b>	Douglas *** *** *** ***
<b>Mitchell's Restoration Millwork</b>	Mervyn Mitchell *** *** *** ***
<b>Modworxx</b>	Joshua Barnett *** *** *** *** ***
<b>Mortensen Woodwork</b>	Peter Mielach *** *** *** *** ***
<b>Napoleon Contracting (MMK Millwork)</b>	Alan resnick / Mike Koljenovic *** *** *** *** ***
<b>Omega Construction</b>	Davie Finnegan *** *** *** ***
<b>Patella</b>	Bob McMullen *** *** *** ***
<b>Premier Woodcraft, Ltd.</b>	Bob Ebner - Ext ***/**/ *** *** *** ***
<b>Roche Construction</b>	Pat Roche *** *** *** ***
<b>Unique Woodworking Inc.</b>	Rupert Gordon *** *** *** ***

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## **07500 ROOFING / WATERPROOFING**

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**Concord Restoration Inc**

Dominic Fusco

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<b>D-Star Waterproofing</b>	Anthony *** *** *** ***
<b>Duraford Construction</b>	Nimer Dewan *** *** *** ***
<b>Eagle One Roofing Contractors</b>	Amanda *** *** *** *** ***
<b>Gibraltar Contracting</b>	Martin Guzman *** *** ***
<b>Gotham Waterproofing &amp; Restoration</b>	Kyle E. Stewart *** *** *** *** *** ***
<b>Hayden (Non Union) / Hudson Valley (Union)</b>	Craig Alper/Mark Dari *** *** *** *** ***
<b>J&amp;C Restoration</b>	Juan Costa *** *** *** ***
<b>KNS Building Restoration</b>	Anthony Ballato *** *** *** *** ***
<b>National Roofing Corp.</b>	Sam Nirenberg *** *** *** ***
<b>Osman Ltd.</b>	Allen *** *** *** ***
<b>Plescia Roofing</b>	Allan ***

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<b>Seaview Construction Inc.</b>	Estimating *** *** *** ***
<b>USG</b>	Zina Estrina *** *** *** *** ***
<b>07800 FIREPROOFING</b>	
<b>Melvin Construction</b>	Peter/ Jeremy *** *** *** *** ***
<b>P.A.L Environmental</b>	Arick Domozick *** *** *** ***
<b>Profile Builders (Non-Union) / Tangent (Union)</b>	Gary Birdie *** *** *** ***
<b>Solid Development Group</b>	Eamon Loughran *** *** *** ***
<b>Zeus Construction Services</b>	Frank Mihas / Steve *** *** *** *** ***
<b>07840 FIRESTOPPING</b>	
<b>Firestop Solutions</b>	Kamil *** *** *** ***
<b>Horizon Contracting (Firestopping Division)</b>	Mark Nunn *** *** *** ***
<b>JLE, Inc.</b>	Estimating *** *** ***
<b>Premier Firestopping</b>	John Morosco

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<b>Tri-State Fireproofing Inc.</b>	Joseph Jacob
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**03100 HOLLOW METAL DOORS & FRAMES**

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<b>DCI Metro</b>	Alvin Duncan
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<b>Director Door Industries Ltd</b>	Cheryl Fass
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<b>Door Stop LLC</b>	Ronnie Napoli
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<b>Liberty Doorworks</b>	Pam / Paul
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<b>M &amp; D Door &amp; Hardware</b>	Rivky Kramer / Mendel Mandel
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<b>Secure Door &amp; Hardware</b>	Yana / Alex
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<b>Weinstein &amp; Holtsman</b>	Juan Murillo or Pat Ho
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<b>08330 COILING DOORS &amp; GRILLES</b>	
<b>AGP (Overhead Door)</b>	Paul De Graaf
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<b>Atlantic Rolling Steel Door</b>	Estimating
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**City-Gates**

Vincent Greco

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<b>Global Overhead Doors</b>	A Tome *** *** *** *** ***
<b>Lombardi Door</b>	James Hurley *** *** *** *** ***
<b>Metro Door, Inc.</b>	Salvatore Agostino or Jef Chevalier *** *** *** *** ***
<b>Overhead Door Inc.</b>	Jai *** *** *** *** ***
<b>08500 WINDOWS</b>	
<b>Certified Glass Corp</b>	Estimating *** *** *** *** ***
<b>City View Alterations</b>	Robert Reyes *** *** *** *** ***
<b>Crystal Windows Doors</b>	Sales *** *** *** *** ***
<b>Kilroy</b>	Rich Green / Orlando Ojeda *** *** *** *** ***
<b>Malmek Glass Contractor</b>	Michael Simmons *** *** *** *** ***
<b>Midtown Glass, Inc.</b>	Steve *** *** *** *** ***
<b>Skyline Window</b>	Ken Kraus ***

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**Stealth Architectural Group** Sandra / George Mejia  
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## 08700 HARDWARE

**DCI Metro** Alvin Duncan  
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**Director Door Industries Ltd** Cheryl Fass  
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**Door Stop LLC** Ronnie Napoli  
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**Liberty Doorworks** Pam / Paul  
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**M & D Door & Hardware** Rivky Kramer / Mendel Mandel  
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**Secure Door & Hardware** Yana / Alex  
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**Weinstein & Holtsman** Juan Murillo or Pat Ho  
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## 08800 GLASS / GLAZING

**AAA Metal & Glass Inc.** Evan Feather  
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**All County** Estimating  
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<b>Apex Glass (Non Union) of Infinity</b>	Dragan Milo *** *** *** ***
<b>Bobby's Glass Co.</b>	Robert Bovain *** *** *** ***
<b>Certified Glass Corp</b>	Estimating *** *** *** ***
<b>Checker Glass Corp</b>	Nick *** *** *** *** ***
<b>Diversified Glass &amp; Storefronts</b>	Joe / Davis *** *** *** *** *** ***
<b>Doorline Glass &amp; Metal</b>	Camilo Zambrano *** *** *** ***
<b>Doortec Architectural Metal &amp; Glass LLC</b>	Mike *** *** *** *** ***
<b>Empire Architectural Metal &amp; Glass</b>	Chris / Shoaib / Gary / Alex *** *** *** *** ***
<b>Forma Glass</b>	Xenia Morales *** *** *** ***
<b>Franklin Glass</b>	Estimating *** *** ***
<b>Globe Gates</b>	Liz Ferreira *** ***

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**Imperial Iron Works**

Jamie Osorio

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**Malmek Glass Contractor** Michael Simmons  
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**08870 GLAZING FILM**

**CGY, INC.** Edward Gunia  
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**CHB Industries** Dan Venet  
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**Metrosolar** Dale  
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**09250 DRYWALL & CARPENTRY**

**Advanced Drywall Systems** James  
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**Amick Construction** Alan McIntyre  
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**Atlantic Drywall (Top Notch)** Dan  
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**Attri Enterprises** Shri Attri  
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**Castle**  
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**CIP Construction Group** Cadil Rodriguez  
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**Capital Interiors** Benny Corso  
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<b>Chelsea Development</b>	Noel *** *** *** *** ***
<b>CNP CARPENTRY</b>	Eamon Timoney *** *** *** *** ***
<b>Complete Contracting Inc.</b>	Dave *** *** *** *** ***
<b>Drywall Concepts</b>	John Tasso *** *** *** *** ***
<b>Dynamic Construction Services</b>	Kenneth Stubbolo *** *** *** *** ***
<b>Folor</b>	John Dowling *** *** ***
<b>Gotham Drywall</b>	John Fitzpatrick *** *** *** *** ***
<b>Gridco</b>	Mick Williams *** *** ***
<b>Hi-Lume Corporation</b>	Bill Miller *** *** *** ***
<b>Montec Interiors</b>	Hetal *** *** *** ***
<b>Nevco Contracting</b>	Brien Brady / Sean Tierny *** *** *** *** ***

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<b>Premier Builders, LLC</b>	James Murphy / Nick *** *** *** *** *** ***
<b>RL Construction</b>	Colin Barton *** *** *** *** ***
<b>Signature Building Corp.</b>	Ark Zeldin *** *** ***
<b>Solid Development Group</b>	Eamon Loughran *** *** *** *** ***
<b>Vincent Cascone Contracting / Amazing Drywall</b>	Vincent Cascone *** *** *** *** ***
<b>Washington Construction</b>	Donston Edwards *** *** *** ***
<b>Woodview Inteiors, Inc.</b>	Maurice O'Connor *** *** *** ***
<b>09300 CERAMIC AND MARBLE</b>	
<b>Academic Stone Setters (Restoration Specialty)</b>	John Palomba *** *** *** ***
<b>Alpstone / Urban</b>	Haktan *** *** *** ***
<b>Amadeus Tile</b>	Christina *** *** *** ***
<b>Austro Tile &amp; Stone LLC</b>	William Tamay *** *** ***

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**Baybrent Tile**

Bill Scharf

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<b>Cathedral Marble &amp; Stone</b>	Sharon Amari *** *** *** *** ***
<b>Emerald Tile &amp; Marble</b>	Aiden Corr *** *** *** *** *** ***
<b>Interior Design Flooring</b>	Ben Cohen / Matt *** *** *** *** *** ***
<b>Monumental Marble</b>	John Bartolone *** *** *** *** ***
<b>Pro Design Inc.</b>	Ron Truglio *** *** *** *** ***
<b>ST-ONE</b>	Bob *** *** *** *** ***
<b>Quarry Tile Marble &amp; Granite, Inc.</b>	Adrienne Zeller *** *** *** *** ***
<b>09540 LATHE &amp; ACOUSTICS</b>	
<b>Amick Construction</b>	Alan McIntyre *** *** *** *** ***
<b>Attri Enterprises</b>	Shri Attri *** *** *** ***
<b>CIP Construction Group</b>	Cadil Rodriquez *** *** *** ***
<b>Capital Interiors</b>	Benny Corso

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<b>Chelsea Development</b>	Noel *** *** *** *** ***
<b>CNP Carpentry</b>	Eamon Timoney *** *** *** ***
<b>Complete Contracting Inc.</b>	Dave *** *** *** *** ***
<b>Dynamic Construction Services</b>	Kenneth Stubbolo *** *** *** *** ***
<b>Gotham Drywall</b>	John Fitzpatrick *** *** *** *** ***
<b>Hi-Lume Corporation</b>	Bill Miller *** *** *** *** ***
<b>Montec Interiors</b>	Hetal *** *** *** *** ***
<b>Nevco Contracting</b>	Brien Brady / Sean Tierny *** *** *** *** ***
<b>Premier Builders, LLC</b>	James Murphy / Nick *** *** *** *** ***
<b>RL Construction</b>	Colin Barton *** *** *** *** ***
<b>Signature Building Corp.</b>	Ark Zeldin *** *** ***

<b>Solid Development Group</b>	Eamon Loughran *** *** *** ***
<b>Vincent Cascone Contracting / Amazing Drywall</b>	Vincent Cascone *** *** *** ***
<b>Washington Construction</b>	Donston Edwards *** *** *** ***
<b>09670 FLUID-APPLIED FLOORING</b>	
<b>Advanced Epoxy Flooring</b>	Danny Harmer *** *** *** ***
<b>Asbestolith</b>	Mike Huntington *** *** *** *** ***
<b>Liquid Elements</b>	Caitlin Smith / Sally Reis *** *** ***
<b>09680 FLOORING &amp; BASE</b>	
<b>BC Exchange</b>	Jon *** *** *** *** *** ***
<b>Capitol Wood Floors</b>	Brian J Sakosits *** *** *** ***
<b>Carpet Resources, LTD.</b>	Victor Maldonado *** *** *** ***
<b>CIP Construction Group</b>	Cadil Rodriquez *** *** *** ***
<b>Commercial Flooring Specialists</b>	Frank Alesandro *** *** *** ***



<b>Corporate Floors</b>	Peter O'Henlon *** *** *** ***
<b>Country Carpet &amp; Rug</b>	Thomas Huber - Ext **** *** *** *** ***
<b>D 9 Inc</b>	Tom Dinger *** *** *** ***
<b>Eastside Floors</b>	Brian *** *** *** ***
<b>Genesis Flooring</b>	Robert Faulkner *** *** *** ***
<b>GP Land &amp; Carpet</b>	Joel Abejar *** *** ***
<b>Interior Design Flooring</b>	Ben Cohen / Matt *** *** *** *** ***
<b>J G T Contracting</b>	Naftali Perez *** *** *** ***
<b>JH Floors</b>	Jemes Feraca *** *** *** ***
<b>KBF Interior Designs</b>	Kirk Kerry *** *** ***
<b>Lane Floor Covering</b>	Umberto Aponte *** *** *** ***
<b>McEvoy Interiors Inc.</b>	Paul *** *** *** ***

<b>O'Connor Carpet</b>	Estimating / Keith O'Connor *** *** *** ***
<b>Pisos Flooring</b>	Robledo E. Aybar *** *** *** ***
<b>Shehardi Commercial Flooring</b>	John Teresi *** *** *** ***
<b>Spina Floor Covering, Inc</b>	Estimating *** *** *** ***
<b>Tipp Floor Covering, Inc.</b>	Karen Bennett *** *** *** ***
<b>Vak of Brooklyn</b>	Owen Olivier *** *** *** ***
<b>09900 PAINTING &amp; WALL COVERING</b>	
<b>711 NY Painting &amp; Decorating Co.</b>	Djozer / George / Yadira *** *** *** *** *** ***
<b>Alpine Painting</b>	Roy Katzman *** *** *** *** ***
<b>CIP Construction Group</b>	Cadil Rodriguez *** *** *** ***
<b>Changing Times Interiors, Inc</b>	Mark Taras *** *** *** ***
<b>Choice of Color Inc.</b>	Valmond Marlow *** *** *** ***

<b>Con-Tec</b>	John Constantino *** *** *** ***
<b>Fine Painting</b>	Greg Singh *** *** *** ***
<b>Fresh Painting</b>	Dino Prodromakis *** *** *** *** ***
<b>Heleco Painting</b>	Peter Silverstein *** *** *** ***
<b>JM Corporate Painter</b>	Maureen Murphy / Arini *** *** *** ***
<b>NY Paint</b>	Michael Steinmetz *** *** *** ***
<b>On Point Finishing</b>	Michael Ozzimo *** *** *** ***
<b>PFI Painting Corp.</b>	Peter F. Ianne *** *** *** *** ***
<b>Plateau Painting</b>	James Straface *** *** ***
<b>PNC Painting</b>	Carlos *** *** *** ***
<b>Prestige Decorating</b>	Sam Goldstein *** *** *** ***
<b>RS Painting</b>	Reginald Sweeney *** *** *** ***



<b>RA Painting LLC</b>	Egor Aranin / David Alcaras *** *** *** ***
<b>Signature Painting (Allied Contracting II Corp)</b>	John Spanoudakis *** *** *** *** ***
<b>The Daniel Mathews Group</b>	*** *** *** ***
<b>10155 TOILET COMPARTMENTS</b>	
<b>ABL</b>	Barbara (Ext *** ) / Chrissy (Ext *** ) *** *** *** *** ***
<b>Aliss (White Boards &amp; Tack Boards)</b>	Scott Stoler *** *** *** ***
<b>Danbar Supply LLC</b>	Danielle Marshall *** *** *** ***
<b>Division Ten Specialties (DTS)</b>	Yogesh Vyas *** *** *** ***
<b>Knickerbocker Partition Corp</b>	Bob Hart *** *** *** ***
<b>Metpar</b>	Estimating *** *** *** *** ***
<b>National Bath Works</b>	Jeffrey Majewski *** *** *** ***
<b>10400 SIGNAGE</b>	
<b>Going Sign Co. Inc</b>	Kevin Going

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<b>L M Signs</b>	Paul Lorenzo *** *** *** *** ***
<b>New Style Signs, Ltd</b>	Ilan Aboody *** *** *** *** ***
<b>Sign Engineers Inc</b>	J.R. *** *** *** *** ***
<b>Signs Unlimited Inc.</b>	Alana Kaufman *** *** *** *** ***
<b>10520 FIRE EXTINGUISHERS, CABINETS &amp; ACCESSORIES</b>	
<b>ABL</b>	Barbara (Ext *** ) / Chrissy (Ext *** ) *** *** *** *** *** ***
<b>Aliss (White Boards &amp; Tack Boards)</b>	Scott Stoler *** *** *** *** ***
<b>CR Specialties Ltd</b>	Stan Rothenberg *** *** *** *** ***
<b>Danbar Supply LLC</b>	Danielle Marshall *** *** *** *** ***
<b>Division 10 Specs.</b>	Jim *** *** *** *** ***
<b>Division Ten Specialties (DTS)</b>	Yogesh Vyas *** *** *** ***
<b>11000 EQUIPMENT</b>	
<b>H.O. Penn (Caterpillar Emergency Generators)</b>	Bob Muir *** *** *** *** ***

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## **11160 LOADING DOCK EQUIPMENT**

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**Loading Dock Inc.** Steve Petro

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**New Jersey Door Works Inc.** Mr. U. Dutton

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**The Jennings Company** M Jennings Jr.

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**Viccaro Equipment Corp** Estimating

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## **14200 ELEVATORS**

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**Nouveau Elevator** Don Speranza

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**Thyssen Krupp Elevators Co.,** John Zangakis

**Inc.**  
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## **15400 PLUMBING**

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**Anesis**

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**A Plus Installation** Steve / Dave

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**AM Warshaw** Michael Warshaw

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**C. James Plumbing Heating** Gloria/James

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**Casino Mechanical Corp** Tracey

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<b>Centrifugal Associates Group LLC</b>	Stephen Yager *** *** *** ***
<b>Concept</b>	Cathal *** *** *** ***
<b>Crest Mechanical</b>	Nate Breglio/Paul Breglio *** *** *** ***
<b>Danton Plumbing</b>	Douglas Matson *** *** *** ***
<b>Domestic Plumbing Corp</b>	Emidio Buono *** *** *** ***
<b>Donato Plumbing</b>	Sarah *** *** *** *** ***
<b>Evergreen Mechanical</b>	Maribel Ramirez *** *** *** ***
<b>Independent Mechanical Inc.</b>	Estimating *** *** *** ***
<b>L. Richards Plumbing Heating</b>	Leonard Richards *** *** *** ***
<b>Lifetime Plumbing (formerly Solas Services)</b>	Estimating *** *** *** ***
<b>Miller Plumbing &amp; Heating</b>	Jeff Miller *** *** *** ***



<b>Pinnacle Plumbing</b>	Alan Isaacs *** *** ***
<b>Reliable Plumbing</b>	Leon Vinokur *** *** *** ***
<b>Robert Parchment Plumbing</b>	Robert Parchment *** *** *** ***
<b>Varsity Plumbing Heating, Inc.</b>	Beata Jimenez, ext. **** *** *** *** ***
<b>Tristate Plumbing Services</b>	Marc Breslaw or Anthony Pena *** *** *** *** ***
<b><u>15500 SPRINKLERS</u></b>	
<b>A Plus Installation</b>	Steve/Dave *** *** *** *** *** *** ***
<b>Academy Fire Protection</b>	Bud Walker *** *** *** ***
<b>Acme Sprinkler (Non Union)</b>	Howard Pasto *** *** *** ***
<b>Active Fire Sprinkler</b>	Barry *** *** *** ***
<b>All State Sprinkler</b>	Melonie Claudio *** *** *** ***
<b>Anesis</b>	***

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**ARCO Fire Protection**

George Allen  
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<b>C. James Plumbing Heating</b>	Gloria/James *** *** *** *** ***
<b>Casino Mechanical Corp</b>	Tracey *** *** *** *** ***
<b>Concept</b>	Cathal *** *** *** ***
<b>D &amp; S Sprinkler Systems</b>	Wazi *** *** *** *** ***
<b>Independent Mechanical Inc.</b>	Estimating *** *** *** *** ***
<b>Lifetime Plumbing (Formerly Solas Services)</b>	Estimating *** *** *** *** ***
<b>Metro Fire Protection</b>	Angela Stiglianese *** *** *** *** ***
<b>Reliable Plumbing</b>	Leon Vinokur *** *** *** *** ***
<b>TJ Piping Heating Sprinkler</b>	Terrence Jackman *** *** *** *** ***
<b>T.McGowan Fire Protection, Inc,</b>	Torin McGowan *** *** *** *** ***
<b>Tristate Plumbing Services</b>	Marc Breslaw or Anthony Pena *** *** *** *** ***



<b>Zone Mechanical, LLC</b>	Helena levas *** *** *** *** ***
<b>15700 HVAC</b>	
<b>Admore Air Conditioning</b>	Vijay Birsdar *** *** *** *** ***
<b>Alliance Mechanical Group (AMG)</b>	Peter Unrath *** *** *** *** ***
<b>BP Mechanical</b>	Anthony Marino *** *** *** *** *** *** ***
<b>C. James Plumbing Heatin</b>	Gloria James *** *** *** *** ***
<b>Capital Cooling Systems</b>	Michael Chen *** *** *** *** *** ***
<b>Centrifugal Associates, Inc.</b>	Stepehn J. Yager *** *** *** *** ***
<b>Command HVAC</b>	Regl Ballanca *** *** *** *** ***
<b>Dan Yant Inc</b>	Daniel Nyante *** *** *** *** ***
<b>Eagle AC and Heating Inc</b>	Andis Harasanl *** *** *** *** ***
<b>EAS Mechanical</b>	Ed Sotomayor

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**Emcor**

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**Gotham Air**

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**Henick Lane**

Jesse  
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**Iconic Mechanical**

Christian Bezmalinovic  
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**Irving Hasse**

Frank Cooney  
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**King Freeze**

Betty  
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**L&M**

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**Main Mechanical**

Neil  
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**Midre Contracting Corp**

Marco Mendez/Ronny Leon  
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**MS Mechanical**

Estimating  
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**NU Way**

Conor  
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**Peak Mechanical**

George Leoutsakos/Amit  
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<b>React Industries</b>	Christina/donna *** *** *** *** *** ***
<b>Unified Air</b>	Joe Porto/Roman Baytalsky *** *** *** *** *** ***
<b>16000 ELECTRICAL</b>	
<b>2G Electrical</b>	Pat Gallagher *** *** *** ***
<b>All State</b>	Chris Hand *** *** ***
<b>Blake Electric</b>	Steven Kling *** *** *** *** ***
<b>Cogen Electrical Services</b>	David and Roman *** *** *** *** ***
<b>D&amp;D Electrical (Non Union of Crana Electric)</b>	Michelle Cornar *** *** *** ***
<b>GT Electrical</b>	Aziz *** *** *** ***
<b>Horsepower Electric</b>	Steve Penkower *** *** *** ***
<b>Innovative Electrical Services</b>	Chez Degennaro *** *** *** *** *** ***



<b>JCF Electric</b>	Bernadette Jeronimo *** *** *** ***
<b>MC Electric</b>	Shay *** *** *** ***
<b>NY Electric</b>	George Alatzelis *** *** ***
<b>Patriot Electric</b>	Michael Tek *** *** *** *** ***
<b>PEC Electric</b>	Bob Peterson *** *** *** ***
<b>Pinnacle Electric</b>	Michelle Molina *** *** *** ***
<b>Static Electric Corp</b>	Devon Chambers *** *** ***
<b>Sure Power Electric</b>	Edmond Atrachij *** *** *** ***
<b>Team Electric</b>	Roberto Logozio *** *** *** *** ***
<b>Total Electric Construction</b>	Michael Lipari *** *** *** ***

## **16500 ELECTRIC FIXTURES**

**Benfield Electric Supply**      Barry Kestcmtaerg - Ext \*\*\*\*  
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**Chelsea Lighting**

Bobby Wasserman

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<b>Gotham Lighting</b>	Estimating *** *** *** ***
<b>Image Lighting</b>	Matt McCarthy *** *** *** ***
<b>New York Light Source Corp</b>	Jamie *** *** *** ***
<b>Sure Power Electric</b>	Edmond Atrachij *** *** *** ***
<b>Weltmann Lighting - MBE</b>	Sinan Cinar / Brendan Woods *** *** *** ***
<b><u>16601 SECURITY</u></b>	
<b>Access Control Technologies</b>	Joseph Liguori *** *** *** ***
<b>Diebald Security</b>	Philip DiMarco *** *** *** ***
<b>Security by Design / Wireworks</b>	Rob DiMarco *** *** *** ***
<b><u>16550 FIRE ALARMS</u></b>	
<b>AFEC</b>	Joe Rollo *** *** *** *** ***
<b>Casey Systems</b>	Susan Fibel *** *** ***

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<b>Edwards Systems</b>	Michael Taino *** *** *** ***
<b>Firecom Inc.</b>	Haram Chelliah *** *** *** *** ***
<b>Simplex Grinnell</b>	Anthony Porpora *** *** *** *** ***
<b>16700 TELE / DATA CABLING</b>	
<b>Agility Cable</b>	Frank Modica / Vince Connolly *** *** *** *** ***
<b>BBH Solutions Inc.</b>	Raymond Mackalonis - Ext *** *** *** *** ***
<b>Blake Electric</b>	Steven Kline *** *** *** *** ***
<b>Cableworx</b>	Brian *** *** *** ***
<b>D&amp;D Electrical (Non Union of Crana Electric)</b>	Michelle Comar *** *** *** ***
<b>Security by Design / Wireworks</b>	Rob DiMarco *** *** *** *** ***
<b>USIS: U.S. Information Systems</b>	Beth Gerofsky *** *** *** ***



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## 16900 CONTROLS

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**ABM Systems, Inc.** Alkesh Amin  
**(Automated Bldg. Mgmt.**  
**Controls)** \*\*\*  
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**Admore Air Conditioning** Vihay Birador  
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**Automatic Logic** Chris Beck  
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**Richmar Controls** Rick Ekberg  
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**Schneider Electric** Ron Posner  
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**T M Bier** Estimating Dept  
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**T S B A** S. Mannarino  
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**Unified Air** Joe Porto / Roman Baytalsky  
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## SCHEDULE "C" HVAC DESIGN STANDARDS

Landlord shall provide interior space temperatures of 70 degrees F +/- 2 degrees that will be maintained during the heating seasons throughout the Premises without utilizing no interior heat load, one (1) person per 150 rentable square feet and outside dry bulb temperature of 13.0 degrees. Landlord shall provide base building air conditioning capable of maintaining space temperatures 74 degrees F +/- 2 degrees and 50% relative humidity with an interior heat load of 5.0 watts/rsf, no interior shading, one (1) person per 150 rentable square feet, and outside mean coincident temperatures of 90 degrees F dry bulb, 73 degrees F wet bulb. Minimum 78 degree F wb on the cooling tower.\*

Landlord shall provide a minimum ventilation of 75 CFM of toilet exhaust per fixture within the bathrooms.

\* The foregoing HVAC Design Standards are subject to, and conditioned upon, Tenant's compliance with provisions of **Section 10.3** of this Lease.

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**SCHEDULE "D"**

**Copies of Current Certificate of Occupancy**

THE CITY OF NEW YORK

# DEPARTMENT OF BUILDINGS

## CERTIFICATE OF OCCUPANCY Annotated

BOROUGH BROOKLYN

DATE: JUN 29 1984 NO. 2222611

THIS CERTIFICATE IS FOR C.O. No. 208340

ZONING DISTRICT BL-6

THIS CERTIFICATE STATES THAT THE NEW-ALTERED-EXISTING-BUILDING-PREMISES LOCATED AT

117-125 Adams Street

Block 78

Lot 1

CONFORMS SUBSTANTIALLY TO THE APPROVED PLANS AND SPECIFICATIONS AND TO THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES, AND REGULATIONS FOR THE USES AND OCCUPANCIES SPECIFIED HEREIN.

## PERMISSIBLE USE AND OCCUPANCY

FLOOR	COUNTY LINE NUMBER	MAXIMUM NUMBER OF故事层	ZONING CLASSIFICATION	BUILDING NUMBER AND ADDRESS	GRADE AND GROUP	HIGH ESTIMATE OF EXISTING USE	DESCRIPTION OF USE
First	On Ground	7			17 Comm.		Storage, Boiler Room, Engine Room, Garage, Trucking, Laundry, Factory, Office, Woodworking Shop, Paint Room, (Spray Booth), Storage, Factory, Storage, Laundry
Second	250	30			17 Comm.		
Third	350	30			17 Comm.		
Fourth	250	61			17 Comm.		Storage, Factory, Printing, Ink Room
Fifth	250	24			17 Comm.		Storage, Ink Room
Sixth	250	50			17 Comm.		Factory, Printing, Office
Eleventh	150	2			17 Comm.		Storage
Seventh	200	60			17 Comm.		Printing and Publishing, Storage
Eighth	200	88			17 Comm.		Printing and Publishing, Offices, Storage
Ninth	120	42			17 Comm.		Printing and Publishing, Offices, Storage
Performance Standards will be complied with for an BL-6 zone.							
TOTAL: Printing and Publishing Plant One Occup 17							
Old Code							
Annotated Certificate of Occupancy for parts of 4, 5, 6, 7, 8th and 9th floors.							

## OPEN SPACE USES

(OFFICE, PARKING SPACES, LOADING BERTHS, OTHER USES, NONE)

NO CHANGES OF USE OR OCCUPANCY SHALL BE MADE UNLESS

A NEW AMENDED CERTIFICATE OF OCCUPANCY IS OBTAINED

THIS CERTIFICATE OF OCCUPANCY IS ISSUED SUBJECT TO FURTHER LIMITATIONS, CONDITIONS AND SPECIFICATIONS NOTED ON THE REVERSE SIDE.

*George E. Ryan* / *Chairman M. Vitti*  
BOROUGH SUPERINTENDENT

COMMISSIONER

 ORIGINAL     OFFICE COPY    DEPARTMENT OF BUILDINGS     COPY

222611

## THAT THE ZONING LOT ON WHICH THE PREMISES IS LOCATED IS BOUNDED AS FOLLOWS:

BEGINNING at a point on the **Bethel** side of **Prospect Street**  
 distant **0'** feet from the corner formed by the intersection of  
 running thence **Prospect Street** feet; thence **Adams Street** feet;  
 thence **Northwesterly 206.0** feet; thence **Northwesterly 100.0** feet;  
 thence **Northwesterly 206.0** feet; thence **Northwesterly 100.0** feet;  
 thence **Northwesterly 206.0** feet; thence **Northwesterly 100.0** feet;  
 to the point or place of beginning.

Alt. 1533/74 I.U.S. or ALT. NO. DATE OF COMPLETION CONSTRUCTION CLASSIFICATION  
 BUILDING OCCUPANCY GROUP CLASSIFICATION C-3 HEIGHT 9 STORIES, 112.32 FEET

WATER SUPPLY SYSTEM  
 DIVISION: THE FOLLOWING FIRE DETECTION AND EXTINGUISHING SYSTEMS ARE REQUIRED AND WERE INSTALLED IN COMPLIANCE WITH APPLICABLE LAW.

	YES	NO		YES	NO
HYDRAULIC SYSTEM			AUTOMATIC SPRINKLER SYSTEM		
YARD HYDRANT SYSTEM					
STANDPIPE FIRE TELEPHONE AND SIGNALLING SYSTEM					
SMOKE DETECTOR					
FIRE ALARM AND SIGNAL SYSTEM					

STORM DRAINAGE DISCHARGES INTO: A) STORM SEWER  B) COMBINED SEWER  C) PRIVATE SEWAGE DISPOSAL SYSTEM

SANITARY DRAINAGE DISCHARGES INTO: A) SANITARY SEWER  B) COMBINED SEWER  C) PRIVATE SEWAGE DISPOSAL SYSTEM

LIMITATIONS OR RESTRICTIONS:  
 BOARD OF STANDARDS AND APPEALS GAL. NO. \_\_\_\_\_  
 CITY PLANNING COMMISSION GAL. NO. \_\_\_\_\_  
 OTHERS: \_\_\_\_\_





## *Certificate of Occupancy*

CO Number:

301598135F

This certifies that the premises described herein conforms substantially to the approved plans and specifications and to the requirements of all applicable laws, rules and regulations for the uses and occupancies specified. No change of use or occupancy shall be made unless a new Certificate of Occupancy is issued. *This document or a copy shall be available for inspection at the building at all reasonable times.*

#### **A. Borough:** Brooklyn

**Block Number:** 00063 **Certificate Type:** Final

**Address:** 55 PROSPECT STREET

**Lot Number(s):** 1      **Effective Date:** 03/16/2012

**Building Identification Number (BIN):** 3000161

**Building Type:** Altered

*For zoning lot metes & bounds, please see BISWeb.*

### **B. Construction classification:**

1-B (1968 Code)

## **Building Occupancy Group classification:**

D-1 (1968 Code)

## **Multiple Dwelling Law Classification:**

None

**No. of stories:** 10

**Height in feet:** 129

**No. of dwelling units:** 0

#### **C. Fire Protection Equipment:**

Standpipe system, Fire alarm system

#### D. Type and number of open spaces:

## Loading berths (6)

**E. This Certificate is issued with the following legal limitations:**

None

**Borough Comments:** None

Acting

## Borough Commissioner

Robert Llini

## **Commissioner**

*DOCUMENT CONTINUES ON NEXT PAGE*

*Certificate of Occupancy*

CO Number:

301598135F

**Permissible Use and Occupancy**

**All Building Code occupancy group designations are 1968 designations, except RES, COM, or PUB which are 1938 Building Code occupancy group designations.**

Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
CEL	70	OG	B-2 D-2 E		16	STORAGE, MECHANICAL ROOMS, SWITCHGEAR ROOM, BOILER ROOM, OFFICE.
CEL	3	OG	B-1		16	FUEL TANK STORAGE
001	235	250	B-2 D-2 F-1B		16	6 LOADING BERTHS, STORAGE, MECHANICAL & MEETING HALL
002	90	250	B-2 D-2 E		16	STORAGE, MAINTENANCE AREA, OFFICE
003	82	250	B-2		16	STORAGE
004	38	250	B-2 D-2		16	STORAGE, MECHANICAL ROOMS
004	132	250	F-3		16	EXERCISE ROOMS
005	77	250	B-2 D-2		16	STORAGE & MECHANICAL EQUIPMENT ROOMS
006	89	250	B-1 D-2 E		16	LINEN AREA, LAUNDRY, & OFFICES
007	85	250	B-2 D-2 E		16	STORAGE, DRY CLEANING, OFFICES
008	19	250	E		16	OFFICES
008	70	250	A B-2 D-2		16	CHEMICAL STORAGE, STAGING AREA, GENERAL WORK AREA
009	10	250	E		16	OFFICES



Borough Commissioner



Commissioner

*Certificate of Occupancy*

CO Number:

301598135F

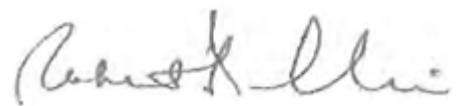
**Permissible Use and Occupancy**

**All Building Code occupancy group designations are 1968 designations, except RES, COM, or PUB which are 1938 Building Code occupancy group designations.**

Floor From To	Maximum <u>persons permitted</u>	Live load <u>lbs per sq. ft.</u>	<u>Building Code occupancy</u>	Dwelling or		<u>Description of use</u>
				<u>Rooming group</u>	<u>Zoning Units</u>	
009	78	250	A B-2 D-2		16	COMPRESSED GAS STORAGE, STAGING AREA, METAL SHOP
010	90	250	B-2 D-2 E		16	STAGING AREA, STORAGE, MACHINE SHOP, ELECTRICAL ROOM, & OFFICES
RO F	15	40	B-2 D-2		16	MECHANICAL ROOMS & STORAGE

**END OF SECTION**


Acting Borough Commissioner



Commissioner

301593135/000 3/16/2012 8:18 11 AM

**END OF DOCUMENT**

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**SCHEDULE "E"**  
**FORM OF CERTIFICATE OF INSURANCE**

See Immediately Following Page



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER PRODUCER NAME PRODUCER ADDRESS	CONTACT NAME PHONE FAX EMAIL ADDRESS	FAX EMAIL
INSURED VENDOR NAME VENDOR ADDRESS	INSURER A: CARRIER A. INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	NAME #

RISK #	TYPE OF INSURANCE GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAINS-MADE <input checked="" type="checkbox"/> OCCUR	POLICY PERIOD MM/DD/YY TO MM/DD/YY	POLICY NUMBER	POLICY EFF. MM/DD/YY TO MM/DD/YY	POLICY EXP. MM/DD/YY TO MM/DD/YY	LIMITS	REVISION NUMBER:
							EFF DATE
A	GENERAL AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					EACH OCCURRENCE \$2,000,000 TOTAL YTD/ACCIDENT PREMIUMS (EX. RETENTION) \$ MED EXP (Per Day Period) \$ PERSONAL & ADN LIABILITY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/PROD \$ 2,000,000 \$	
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED Hired Autos <input checked="" type="checkbox"/> UNCOVERED AUTOS					COMMERCE AUTO LIM. \$1,000,000 BODILY INJURY (Per Person) \$ BODILY INJURY (Per Accident) \$ PROPERTY DAMAGE (Per Incident) \$ \$	
A	UMBRELLA LIMIT EXCESS LIMIT <input type="checkbox"/> RETENTION					EACH OCCURRENCE \$10,000,000 AGGREGATE \$ \$	
A	WORKERS' COMPENSATION AND DISABILITY BENEFITS ANY PROPRIETOR/PARTNER/EXECUTIVE OF INSUREDBER EXCLUDED (Mandatory in NY) For additional information DEPARTMENT OF INSURANCE 3100	TIR N/A				WEEKLY \$1,000,000 TOTAL \$ EACH ACCIDENT \$ 500,000 EACH EMPLOYEE \$ 500,000 EACH EMPLOYEE - POLICY LIMIT \$ 500,000	
A	PROFESSIONAL LIABILITY (ERRORS & OMISSIONS)					\$2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ADDENDUM, Additional Remarks Schedule, if more space is required)  
RE: PROJECT / LOCATION: WATCHTOWER, 171 PEARL ST., 117 ADAMS ST., 81 & 85 PROSPECT ST., 77 SANDS ST., BROOKLYN, NY 11201.

INCLUDED AS CERTIFICATE HOLDER: Abby Rosen, Michael Fuchs, Jared Kasher, 117 Adams Owner, LLC, 77 Sands Owner, LLC, 85 Prospect Owner, LLC, 81 Prospekt Owner, LLC, 175 Pearl Owner, LLC, Dumbo WT Sub, LLC, Dumbo WT Venture LLC, IMRF Watchtower Manager, LLC, IMRF Watchtower Member, LLC, Dumbo Promote LLC, Watchtower Property Manager, LLC, Watchtower Construction Manager, LLC, Watchtower Leasing, LLC, RFRK DUMBO LLC, RF DUMBO HOLDING LLC, KC DUMBO HOLDING LLC

*Natixis Real Estate Capital LLC*

CERTIFICATE HOLDER	CANCELLATION		
INVESSCO REAL ESTATE A DIVISION OF INVESSCO ADVISERS, INC. 13156 NOEL RD., SUITE 600 DALLAS TX 75240	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p>		

ACORD 25 (2010/08)

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**SCHEDULE “F”  
SUSTAINABILITY WORK**

See Attached

To: Robert Israel  
From: John An, CodeGreen  
Date: 4 April 2014  
RE: **117 A DAMS S TREET , B ROOKLYN , NY**

**2013-126\_M EMO : E TSY F ITOUT R EQUIREMENTS TO A CHIEVE A DDITIONAL B ASE B UILDING LEED C REDITS**

In the major renovation of the existing building at 117 Adams Street, RFR is pursuing LEED 2009 Core and Shell certification. During a meeting on 3/28/2014 between RFR, Gensler, Etsy, VVA, and CodeGreen Solutions, the participants identified opportunities in which a collaborative approach to incorporating Etsy's fitout intent and design into the base building tenant fitout requirements could help to augment the base buildings LEED Core and Shell certification efforts. In total, a collaborative effort could enable the base building to achieve 11-12 additional LEED points. Below is an explanation of the specific credits that could be achieved through a collaborative approach, and an explanation of what would be required of RFR and/or Etsy. The following pages shows the project's LEED scorecard, identifying the in a column labeled "Etsy" these points.

### Sustainable Sites

#### SSc4.2 Alternative Transportation – Bicycle Storage and Changing Rooms

RFR to dedicate a specified number of bicycle storage spaces (5% of peak occupancy) for Etsy's use. Etsy to provide water efficient (1.5 GPM or lower) showering facilities to serve 0.5% of the FTE occupants. Etsy to provide tenant fitout scope of work / requirement that RFR will incorporate into the base building's tenant fitout requirements.

#### SSc7.2 Heat Island Effect – Roof

Etsy to refinish 75% or more of the roof area with material/paint that has an Solar Reflectance Index of 78 or higher.

OR

Etsy to install vegetation for 50% or more of the roof area.

### Water Efficiency

#### WEc3 Water Use Reduction

Etsy to install highly water-efficient plumbing fixtures (0.125 GPM urinals, 1.28 GPF or lower WC's, 1.5 GPM or lower showerheads, 0.5 GPM lavatory faucets with 12 second timer, and 1 GPM or lower pantry faucets.) Etsy to provide tenant fitout scope of work / requirement that RFR will incorporate into the base building's tenant fitout requirements.

### Energy & Atmosphere

#### EAc1 Optimize Energy Performance\*

Etsy to adopt policy of limiting installed lighting power density (LPD) that is 30-40% below the allowable values in ASHRAE 90.1-2007. Etsy to install daylight controls for all lighting within 15-20 feet of windows and under skylights (if applicable). Etsy to install occupancy controls for over 75% of the connected lighting load. Etsy to provide tenant fitout scope of work / requirement that RFR will incorporate into the base building's tenant fitout requirements.

\* While these measures will help to improve the building's energy performance, it is possible that these measures may not reduce energy consumption enough to achieve 1 additional point.

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SAN FRANCISCO | LOS ANGELES



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## Materials & Resources

### MRc4 Recycled Content

Etsy to specify building materials throughout their fitout project that have high recycled content.

Etsy to provide tenant fitout scope of work / requirement that RFR will incorporate into the base building's tenant fitout requirements.

### MRc5 Regional Materials

Etsy to specify building materials throughout their fitout project that are extracted and manufactured within 500 miles of the project site.

Etsy to provide tenant fitout scope of work / requirement that RFR will incorporate into the base building's tenant fitout requirements.

## Indoor Environmental Quality

### IEQc5 Indoor Chemical and Pollutant Source Control

RFR to confirm that mechanical system is capable of accommodating MERV 13 air filters for all return and outside air intakes. RFR to Incorporate IEQc5 requirements into tenant fitout requirements.

Etsy to incorporate either permanent walk-off grill or walk-off matts with maintenance contract at all building entrances. Matts must be a minimum 10' in the direction of travel. Etsy to design fitout ventilation system for hazardous gas and chemical use areas (janitors closets, high-volume copy rooms, etc.) to have an exhaust rate of 0.5 CFM/sf, self-closing doors, and deck-to-deck partitions or hard-lid ceilings.

### IEQc8.2 Daylight and Views — Views

Etsy to design a fully open-office workspace fitout, with partitions that are no higher than 42" tall. Etsy to provide view diagram and LEED documentation demonstrating that the fitout achieves views for 90% or more of the occupied space.

---

N EW Y ORK | C HICAGO | W ASHINGTON , DC  
S AN F RANCISCO | L OS A NGELES



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LEED 2009 for Core and Shell Development  
DUMBO Heights -- BLDG 1  
Preliminary LEED Checklist

OVERALL POINT TOTAL			
The	Day	N	No
47	12	7	56

Rev: 31-Mar-14

Certified: 46-49 points | Silver: 50-59 points | Gold: 60-79 points | Platinum: 80+ points

110

The	Day	N	No
15	3	0	13
1			
1			
5			
		1	
6			
2	2	2	
		3	
2			
		1	
		1	
		1	
		1	
		1	
		1	
		1	
1	1	1	
		1	
		1	
1			

#### SUSTAINABLE SITES

28 Points

Prereq 1	Construction Activity Pollution Prevention	0
Credit 1	Site Selection	1
Credit 2	Development Density and Community Connectivity	5
Credit 3	Brownfield Redevelopment	1
Credit 4.1	Alternative Transportation—Public Transportation Access	6
Credit 4.2	Alternative Transportation—Bicycle Storage and Changing Rooms	2
Credit 4.3	Alternative Transportation—Low-Emitting and Fuel-Efficient Vehicles	3
Credit 4.4	Alternative Transportation—Parking Capacity	2
Credit 5.1	Site Development—Protect or Restore Habitat	1
Credit 5.2	Site Development—Maximize Open Space	1
Credit 6.1	Stormwater Design—Quantity Control	1
Credit 6.2	Stormwater Design—Quality Control	1
Credit 7.1	Heat Island Effect—Non-roof	1
Credit 7.2	Heat Island Effect—Roof	1
Credit 8	Light Pollution Reduction	1
Credit 9	Tenant Design and Construction Guidelines	1

The	Day	N	No
0	4	0	10
1			
		4	

#### WATER EFFICIENCY

16 Points

Prereq 1	Water Use Reduction—20% Reduction	4
Credit 1	Water Efficient Landscaping	4
	Reduce by 50%	2
	Reduce by 50% No Potable Water Use or Irrigation	4
Credit 2	Innovative Wastewater Technologies	2
Credit 3	Water Use Reduction	4
	Reduce by 30%	2
	Reduce by 35%	3
	Reduce by 40%	4

Yea	No	N	No
13	1	0	24
Y			
3	1		18

### ENERGY & ATMOSPHERE

37 Points

- Prereq 1 Fundamental Commissioning of Building Energy Systems  
 Prereq 2 Minimum Energy Performance  
 Prereq 3 Fundamental Refrigerant Management  
 Credit 1 Optimize Energy Performance

<input checked="" type="checkbox"/> Improve by 12% for New Buildings or 8% for Existing Building Renovations	3
<input checked="" type="checkbox"/> Improve by 14% for New Buildings or 10% for Existing Building Renovations	4
<input checked="" type="checkbox"/> Improve by 16% for New Buildings or 12% for Existing Building Renovations	5
<input checked="" type="checkbox"/> Improve by 18% for New Buildings or 14% for Existing Building Renovations	6
<input checked="" type="checkbox"/> Improve by 20% for New Buildings or 16% for Existing Building Renovations	7
<input checked="" type="checkbox"/> Improve by 22% for New Buildings or 18% for Existing Building Renovations	8
<input checked="" type="checkbox"/> Improve by 24% for New Buildings or 20% for Existing Building Renovations	9
<input checked="" type="checkbox"/> Improve by 26% for New Buildings or 22% for Existing Building Renovations	10
<input checked="" type="checkbox"/> Improve by 28% for New Buildings or 24% for Existing Building Renovations	11
<input checked="" type="checkbox"/> Improve by 30% for New Buildings or 26% for Existing Building Renovations	12
<input checked="" type="checkbox"/> Improve by 32% for New Buildings or 28% for Existing Building Renovations	13
<input checked="" type="checkbox"/> Improve by 34% for New Buildings or 30% for Existing Building Renovations	14
<input checked="" type="checkbox"/> Improve by 36% for New Buildings or 32% for Existing Building Renovations	15
<input checked="" type="checkbox"/> Improve by 38% for New Buildings or 34% for Existing Building Renovations	16
<input checked="" type="checkbox"/> Improve by 40% for New Buildings or 36% for Existing Building Renovations	17
<input checked="" type="checkbox"/> Improve by 42% for New Buildings or 38% for Existing Building Renovations	18
<input checked="" type="checkbox"/> Improve by 44% for New Buildings or 40% for Existing Building Renovations	19
<input checked="" type="checkbox"/> Improve by 46% for New Buildings or 42% for Existing Building Renovations	20
<input checked="" type="checkbox"/> Improve by 48%+ for New Buildings or 44%+ for Existing Building Renovations	21

			4
			2
2			
3			
3			
2			

- Credit 2 On-Site Renewable Energy  
 Credit 3 Enhanced Commissioning  
 Credit 4 Enhanced Refrigerant Management  
 Credit 5.1 Measurement and Verification—Base Building  
 Credit 5.2 Measurement and Verification—Tenant Submetering  
 Credit 6 Green Power

Yea	No	N	No
7	2	5	1
Y			
5			

### MATERIALS & RESOURCES

13 Points

- Prereq 1 Storage and Collection of Recyclables  
 Credit 1 Building Reuse—Maintain Existing Walls, Floors, and Roof

<input checked="" type="checkbox"/> Reuse 25%	1
<input checked="" type="checkbox"/> Reuse 33%	2
<input checked="" type="checkbox"/> Reuse 42%	3
<input checked="" type="checkbox"/> Reuse 50%	4
<input checked="" type="checkbox"/> Reuse 75%	5

2		

- Credit 2 Construction Waste Management

<input checked="" type="checkbox"/> 50% Recycled or Salvaged	1
<input checked="" type="checkbox"/> 75% Recycled or Salvaged	2

		1
1	2	

- Credit 3 Materials Reuse

<input checked="" type="checkbox"/> Recycled Content	1
<input checked="" type="checkbox"/> 10% of Content	2

	1	2
1	2	

- Credit 4 Regional Materials

<input checked="" type="checkbox"/> 10% of Materials	1
<input checked="" type="checkbox"/> 20% of Materials	2

		1
1		

- Credit 5 Certified Wood

Yea	No	N	No
7	2	5	1
Y			
5			

7	2	0	5	INDOOR ENVIRONMENTAL QUALITY		12 Points
Y				Prereq 1	Minimum Indoor Air Quality Performance	
Y				Prereq 2	Environmental Tobacco Smoke (ETS) Control	
1				Credit 1	Outdoor Air Delivery Monitoring	1
			1	Credit 2	Increased Ventilation	1
1				Credit 3	Construction Indoor Air Quality Management Plan—During Construction	1
1				Credit 4.1	Low-Emitting Materials—Adhesives and Sealants	1
1				Credit 4.2	Low-Emitting Materials—Paints and Coatings	1
1				Credit 4.3	Low-Emitting Materials—Flooring Systems	1
1				Credit 4.4	Low-Emitting Materials—Composite Wood and Agrifiber Products	1
		1	1	Credit 5	Indoor Chemical and Pollutant Source Control	1
		1	1	Credit 6	Controllability of Systems—Thermal Comfort	1
1				Credit 7	Thermal Comfort—Design	1
			1	Credit 8.1	Daylight and Views—Daylight	1
			1	Credit 8.2	Daylight and Views—Views	1

Yes	No	Not Applicable	Total	INNOVATION AND DESIGN PROGRESS		6 Points
4	0	2	6	Credit 1.1	Innovation In Design: Exceed SSc4.1	1
1				Credit 1.2	Innovation in Design: Exceed SSc2	1
1				Credit 1.3	Innovation in Design: Exceed EAc6 (70% Green Power Purchase)	1
		1		Credit 1.4	Innovation in Design: Cooling Tower Chemical Management Program	1
		1		Credit 1.5	Innovation in Design: Green Cleaning Policy and Program	1
1				Credit 2	LEED Accredited Professional	1

Yes	No	Not Applicable	Total	REGIONAL PRIORITY		4 Points
1	0	0	1	Credit 1.1	Regional Priority: MRc1 - 75% Reuse	1
1				Credit 1.2	Regional Priority: SSc9.1	1
		1		Credit 1.3	Regional Priority: SSc5.1	1
		1		Credit 1.4	Regional Priority: WEc2	1
47	12	7	56	Certified: 40-49 points   Silver: 50-59 points   Gold: 60-79 points   Platinum: 80+ points		110

---

## SCHEDULE "G"

### USEABLE SQUARE FOOTAGE

Floor	<u>117 Adams Street</u>	Rentable Square Feet	Useable Square Feet
Entire 9 <sup>th</sup>		10,600	7,738
Entire 8 <sup>th</sup>		21,498	15,693
Entire 7 <sup>th</sup>		21,401	15,623
Entire 6 <sup>th</sup>		21,515	15,706
Entire 5 <sup>th</sup>		22,044	16,092
Entire 4 <sup>th</sup>		26,496	19,342
Entire 3 <sup>rd</sup>		26,506	19,349
Partial 2 <sup>nd</sup>		15,927	11,623
Ground		6,148	4,488
<b>Total SF</b>		<b>172,135</b>	<b>125,654</b>

Floor	<u>55 Prospect Street</u>	Rentable Square Feet	Useable Square Feet
Entire 6 <sup>th</sup>		26,500	19,345
<b>Total SF</b>		<b>26,500</b>	<b>19,345</b>

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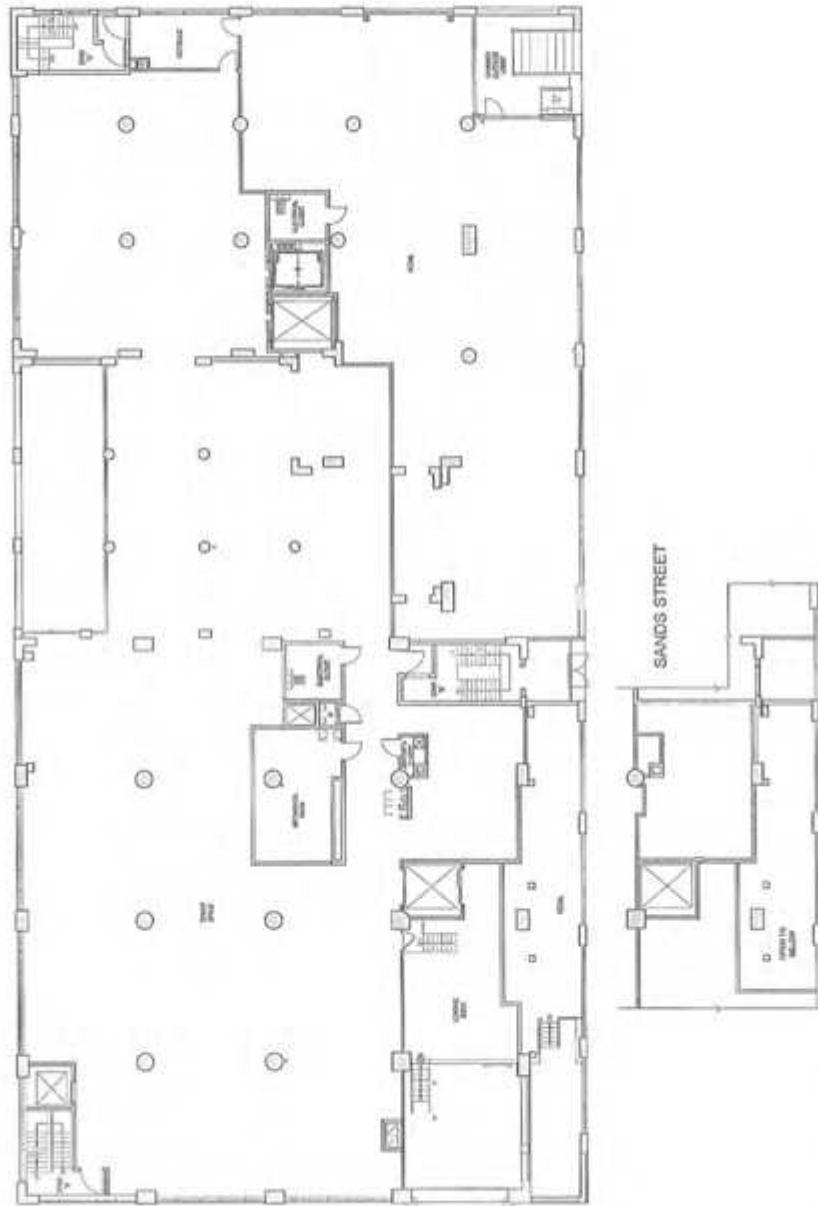
**EXHIBIT "A"**  
**FLOOR PLANS OF THE PREMISES**

The floor plans that follow are intended solely to identify the general location of the Premises, and should not be used for any other purpose. All areas, dimensions and locations are approximate, and any physical conditions indicated may not exist as shown.

PROSPECT STREET PEARL STREET

PROSPECT STREET

ADAMS STREET

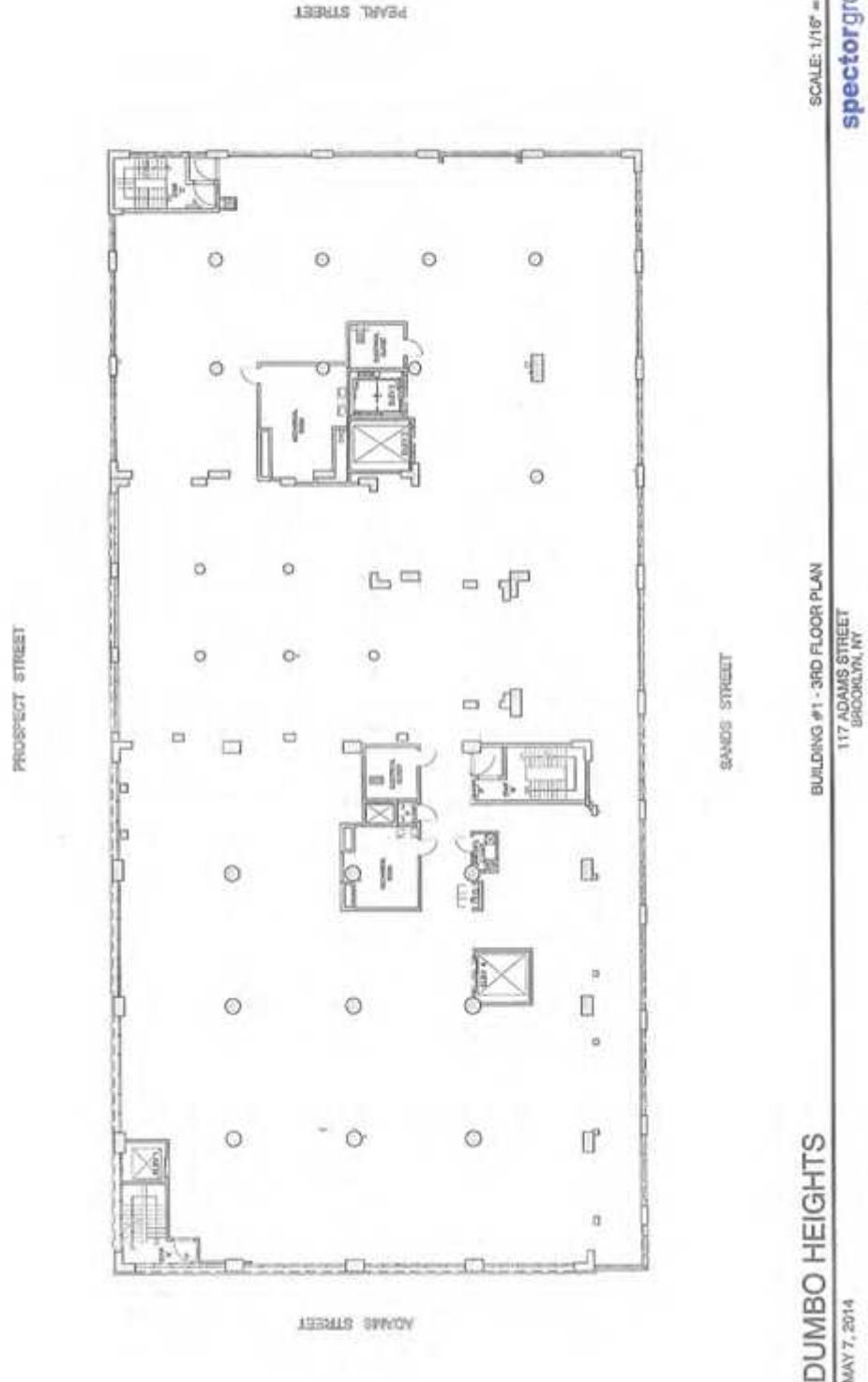


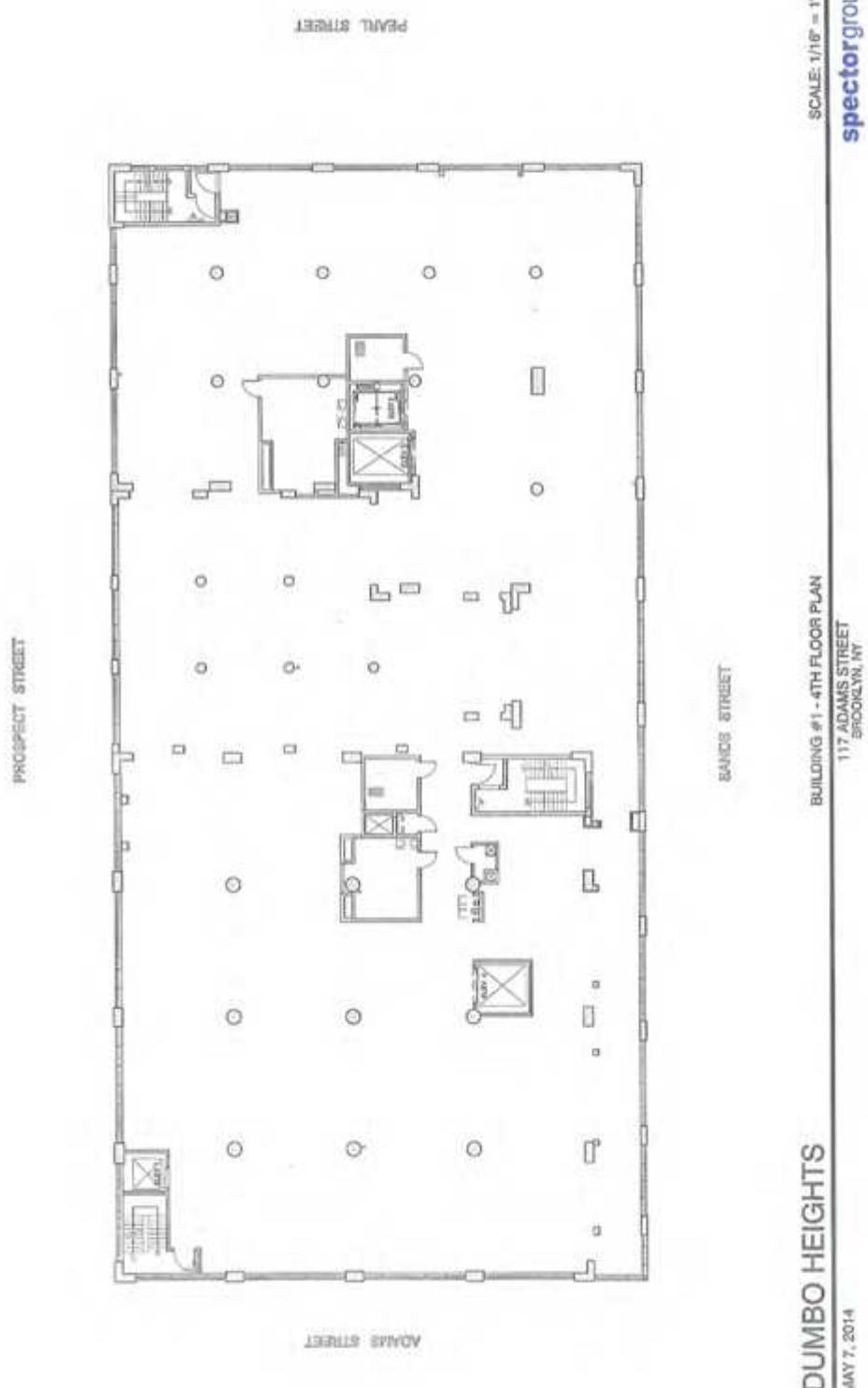
DUMBO HEIGHTS

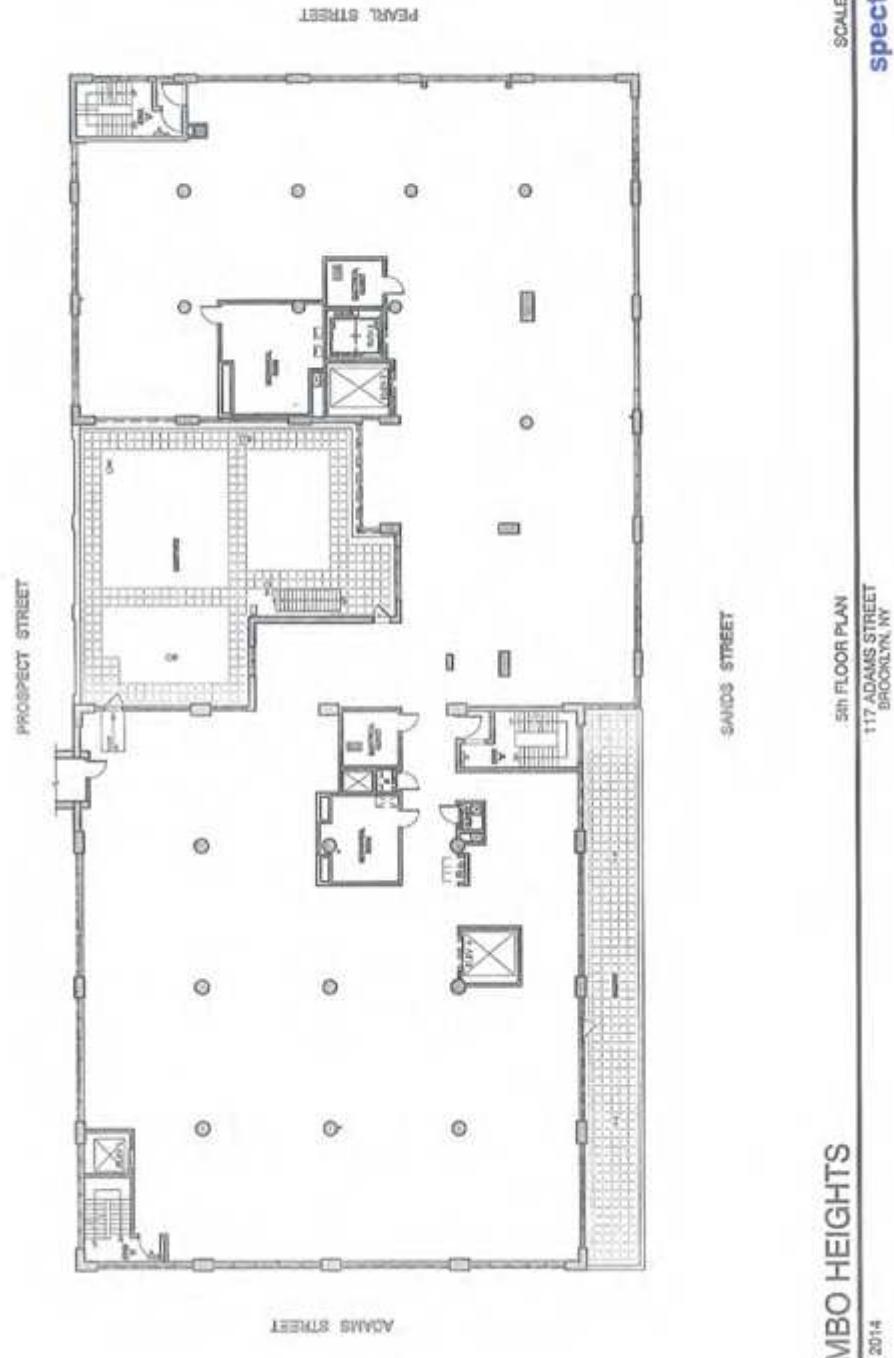
MAY 7, 2014

BUILDING #1 - 2ND FLOOR PLAN  
117 ADAMS STREET  
BROOKLYN, NY

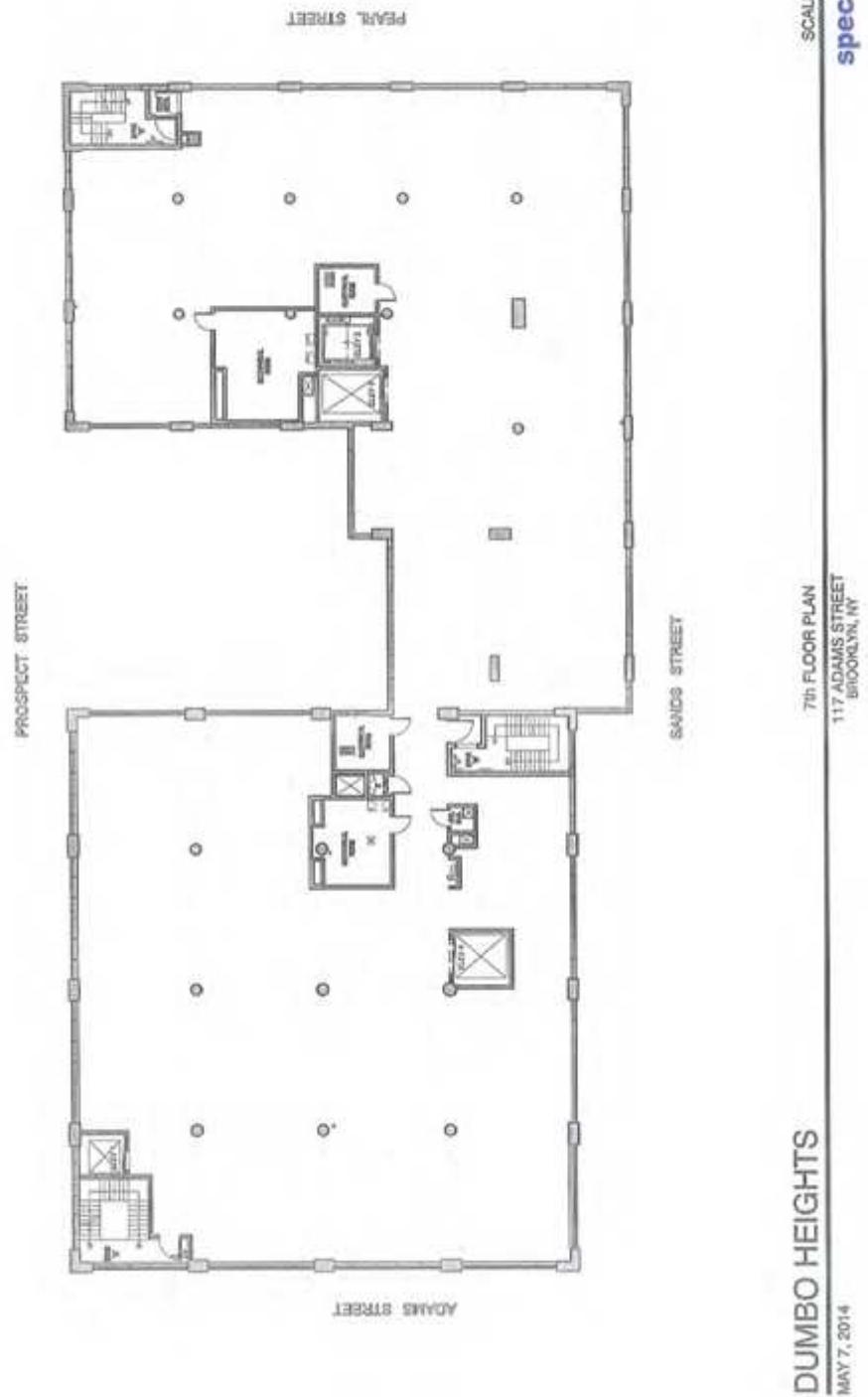
SCALE: 1/16" = 1'-0"  
**spector group**











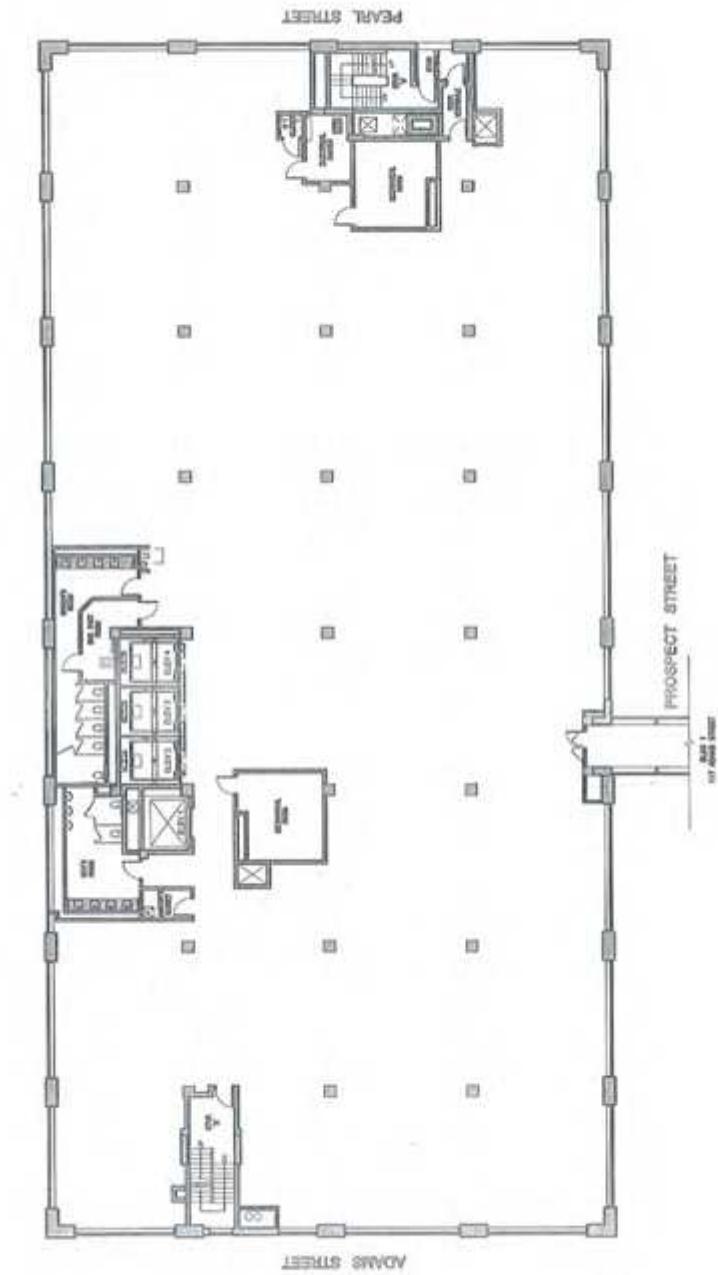




SCALE: 1/16" = 1'-0"  
spector group

6th FLOOR PLAN  
55 PROSPECT STREET  
BROOKLYN, NY

DUMBO HEIGHTS  
MAY 7, 2014



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## EXHIBIT "B" DEFINITIONS

**Additional Rent:** Except as otherwise expressly provided in this Lease, all sums other than Fixed Rent due and payable by Tenant to Landlord under this Lease, which shall be paid to Landlord within five (5) days immediately following delivery of an invoice therefore.

**Affiliate:** Any person or entity which controls, or is under common control with, or which is controlled by, the person or entity in question. For the purposes hereof, "control" shall be deemed to mean ownership of not less than 50% of all of the beneficial interests of such entity and the ability to direct the management thereof.

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

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

**Business Days:** All days, excluding Saturdays, Sundays and Observed Holidays.

**Code:** The Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as amended.

**Common Areas:** The lobby and sidewalk areas and other similar areas of general access and the areas on individual multi-tenant floors in the Building devoted to corridors, elevator lobbies, restrooms, and other similar facilities serving the Premises.

**Comparable Buildings:** Class A office buildings in midtown-south Manhattan that are of comparable age and quality to the Building.

**Deficiency:** The difference between (a) the Fixed Rent and Additional Rent for the period which otherwise would have constituted the unexpired portion of the Term, and (b) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of the Lease for any part of such period (after first deducting from such rents all expenses reasonably incurred by Landlord in connection with the termination of this Lease, Landlord's re-entry upon the Premises and such reletting, including repossession costs, brokerage commissions, attorneys' fees and disbursements, and alteration costs).

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**Financial Test** : shall mean, as of the applicable date of determination, that Tenant has (i) achieved annual earnings before income taxes, depreciation and amortization (EBITDA) in an amount not less than Twenty-Three Million and 00/100 (\$23,000,000.00) Dollars, and (ii) Unrestricted Cash and Cash Equivalents in amount not less than Fifty-Five Million and 00/100 (\$55,000,000.00) Dollars.

**Fixed Tax Escalations** : shall mean: (i) for the Tax Year ending June 30, 2018, One Hundred Three Thousand Two Hundred Eighty-One and 00/100 (\$103,281.00) Dollars, (ii) for the Tax Year ending June 30, 2019, Two Hundred Six Thousand Five Hundred Sixty-Two and 00/100 (\$206,562.00) Dollars, (iii) for the Tax Year ending June 30, 2020, Three Hundred Nine Thousand Eight Hundred Forty Three and 00/100 (\$309,843.00) Dollars, (iv) for the Tax Year ending June 30, 2021, Four Hundred Thirteen Thousand One Hundred Twenty-Four and 00/100 (\$413,124.00) Dollars, (v) for the Tax Year ending June 30, 2022, Four Hundred Thirteen Thousand One Hundred Twenty-Four and 00/100 (\$413,124.00) Dollars, (vi) for the Tax Year ending June 30, 2023, Four Hundred Thirteen Thousand One Hundred Twenty-Four and 00/100 (\$413,124.00) Dollars, (vii) for the Tax Year ending June 30, 2024, Four Hundred Thirteen Thousand One Hundred Twenty-Four and 00/100 (\$413,124.00) Dollars, (viii) for the Tax Year ending June 30, 2025, Four Hundred Thirteen Thousand One Hundred Twenty-Four and 00/100 (\$413,124.00) Dollars, and (ix) for the Tax Year ending June 30, 2026, Four Hundred Thirteen Thousand One Hundred Twenty-Four and 00/100 (\$413,124.00) Dollars, such amounts being subject to proration pursuant to **Section 7.5** hereof.

**Free Rent Credits** : shall mean collectively, the Additional Rent Credit and the Additional 5th Floor Rent Abatement.

**Governmental Authority:** The United States of America, the City of New York, County of New York, or State of New York, or any political subdivision, agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Building.

**Hazardous Materials:** Any substances, materials or wastes currently or in the future deemed or defined in any Requirement as "hazardous substances," "toxic substances," "contaminants," "pollutants" or words of similar import.

**HVAC System:** The Building System designed to provide heating, ventilation and air conditioning.

**Indemnitees:** Landlord, Landlord's Agent, each Mortgagee and Lessor, and each of their respective direct and indirect partners, officers, shareholders, directors, members, managers, trustees, beneficiaries, employees, principals, contractors, servants, agents, and representatives.

**Lessor:** A lessor under a Superior Lease.

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**Losses:** Any and all actual losses, liabilities, damages, claims, judgments, fines, suits, demands, costs, interest and expenses of any kind or nature (including reasonable attorneys' fees and disbursements) incurred in connection with any claim, proceeding or judgment and the defense thereof, and including all reasonable and actual costs of repairing any damage to the Premises or the Building or the appurtenances of any of the foregoing to which a particular indemnity and hold harmless agreement applies.

**Major Construction Work :** Any Alterations which either adversely affect the structure of the Buildings or the Building Systems, and in all cases any Alterations affecting the Building's Class E system.

**Mortgage(s):** Any mortgage, trust indenture or other financing document which may now or hereafter affect the Premises, the Building or any Superior Lease and the leasehold interest created thereby, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefore, and advances made thereunder.

**Mortgagee(s):** Any mortgagee, trustee or other holder of a Mortgage.

**Observed Holidays:** New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**" Permitted Tenant "** shall mean the original named Tenant, and/or any Affiliate of Tenant or any Successor Entity.

**Prohibited Use:** Any use or occupancy of the Premises (except the Permitted Use) that in Landlord's reasonable judgment would:

(a) cause damage to the Building or any equipment, facilities or other systems therein; (b) impair the appearance of the exterior Building or the Common Areas; (c) unreasonably interfere with the efficient and economical maintenance, operation and repair of the Premises or the Building or the equipment, facilities or systems thereof; (d) materially and adversely affect any service provided to, and/or the use and occupancy by, any tenant or occupants of the Building; (e) violate the Certificate of Occupancy issued for the Premises or the Building; (f) intentionally omitted or (g) result in protests or civil disorder or commotions at, or other disruptions of the normal business activities in, the Building excluding any of the foregoing resulting from union activities; it being understood and agreed that Tenant is expressly permitted to use union labor. Prohibited Use also includes the use of any part of the Premises for: (i) intentionally omitted; (ii) the preparation, consumption, storage, manufacture or sale of liquor, tobacco or drugs; (iii) the business of photocopying, multilith or offset printing (except photocopying in connection with Tenant's own business); (iv) intentionally omitted; (v) lodging or sleeping; (vi) the operation of a savings and loan association or off-the-street retail facilities of any financial, lending, securities brokerage or investment activity; (vii) a payroll office (except payroll for Tenant's own personnel); (viii) a barber, beauty or manicure shop; (ix) an employment agency or similar enterprise; (x) offices of any Governmental Authority, any foreign government, the United Nations, or any agency or

department of the foregoing (unless any sovereign or diplomatic immunity has been waived in a manner satisfactory to Landlord in Landlord's sole and absolute discretion); (xi) the manufacture, retail sale, storage of merchandise or auction of merchandise, goods or property of any kind to the general public which could reasonably be expected to create a volume of pedestrian traffic substantially in excess of that normally encountered in the Premises; provided, that, the foregoing shall not be deemed to prohibit Tenant from conducting craft fairs and other related activities from time to time at the Premises in connection with its business; (xii) the rendering of medical, dental or other therapeutic or diagnostic services; or (xiii) any illegal purposes or any activity constituting a nuisance.

**Rent:** Fixed Rent and Additional Rent.

**Requirements:** All present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, extraordinary and ordinary of (i) all Governmental Authorities, including, without limitation, (A) the Americans With Disabilities Act, 42 U.S.C. §12101 (et seq.) ("ADA"), New York City Local Law 58 of 1987, and (B) any law of like import, and all rules, regulations and government orders with respect thereto, and any of the foregoing relating to Hazardous Materials, environmental matters, public health and safety matters, and landmarks preservation, and (ii) any applicable fire rating bureau or other body exercising similar functions, affecting the Building or the maintenance, use or occupation thereof, or any street, avenue or sidewalk comprising a part of or in front thereof or any vault in or under the same. "Requirements" shall also include the terms and conditions of any Certificate of Occupancy issued for the Premises or the Building, and any other covenants, conditions or restrictions affecting the Building as of the date hereof.

**Rules and Regulations:** The rules and regulations annexed to and made a part of this Lease as **Exhibit E-1**, as they may be modified from time to time by prior written notice from Landlord to Tenant. The terms contained in the body of this Lease shall supersede any inconsistent provisions of **Exhibit E-1**.

**Specialty Alterations:** Alterations which are not standard office installations such as kitchens, executive bathrooms, raised computer floors, supplemental HVAC equipment, safe deposit boxes, vaults, libraries or file rooms requiring reinforcement of floors, internal staircases, slab penetrations (as opposed to core drills or poke-throughs), conveyors, dumbwaiters, and other Alterations of a similar character, provided that nothing shall be deemed a Specialty Alteration unless its removal would materially increase the cost of demolition of the Premises (so as to exceed the cost of typical demolition of ordinary and typical standard office installations). Notwithstanding anything to the contrary contained herein, Landlord's Base Building Work shall not be deemed to be Specialty Alterations.

**Substantial Completion:** As to any construction performed by any party, "Substantial Completion" or "Substantially Completed" means that such work has been completed, in accordance with (a) the provisions of this Lease applicable thereto, (b) the plans and specifications for such work, and (c) all applicable Requirements,

except for minor details of construction, decoration and mechanical adjustments, if any, the non-completion of which does not materially interfere with Tenant's use of the Premises, including the performance of Tenant's Initial Installations, or which in accordance with good construction practice should be completed after the completion of other work in the Premises or the Building (" **Punch List Items**" ). Landlord shall complete any Punch List Items promptly (but in no event more than thirty (30) days) following the date upon which the Pre-Commencement Base Building Work or Post-Commencement Base Building Work, as applicable, is Substantially Complete.

**Superior Lease(s):** Any ground or underlying lease of the Building or any part thereof heretofore or hereafter made by Landlord and all renewals, extensions, supplements, amendments, modifications, consolidations, and replacements thereof.

**Tenant Competitor :** The term Tenant Competitor shall mean either a Top Tier Tenant Competitor or Second Tier Tenant Competitor. "**Top Tier Tenant Competitor**" shall mean (i) Facebook and (ii) Amazon, and "**Second Tier Tenant Competitor**" shall mean (i) eBay, (ii) Square, (iii) Google and (iv) Twitter (collectively, the "**List of Tenant Competitors**") together with any affiliates of such entities a significant portion of whose business, to Landlord's knowledge acting in good faith, is a Competing Business (each a "**Competing Affiliate**"), it being agreed, without limitation, that Landlord shall be deemed to have such knowledge if the entity in question bears the same or substantially similar name as one of the entities on the List of Tenant Competitors (e.g., if eBay had an affiliate named eBay Asia, same would constitute a Competing Affiliate), but the mere fact that such entity might bear a name similar or substantially similar as the name of an entity on the List of Tenant Competitors shall not in and of itself be deemed to mean that such entity is a Qualified Affiliate (i.e., involved in a Competing Business). Tenant, from time to time (but not more than two (2) times at any time prior to the date that there are three (3) years or less remaining in the initial Term, and one (1) time each per each Renewal Term), shall have the right to update the List of Tenant Competitors to remove entities therefrom and add entities thereto, provided that (i) there shall at no point in time be more than six (6) entities listed on the List of Tenant Competitors, and (ii) Tenant shall only have the right to add to the List of Tenant Competitors entities who, in Tenant's sole but reasonable judgment is in competition with Tenant, including any entity that from a cultural standpoint is not in mission alignment with Tenant (a "**Competing Business**").

**Tenant Delay :** Any delay which directly results from any act or omission (where Tenant has a duty to act unless Tenant is prevented from doing so as a result of Unavoidable Delay) of any Tenant Party (but not Landlord or any Affiliate of Landlord), including delays due to changes in or additions to, or interference with any work to be done by Landlord, or delays by Tenant in submission of information approving working drawings or estimates or giving authorizations or approvals. No Tenant Delay shall be deemed to have occurred unless Landlord has provided written notice to Tenant (a "**Tenant Delay Notice**") specifying in reasonable detail the action or inaction that Landlord contends constitutes a Tenant Delay and the delay in question is not remedied within five (5) days after Tenant's receipt of the Tenant Delay Notice. If Landlord provides a Tenant Delay Notice and the delay in question is not remedied within five (5) days

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after Tenant's receipt of the Tenant Delay Notice, then a Tenant Delay as set forth in such notice, shall be deemed to have occurred (subject to Tenant's right to dispute by submitting the matter to arbitration in accordance with **Section 11.8**) on the date of Tenant's receipt of such Tenant Delay Notice.

**Tenant Party:** Tenant and any subtenants and occupants of the Premises and their respective agents, contractors, subcontractors, employees, invitees or licensees.

**Tenant's Property:** Tenant's movable fixtures and movable partitions, telephone and other movable equipment, computer systems, trade fixtures, furniture, furnishings, and other items of personal property which are removable without material damage to the Buildings.

**Unavoidable Delays:** Either party's inability to fulfill or delay in fulfilling any of its obligations under this Lease expressly or impliedly to be performed by such party or such party's inability to make or delay in making any repairs, additions, Alterations, improvements or decorations or such party's inability to supply or delay in supplying any equipment or fixtures, if such party's inability or delay is due to or arises by reason of strikes, labor troubles or by accident, or by any cause whatsoever beyond such party's reasonable control, including governmental preemption in connection with a national emergency, or shortages, or unavailability of labor, fuel, steam, water, electricity or materials, or delays caused by the other party or other tenants, mechanical breakdown, acts of God, enemy action, civil commotion, fire or other casualty.

**Unrestricted Cash and Cash Equivalents :** shall mean, the following assets of Tenant, in each case, not subject to any lien, security interest or restriction: (i) cash, (ii) securities issued or directly or fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than six (6) months from the date of acquisition, (iii) shares of money market funds invested in securities described in clause (ii) above, and (iv) dollar denominated timed deposits or certificates of deposit of any domestic United States commercial bank whose long term debt is rated A by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. or A2 by Moody's Investor Service, Inc.

**Zero Occupancy TCO:** shall mean a so-called "zero occupancy" temporary certificate of occupancy to be obtained by Landlord for the Premises as part of Landlord's Pre-Commencement Base Building Work.

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**EXHIBIT "C"**  
**LANDLORD'S BASE BUILDING WORK**

- A. Landlord shall, at its sole cost and expense, perform the following work ("Pre-Commencement Base Building Work") in, or about, the Premises, in a manner and using materials consistent with the standards adopted for such work at the Buildings in compliance with all applicable Requirements:
- Obtain a Zero Occupancy TCO for the Premises.
  - \*Deliver of the main HVAC supply and return ductwork through perimeter wall of MER only, complete with smoke and fire dampers at the core of each floor of the Premises, including wiring to fire alarm and BMS system, as required by code.
  - Provide electrical capacity of six (6) watts demand load per usable square foot, exclusive of base building systems. Landlord shall provide dedicated buss plug disconnect switches within the electrical closets on each floor of the Premises for Tenant extension.
  - Loading Dock access only but with pathway to elevators.
  - Provide Code compliant fire alarm and life safety system, with the necessary components (speaker/strobes, manual pulls, smoke detectors, water flows and tamper switches) installed in core common area. Landlord shall provide a life safety infrastructure including panels and power sources with adequate capacity within the base building fire alarm system to provide for Tenant's reasonable fire life safety requirements on the floor(s) comprising the Premises on the Commencement Date including all devices required by code in order for Tenant to commence Tenant's Initial Installations.
  - Each floor to be fully demolished (existing room, duct work, dropped ceilings, etc.) and all core and perimeter walls shall be patched and ready to accept Tenant finishes; provided, that the following items shall not be demolished and left intact: (A) The following eight (8) sliding building doors and hardware: (i) 117 Adams, 5th Floor, (3) Doors – (1) Bridge & (2) Spray/Chem Room, 6th Floor, (2) Doors – (2) Bridge (ii) 55 Prospect, 5th Floor, (1) Doors – Bridge, 6th Floor: (2) Doors – Bridge, and (B) 117 Adams Water Tower deconstruction & material salvage. The water tower shall be disassembled in a manner in which it can be re-assembled, and Tenant, at its election, may store the "treated" wood therefrom in the Premises; provided, that in no event shall Landlord be responsible to any damage to the wood resulting from the storage of same within the Premises.
  - Exterior Building enclosure shall be water tight.
  - Installation of complete sprinkler infrastructure, including combination standpipe/sprinkler risers, pumps, valve connections suitable for general office occupancy. Landlord shall demolish all existing sprinkler piping downstream of each floor control loop on each floor of the Premises and provide a temporary

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construction sprinkler loop on each floor of the Premises which is fully operational and code compliant. The temporary loop shall be connected to the fire alarm system and the water flow and tamper switches are in place and operational; it being understood and agreed that Tenant shall have no obligation to drain down the temporary loop during the performance of Tenant's Initial Installations and shall not incur any fire watch costs.

- Provide condenser water supply and return valved and capped outlets on each floor of the Premises for supplemental cooling A/C units to be installed by Tenant.
- All mechanical Building systems shall be brought to the Premises and fully operational and tied to BMS System.
- Provide fireproofing and enclosure of any exposed structural steel and all penetrations shall be fire-stopped.
- All floors of the Premises shall be repaired or flash patched to accommodate Tenant's floor covering. Landlord shall also perform in-fill work to match existing slab condition where the slab is currently open due to prior tenant's laundry operation.
- Provide one (1) janitorial closet per floor of the Premises.
- Provide plumbing connections (i.e., sanitary, vent, domestic cold water) at single location on each floor of the Premises.
- Repair windows of the Premises as necessary so that they are in good working order and weather tight on the Commencement Date. Any film currently on windows of the Premises shall be removed by Landlord at Tenant's request.
- Repair and fireproof per code all columns within the Premises, as necessary, and ready the same to accept Tenant finishes.
- Deliver the Premises to Tenant on the Commencement Date in broom clean condition, legally demised and ACP-5.
- Provide cold water plumbing connections at a single location on each floor of the Premises.
- Provide hot water piping riser system (supply and return piping) located at a frequency of not less than every three (3) column bays of the Premises to allow for the installation of finned tube radiation for perimeter heating of the Premises. Landlord shall provide new fully functional hot water generation equipment, pumps, expansion tanks, controls and riser system.

- Landlord to abate/remediate flammable liquid storage on the 5<sup>th</sup> floor at the Adams Street Building, if necessary, and shall in any case take down the non-load bearing walls of the room that contain or contained such materials.
- Install all base building equipment on 9<sup>th</sup> floor of the Adams Street Building including ductwork through Premises.
- Provide unobstructed, hazardous materials-free secure shaft space as set forth in **Section 10.15** of the Lease.
- Delivery of the main lobby at the Adams Street Building in the condition hereinafter described.
- Temporary Certificate of Occupancy suitable for Tenant occupancy and use. Any necessary changes required by Tenant to the Certificate of Occupancy shall be at Tenant's cost.
- Delivery of Premises with no outstanding construction liens and/or outstanding construction liens and/or outstanding violations with the Department of Building or the Fire Marshall that would delay Tenant's construction (or permitting).
- Landlord shall deliver riser infrastructure for bathrooms at designated locations on the floors of 117 Adams and 55 Prospect. Locations to be substantially in accordance with Landlord's plans. Landlord's team shall work in good faith with Tenant's architect to consider Tenant's preferred location for the core to accommodate both a single tenant per floor and multi-tenant floor. Tenant to build bathrooms with the allowance provided by Landlord. Landlord, at its sole cost, shall provide vertical piping riser infrastructure at all bathroom locations including but not limited to cold water riser, hot water riser, vent riser and waste riser. This piping shall be connected to the appropriate base building equipment, main building waste system, etc. as part of Landlord work.
- At Commencement Date, the office portion of 117 Adams Street will be exclusively occupied by Tenant. Landlord, at Tenant's request and sole cost, shall construct a mutually agreeable alternate tenant entrance. Location to be discussed.

\* Noise levels shall not exceed NC-40 at a distance of 15' from building equipment MER's.

- Substantially Complete Code compliance work for the roof deck at the Adams Street Premises.
- Complete modernization of Dual Use Elevator #4 in the Adams Street Building and one of the freight elevators in the Prospect Street Building, including new elevator cab designs, and deliver such elevators fully functional and in compliance with code. With respect to the Dual Use Elevator #4 in the Adams Street Building, Landlord shall convert same to a 2:1 roping, 5000# @ 350 FPM

passenger car, and install 2 speed 4' 6" W X 7' 0" H entrances and the same cab design as the rest of the passenger elevators (the “**Extra Elevator Work**”). Notwithstanding anything to the contrary contained herein, Tenant shall pay the incremental out-of-pocket cost incurred by Landlord in connection with the Extra Elevator Work; provided, that in no event shall Tenant’s reimbursement obligation exceed \$35,000.

- Install communications systems.

**Adams Street Lobby and Ground Floor Delivery Condition :**

**Lobby:**

- HVAC supply and return ductwork to penetrate lobby envelope with all code required Fire alarm devices
- Hot water heater piping to be available for tenant connection within lobby envelope – valved and capped.
- Fire alarm connection point for tenant services in lobby envelope
- Fire command station installed as required per code
- All other code required emergency shut off devices
- Available electrical power and lighting connection for temp power and lighting / if TCO is to be obtained by LL lighting to be installed as per TCO requirements
- Completed storefront assembly installed and watertight.
- All fire stopping and fireproofing completed as required by LL’s work
- Concrete slabs broom swept, level and smooth and ready to accept tenant finishes

**Section A:**

- Provide electrical capacity of six (6) watts demand load per usable square foot exclusive of base building systems
- Provide code compliant fire alarm and life safety system, with the necessary components installed in core common area. Landlord shall provide a life safety infrastructure including panels and power sources with adequate capacity within the base building fire alarm systems to provide for Tenant’s reasonable fire life safety requirements
- Floor to be fully demolished and in broom clean condition, level and smooth, legally demised and ACP-5
- Provide fireproofing and enclosure of any exposed structural steel and all penetrations shall be fire-stopped
- Provide plumbing connections at single location
- Repair and fireproof per code all columns within the Premises, as necessary, and ready the same to accept Tenant finishes
- Unobstructed, hazardous materials free secure shaft space
- Delivery of Premises with no outstanding construction liens and/or outstanding violations with the Department of Building or the Fire Marshall that would delay Tenant’s construction (or permitting)
- Provide new Building Management/Energy Systems (Post Commencement)
- Delivery the Premises without any mechanic liens resulting from Landlord’s Base Building Work (Post Commencement)

B. Landlord shall, at its cost and expense, perform the following work on, or before, the Rent Commencement Date (“**Post-Commencement Base Building Work**”) in, or about, the Premises, in a manner and using materials consistent with the standards adopted for such work at the Buildings:

- Provide new retail storefronts.
- Provide new Building management/energy systems.
- Substantially Complete construction of loading docks.
- Install standard Building security systems and equipment, including turnstiles in locations to be identified by Tenant in the Adams Street Building.
- Complete modernized vertical transportation including new elevator cab designs for the remainder of the elevators in the Buildings, to be Substantially Completed thirty (30) days following the Commencement Date except as otherwise provided in **Section 4.1** as it relates to the second elevator in the Adams Street Building being made available to Tenant no later than the Second Elevator Outside Date.

Provide bicycle storage facility(ies) at a location to be determined by Landlord at the Dumbo Heights Campus.

Deliver the Premises without any mechanic’s liens resulting from Landlord’s Base Building Work.

Provide access to alternate entrance to the Adams Street Building, at Tenant’s cost and expense.

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## **EXHIBIT “D”**

### **CLEANING SPECIFICATIONS**

To Be Determined

- The lobby at 55 Prospect Street will be cleaned in a commercially reasonable manner, Monday – Friday, except for Observed Holidays
- Exterior of the windows to be cleaned 2x per year
- Landlord will clean the common corridor on the ground floor at 117 Adams Street leading from the lobby to the building staff bathrooms/locker room in a commercially reasonable manner, 2x per week, except for Observed Holidays.
- Loading docks, including recycle bins will be cleaned in a commercially reasonable manner

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## **EXHIBIT “E-1”**

### **RULES AND REGULATIONS**

- (1) All tenants are required to present their Building Identification Card to Security upon entering the Prospect Street premises at all times. Firms with multiple locations must present management with a listing of company employees. These firms will then present their company identification card, sign-in and receive temporary Identification badge.
- (2) Except as expressly set forth in the Lease, the sidewalks, entrance, passages, courts, elevators, vestibules, stairways, corridors and halls shall not be obstructed or encumbered by Tenant or used for any purpose other than access to the Premises and for delivery of supplies and equipment in prompt and efficient manner, using elevators and passageways designated for such delivery by Landlord.
- (3) No awnings, air condition units, fans or other projections shall be attached to the outside walls of the Building.
- (4) No curtains, blinds, shades or screens, other than those conforming to Building standards as established by Landlord from time to time, shall be attached to our hung in, or used in connection with, any windows or door of the Premises. All electrical fixtures hung in offices of spaces along the perimeter of the Premises must be of a quality, type, design and bulb color approved by Landlord.
- (5) Except as otherwise expressly set forth in the Lease, no sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside of the Premises or Building or on the inside of the Premises if the same can be seen from the outside of the Premises without in each case the prior written consent of Landlord.
- (6) The exterior windows and doors that reflect or admit light and air into the Premises or the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant.
- (7) No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules, nor shall any article obstruct any air conditioning supply or exhaust without the prior written consent of Landlord.
- (8) The water and janitors closets and other plumbing fixtures shall not be sued for any purposes other than those for which they were designed, and no sweepings, rubbish, rags, acids or other substances shall be deposited therein. All damages resulting from any misuses of the fixtures shall be borne by Tenant.

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- (9) Tenant shall not make, or permit to be made, any unseemly or disturbing notices or disturb or interfere with occupants of the Building or neighboring buildings or those having business with them.
  - (10) Tenant, or any of Tenant's employees, agents, visitors or licensees, shall not at any time bring or keep upon the Premises any inflammable, combustible, or explosive fluid, chemical or substance except such as are incidental to usual office occupancy.
  - (11) No additional locks or bolts of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made in existing locks or the mechanism thereof, unless Tenant promptly provides Landlord with the key or combination thereto. Tenant shall, upon the termination of its tenancy, return to Landlord all keys for locks in the Premises and for all toilet rooms, and in the event of the loss of any keys furnished at Landlord's expense, Tenant shall pay to Landlord the cost thereof.
  - (12) No vehicles (except bicycles which are permitted) shall be brought into or kept by Tenant in or about the Premises or the Building.
  - (13) All removals or the carrying in or out of any safes, freight, furniture or bulky matter of any description at 55 Prospect Street, must take place in the manner and during the hours, which Landlord or its agent reasonably may determine from time to time any by movers approved in advance by Landlord or its agent. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles which violate any of these Rules and Regulations of the Lease of which these Rules and Regulations are apart.
  - (14) Tenant shall not occupy or permit any portion of the Premises to be occupied for the possession, storage, manufacture or sale of liquor or narcotics.
  - (15) Tenant shall not purchase water, ice, towels or other like services, or accept barbering or shoe shining services in the Prospect Street Premises, at hours and under regulations other than as reasonably fixed by Landlord.
  - (16) Landlord shall have the right to prohibit any advertising by Tenant which references the Building, in Landlord's reasonably opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon written notice from Landlord, Tenant shall refrain or discontinue such advertising.
  - (17) Landlord reserves the right to exclude from the Prospect Street Building at all times other than Operating Hours all persons who do not present a pass to the Prospect Street Building signed or approved by Landlord. Tenant shall be responsible for all persons for whom a pass is issued at the request of Tenant and shall be liable to Landlord for all acts of such persons.

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- (18) Tenant shall, at its expense, provide electricity and light for the employees of Landlord doing janitor service or other cleaning, or making repairs or alterations in the Premises
  - (19) The requirements of Tenant will be attended to only upon written application at the Office of the Building. Building employees shall not perform any work or do anything outside of their regular duties, unless under special instructions from the office of Landlord.
  - (20) Canvassing, soliciting and peddling in the Building is prohibited and Tenant shall cooperate to prevent the same.
  - (21) There shall not be used in the Building, either by Tenant or by jobbers or others, any hand trucks except those equipped with rubber tires and side guards. Carts and had trucks of any kind are prohibited in all passenger elevators. All damages resulting from any misuse of the elevators shall be borne by Tenant.
  - (22) Except as otherwise expressly set forth in the Lease, Tenant shall not do any cooking, conduct any restaurant, luncheonette or cafeteria for the sale or service of food or beverages to its employees or to others, or cause or permit any odors of cooking or other processes or any unusual or objectionable odors to emanate from the Premises. The foregoing is not intended to preclude one or more pantries or lunchrooms in the Premises.
  - (23) Tenant shall keep the entrance door to the Premises enclosed at all times.
  - (24) Tenant shall comply with Landlord's rules as promulgated form time to time regarding separation of various types of trash. The amount of any fines incurred by Landlord by reason of Tenant's failure to comply shall be paid by Tenant to Landlord upon demand as Additional Rent.
  - (25) Smoking within the building is prohibited
  - (26) There shall be no storage of any kind allowed in the freight elevator lobby at any time. Storage of any kind is prohibited by law and is subject to monetary penalties.
  - (27) Roller blades are prohibited in the building and plaza areas.

In the case of any conflict between the Rules and Regulations set forth in this Exhibit and the terms and conditions set forth in the main body of the Lease, the provisions of the main body of the Lease shall govern.

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**EXHIBIT "E-2"**

**CONSTRUCTION RULES AND REGULATIONS**

**BUILDING RULES AND BUILDING  
STANDARDS FOR ALTERATIONS**

To the extent of a conflict between these rules and the express provisions of the Lease, the provisions of the Lease shall govern.

1. All construction materials shall be delivered to the job in proper containers and stored in Tenant's work area. Waste, excess building materials, tools and equipment shall not be stored or allowed to accumulate in corridors or stairwells. Contractors responsible for such conditions will be removed from the Building
2. All fire exits shall be kept clear and accessible at all times.
3. Fire extinguishers must be on the job at all times. A.B.C. type, all-purpose extinguisher (minimum 10 lbs.) shall be used.
4. Other than initial alterations, all welding, tie-ins, shut-downs, shall be performed after 6:00 PM or on weekends; provided, that the aforementioned time restriction shall not apply to the Adams Street Building. Welding shall be performed by persons having a valid New York certificate of fitness for welding on his person. During all welding operations, there must be a person, in the capacity of a fire-watcher, having a fire extinguisher and protective blankets.
5. Workers will be assigned one toilet area, which the general contractor will be responsible for cleaning.
6. All fireproofing on steel must be repaired if damaged or missing. Contact Landlord, through the Manager's office, for inspection and approval before installing ceilings. All openings made in ceilings, columns, walls, floor, etc. must be properly sealed (fire stopped).
7. All entrance locks shall be compatible with Building master keying system.
8. Other than initial alterations, all work in the Prospect Street Building that inconveniences or disturbs other tenants must be scheduled before 8:00 AM or after 6:00 PM (before 7:00 AM and after 8:00 PM for heavy duty construction). The Building Manager reserves the right to stop any work being performed in the Prospect Street Building during normal working hours that causes a material disturbance.

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9. Other than initial alterations, with respect to the Prospect Street Building all deliveries of construction materials and related supplies, as well as rubbish removal, shall occur before 8:00 AM or after 6:00 PM (before 7:00 AM and after 8:00 PM for heavy duty construction). This **MUST** be scheduled in writing one (1) week in advance with the name of the appropriate sub-contractor filed with the Building Office.
  10. All after work hours **MUST** have an after-hours permit posted at all times.
  11. For retail tenants – all exterior areas, sidewalk, etc. must be kept clean at all times.

### **TENANT'S RESPONSIBILITIES**

1. Tenant must contact the Building Management office before the start of any construction work.
2. Prior to the start of any work, Tenant must submit six (6) sets of architectural, electrical, structural, mechanical, and sprinkler drawings, along with building notice application or alteration application for approval by Building Management.
3. The purpose of reviewing the plans by Landlord is to verify whether the design is in conformance with applicable codes, Building standards, and Building systems, and therefore, no responsibility is accepted for the accuracy of the drawings. However, any apparent design deficiencies will be noted. This review is not for system performance as it may relate to Tenant requirements, even if comments may relate to Tenant areas. Approval of plans by Landlord does not imply, nor should it be deemed to imply any opinion or judgment as to the fitness of the drawings for their intended purpose, nor does such approval express opinion as to the adequacy, sufficiency, or quality of the plans.

### **TENANT & CONTRACTOR JOINT RESPONSIBILITIES**

1. Certificates of insurance for all trades in conformance with Lease provisions.
2. A copy of the New York City Department of Buildings work permit shall be delivered to Landlord prior to the delivery of equipment and material to the premises. The work permit shall be displayed on the site during the entire alteration.
3. For the Prospect Street Building only, a work schedule indicating the use of freight elevators for deliveries and rubbish removal (information is needed one week in advance of work commencement).
4. A complete set of Contractors “As-Built” drawings must be submitted within 30 days of job completion.

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## **DELIVERY OF EQUIPMENT AND FURNITURE**

1. Before commencement of work on any alterations, a meeting will be held having representatives of Tenant, Building Management, Architect, Design Engineers, General Contractor, Sub-Contractor, and Moving Contractors in attendance. This meeting shall set up a program for the progress of construction, the delivery of building material, the removal of debris, and the delivery of equipment and furniture at the conclusion of the alterations.
2. Unless otherwise provided in the Lease, the delivery of all furniture and equipment shall be the sole responsibility of Tenant.
3. Unless otherwise authorized, furniture and equipment shall be delivered by means of the freight elevator only.
4. Items of furniture and equipment, exceeding the capacity of the elevator, shall be delivered in one of the following methods:
  - a. Transporting items on top of the elevator cab subject to feasibility determined by the size and weight.
  - b. Transporting equipment by means of a sling suspended under the elevator cab. This must be done only by a mover having a valid New York City Rigger's License. An elevator mechanic, employed by the elevator maintenance company shall be present at all times during the move.
  - c. Moving equipment through the elevator shaft by means of hoisting equipment mounted in the shaft.
    - This must be performed at a time permitted by the city agencies having appropriate jurisdiction from which all required permits shall be obtained. All work shall be performed by a rigger having a valid license. Contractor to provide certificates of insurance indicating worker's compensation coverage in statutory amounts and personal injury and property damage coverage in the amount of twenty five million dollars.

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- d. Lifting equipment from the sidewalk through a window opening of the proper floor.
    - This must be performed at a time permitted by the city agencies having appropriate jurisdiction from which all required permits shall be obtained. All work shall be performed by a rigger having a valid license. Contractor to provide certificates of insurance indicating worker's compensation coverage in statutory amounts and personal injury and property damage coverage in the amount of twenty five million dollars.
  - 5. In the event that the furniture or equipment must be transported using one of the methods described in paragraph 4 above, contractor shall maintain, at its sole expense, insurance as follows:
    - a. Bodily injury and property damage, in the amount of ten million dollars per occurrence, except as noted in paragraph 4 (d) above.
    - b. Commercial general liability insurance including products / completed operations coverage and contractual liability coverage shall (1) be underwritten by insurance carrier with an A.M. Best rating of A-/VII or better, (2) name owner, RFR Realty, LLC. as additional insured for the full policy limit, and (3) provide for a waiver of subrogation as respects any additional insured.
    - c. Automobile liability insurance with a combined single limit of at least \$5,000,000.00 per occurrence for bodily injury and property damage. Such insurance shall be: (1) be underwritten by insurance carrier with an A.M. Best rating of A-/VIII or better, (2) name owner, RFR Realty, LLC. as additional insured for the full policy limit, and (3) apply to any automobile.
    - d. Contractor shall provide RFR Realty, LLC. with a certificate of insurance evidencing the insurance required above, not less than one week before the scheduled delivery. The certificate of insurance shall show the total limit liability of all policies.

**ARRANGEMENTS FOR THE DELIVERY OF FURNITURE AND EQUIPMENT SHALL BE COMPLETED A MINIMUM OF TWO (2) WEEKS BEFORE THE DELIVERY DATE.**

- 6. At all times during the use of the elevator as described in paragraph 4 above, the building's elevator contractor shall be present at Tenant's sole cost and expense. At the conclusion of the use of the elevator as described in paragraph 4 above, the building's elevator contractor shall inspect the elevator and at Tenant's sole cost and expense shall make and adjustments or repairs that may be required as a result of such use.

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## SPECIFICATIONS FOR TENANT-INSTALLED HVAC

To be compatible with the Building Management System (“BMS”), any alterations performed by Tenant with respect to the HVAC System shall be designed and installed as follows:

1. The air distribution system shall be designed for variable air volume duct distribution.
2. VAV boxes shall be of the electronic DDC type of a manufacturer approved by Landlord, which approval shall not be unreasonably withheld.
3. VAV box room temperature sensors shall be TBD with LCD Display, local set point adjustment, override to occupied mode compatibility and LED indication of current temperature and current status.
4. A manual medium pressure volume damper shall be installed by Landlord, at Landlord’s expense, in the interior supply air duct main serving the premises.
5. All duct work and duct accessories upstream of VAV boxes shall be medium pressure air duct construction.

Notwithstanding anything to the contrary contained herein, any conflict between the construction rules and regulations set forth in this Exhibit E-2 with the terms and conditions set forth in the main body of the Lease, shall be governed by the provisions contained in the main body of the Lease.

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**EXHIBIT "F"**

**FORM OF SNDA**

**SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT**

**THIS SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("Agreement")** is entered into as of , (the "Effective Date") by and between **NATIXIS REAL ESTATE CAPITAL LLC**, a Delaware limited liability company (the "Mortgagee") and , a (hereinafter, collectively the "Tenant"), with reference to the following facts:

1. , a , whose address is (the "Landlord") owns fee simple title or a leasehold interest in the real property described in Exhibit "A" attached hereto (the "Property").
2. Mortgagee intends to make a loan to Landlord in the estimated principal amount of Dollars (\$ ) (the "Loan").
3. To secure the Loan, Landlord will encumber the Property by entering into a mortgage or deed of trust to secure the Loan.
4. Pursuant to the Lease effective , 200 (the "Lease"), Landlord demised to Tenant the following property (the "Leased Premises"):
5. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

1. **Definitions**. The following terms shall have the following meanings for purposes of this Agreement.

(a) **Foreclosure Event**. A "Foreclosure Event" means: (i) foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which a Successor Landlord becomes owner of the Property; or (iii) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Property in lieu of any of the foregoing.

(b) **Former Landlord**. A "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

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(c) **Offset Right**. An “**Offset Right**” means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease; provided that in no event shall the term Offset Right mean any abatement against Rent that is expressly set forth in the Lease, including, without limitation, the abatement in Rent through the Rent Commencement Date (and any extension of the Rent Commencement Date pursuant to Section 2.2), the Additional Rent Credit, the Additional 5<sup>th</sup> Floor Rent Abatement, and the 5<sup>th</sup> Floor Must Take Initial Rent Abatement Period.

(d) **Rent**. The “**Rent**” means any fixed rent, base rent or additional rent under the Lease.

(e) **Successor Landlord**. A “**Successor Landlord**” means any party that becomes owner of the Property as the result of a Foreclosure Event.

(f) **Other Capitalized Terms**. If the initial letter of any other term used in this Agreement is capitalized and no separate definition is contained in this Agreement, then such term shall have the same respective definition as set forth in the Lease.

2. **Subordination**. The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

3. **Nondisturbance, Recognition and Attornment**.

(a) **No Exercise of Mortgage Remedies Against Tenant**. So long as the Tenant is not in default under the Lease after notice and beyond any applicable grace or cure periods (an “**Event of Default**”), Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant’s rights under the Lease or this Agreement in such action.

(b) **Nondisturbance and Attornment**. If an Event of Default by Tenant is not then continuing, then, when Successor Landlord takes title to the Property (the “**Succession Date**”): (i) Successor Landlord shall not terminate or disturb Tenant’s possession of the Leased Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (ii) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (iii) Tenant shall recognize and attorn to Successor Landlord as Tenant’s direct landlord under the Lease as affected by this Agreement; and (iv) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant. Tenant acknowledges notice of the Mortgage and assignment of rents, leases and profits from the Landlord to the Mortgagee. Tenant agrees to continue making payments of rents and other amounts owed by

Tenant under the Lease to the Landlord and to otherwise recognize the rights of Landlord under the Lease until notified otherwise in writing by the Mortgagee (as provided in the Mortgage), and after receipt of such notice the Tenant agrees thereafter to make all such payments to the Mortgagee, without any further inquiry on the part of the Tenant, and Landlord consents to the foregoing. In such event, Landlord hereby expressly authorizes Tenant to make such payments to Mortgagee and further agrees that any sums paid to Mortgagee shall be in satisfaction of Tenant's obligations under the Lease.

(c) *Further Documentation*. The provisions of this *Article 3* shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this *Article 3* in writing upon request by either of them within ten (10) days of such request.

4. *Protection of Successor Landlord*. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

(a) *Claims Against Former Landlord*. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the Succession Date, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the Succession Date; provided, that the foregoing shall not limit either (i) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the Succession Date, or (ii) Successor Landlord's obligation to correct any conditions that existed as of the date of Succession Date and violate Successor Landlord's obligations as landlord under the Lease., or (iii) any such Offset Right that accrues in accordance with the terms of the Lease.

(b) *Prepayments*. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the Succession Date other than, and only to the extent that, either (i) the Lease expressly required such a prepayment, or (ii) such payment was actually delivered to Successor Landlord.

(c) *Payment; Security Deposit*. Any obligation: (i) to pay Tenant any sum(s) that any Former Landlord owed to Tenant unless such sums, if any, shall have been delivered to Mortgagee by way of an assumption of escrow accounts or otherwise; (ii) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee.

(d) *Modification, Amendment or Waiver*. Any modification or amendment of the Lease, or any waiver of the terms of the Lease, made without Mortgagee's written consent.

(e) *Surrender, Etc.*. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

5. *Exculpation of Successor Landlord*. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be

deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Leased Premises from time to time, including insurance and condemnation proceeds, security deposits, escrows, Successor Landlord's interest in the Lease, and the proceeds from any sale, lease or other disposition of the Property (or any portion thereof) by Successor Landlord (collectively, the "***Successor Landlord's Interest***"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

6. **Notice to Mortgagee and Right to Cure.** Tenant shall notify Mortgagee of any default by Landlord under the Lease that would entitle Tenant to terminate the Lease or exercise an Offset Right, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or Offset Right shall be effective unless Mortgagee shall have received notice of default giving rise to such cancellation or Offset Right and (i) in the case of any such default that can be cured by the payment of money, until thirty (30) days shall have elapsed following the giving of such notice or (ii) in the case of any other such default, until a reasonable period for remedying such default shall have elapsed following the giving of such notice and following the time when Mortgagee shall have become entitled under the Mortgage to remedy the same, including such time as may be necessary to acquire possession of the Property if possession is necessary to effect such cure, provided that Mortgagee undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the default notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, and with reasonable diligence, Mortgagee shall (a) pursue such remedies as are available to it under the Mortgage so as to be able to remedy the default, and (b) thereafter shall have commenced and continued to remedy such default or cause the same to be remedied. Notwithstanding the foregoing, Mortgagee shall have no obligation to cure any such default.

7. **Miscellaneous.**

(a) **Notices.** Any notice or request given or demand made under this Agreement by one party to the other shall be in writing, and may be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postpaid, registered or certified mail, and addressed to the party to be notified, with return receipt requested or by telefax transmission, with the original machine-generated transmit confirmation report as evidence of transmission. Notice deposited in the mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after it is so deposited; however, delivery by overnight courier service shall be deemed effective on the next succeeding business day after it is so deposited and notice by personal service or telefax transmission shall be deemed effective when delivered to its addressee or within two (2) hours after its transmission unless given after 3:00 p.m. on a business day, in which case it shall be deemed effective at 9:00 a.m. on the next business day. For purposes of notice, the addresses and telefax number of the parties shall, until changed as herein provided, be as follows:

If to the Mortgagee, at: Natixis Real Estate Capital LLC  
1251 Avenue of the Americas  
New York, New York 10020  
Attn: Real Estate Administration  
Telecopy No.: (212) 891-6101

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If to the Tenant, at: Until Tenant commences business operations at the  
Leased Premises:

Etsy, Inc.  
55 Washington Street, Suite 512  
Brooklyn, New York 11201  
Attn: Josh Wise

With a copy to:

Etsy, Inc.  
55 Washington Street, Suite 512  
Brooklyn, New York 11201  
Attn: Legal Department, Hissan Bajwa

Thereafter:

Etsy, Inc.  
117 Adams Street  
Brooklyn, New York 11201  
Attn: Josh Wise

With a copy to:

:  
Etsy, Inc.  
117 Adams Street  
Brooklyn, New York 11201  
Attn: Legal Department, Hissan Bajwa

(b) Successors and Assigns. This Agreement shall bind and benefit the parties hereto, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

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(c) *Entire Agreement*. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

(d) *Interaction with Lease and with Mortgage*. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage.

(e) *Mortgagee's Rights and Obligations*. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease.

(f) *Interpretation; Governing Law*. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State in which the Leased Premises are located, excluding such State's principles of conflict of laws.

(g) *Amendments*. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

(h) *Due Authorization*. Tenant represents to Mortgagee that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions. Mortgagee represents to Tenant that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

(i) *Execution*. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the Mortgagee and Tenant have caused this Agreement to be executed as of the date first above written.

ATTEST:

MORTGAGEE:

NATIXIS REAL ESTATE CAPITAL LLC,  
a Delaware limited liability company

Name:  
Title:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name:  
Title:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

Name:  
Title:

a \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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### **LANDLORD'S CONSENT**

Landlord consents and agrees to the foregoing Agreement, including without limitation the provisions of the last two sentences of Section 3(b) hereof, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Landlord shall be deemed a party to the Agreement for the purpose of Landlord's agreement set forth in Section 3(b) hereof.

**LANDLORD:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

## MORTGAGEE'S ACKNOWLEDGMENT

STATE OF :  
COUNTY OF :

On this, the      day of      ,      , before me a Notary Public in and for the State of      , the undersigned officer, personally appeared      , who acknowledged himself/herself to be a      of      , a      , and that he/she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the      by himself/herself as such officer.

I certify that I am not an officer or director of the above-named bank, banking institution or trust company. [ ***Strike if inapplicable*** ]

In witness whereof, I hereunto set my hand and official seal.

[SEAL]

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Notary Public

My Commission Expires: , 20

STATE OF :  
COUNTY OF :

On this, the      day of      ,      , before me a Notary Public in and for the State of      , the undersigned officer, personally appeared      , who acknowledged himself/herself to be a      of      , a      , and that he/she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the      by himself/herself as such officer.

I certify that I am not an officer or director of the above-named bank, banking institution or trust company. [ ***Strike if inapplicable*** ]

In witness whereof, I hereunto set my hand and official seal.

[SEAL]

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**Notary Public**

My Commission Expires: , 20

### **TENANT'S ACKNOWLEDGMENT**

STATE OF : SS  
COUNTY OF :

In witness whereof, I hereunto set my hand and official seal.

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[SEAL]

### My Commission Expires:

, 20

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#### LIST OF EXHIBITS

If any exhibit is not attached hereto at the time of execution of this Agreement, it may thereafter be attached by written agreement of the parties, evidenced by initialing said exhibit.

Exhibit "A" - Legal Description of the Land

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**EXHIBIT "G"**

**FORM OF LETTER OF CREDIT**

**L/C DRAFT LANGUAGE**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVBSF

DATE: 03/24/2014

BENEFICIARY:  
(INSERT FULL NAME AND ADDRESS)

APPLICANT:  
ETSY INC  
55 WASHINGTON STREET  
SUITE 512  
BROOKLYN NY 11201

AMOUNT: US\$000,000.00 (XXXXXXXXXXXXXXXXXXXX NO/100 U.S. DOLLARS)

EXPIRATION DATE:

LOCATION: AT OUR COUNTERS IN SANTA CLARA, CALIFORNIA

DEAR SIR/MADAM:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVBSF        IN YOUR FAVOR AVAILABLE BY YOUR DRAFTS DRAWN ON US AT SIGHT IN THE FORM OF "EXHIBIT A" ATTACHED AND ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENT(S), IF ANY.
2. SIGHT DRAFTS DRAWN ON US.
3. A DATED CERTIFICATION FROM THE BENEFICIARY SIGNED BY AN AUTHORIZED OFFICER, FOLLOWED BY HIS/HER DESIGNATED TITLE, STATING THE FOLLOWING:

(A) "AN EVENT OF DEFAULT (AS DEFINED IN THE LEASE) HAS OCCURRED BY        AS TENANT UNDER THAT CERTAIN LEASE AGREEMENT BETWEEN TENANT, AND        AS LANDLORD. FURTHERMORE THIS IS TO CERTIFY THAT: (I) LANDLORD HAS GIVEN WRITTEN NOTICE TO TENANT TO CURE THE DEFAULT PURSUANT TO THE TERMS OF THE LEASE DATED        ; (II) SUCH DEFAULT HAS NOT BEEN CURED UP TO THIS DATE OF DRAWING UNDER THIS LETTER OF CREDIT; AND (III) LANDLORD IS AUTHORIZED TO DRAW DOWN ON . THE LETTER OF CREDIT.

AND

(B) THIS IS TO CERTIFY THAT LANDLORD WILL HOLD THE FUNDS DRAWN UNDER THIS LETTER OF CREDIT AS SECURITY DEPOSIT FOR TENANT OR APPLY SAID FUNDS TO TENANT'S OBLIGATION UNDER THE LEASE."

PARTIAL DRAWS ARE ALLOWED. THIS ORIGINAL LETTER OF CREDIT MUST ACCOMPANY ANY DRAWINGS HEREUNDER FOR ENDORSEMENT OF THE DRAWING AMOUNT AND WILL BE RETURNED TO THE BENEFICIARY UNLESS IT IS FULLY UTILIZED.

THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY EXTENDED FOR AN ADDITIONAL PERIOD OF ONE YEAR, WITHOUT AMENDMENT, FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE

---

UNLESS AT LEAST 60 DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE WE SEND YOU A NOTICE BY REGISTERED MAIL/OVERNIGHT COURIER SERVICE AT THE ABOVE ADDRESS THAT THIS LETTER OF CREDIT WILL NOT BE EXTENDED BEYOND THE CURRENT EXPIRATION DATE. IN NO EVENT SHALL THIS LETTER OF CREDIT BE AUTOMATICALLY EXTENDED BEYOND

THIS LETTER OF CREDIT MAY ONLY BE TRANSFERRED IN ITS ENTIRETY BY THE ISSUING BANK, ASSUMING SUCH TRANSFER TO SUCH TRANSFeree WOULD BE IN COMPLIANCE WITH THEN APPLICABLE LAW AND REGULATIONS, INCLUDING BUT NOT LIMITED TO THE REGULATIONS OF THE U.S. DEPARTMENT OF TREASURY AND U.S. DEPARTMENT OF COMMERCE, UPON OUR RECEIPT OF THE ATTACHED "EXHIBIT B" DULY COMPLETED AND EXECUTED BY THE BENEFICIARY AND ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENT(S), IF ANY, TOGETHER WITH THE PAYMENT OF OUR TRANSFER FEE  $\frac{1}{4}$  OF 1% OF THE TRANSFER AMOUNT (MINIMUM USD250.00). THE CORRECTNESS OF THE SIGNATURE AND TITLE OF THE PERSON SIGNING THE TRANSFER FORM MUST BE VERIFIED BY YOUR BANK.

DRAFT(S) AND DOCUMENTS MUST INDICATE THE NUMBER AND DATE OF THIS LETTER OF CREDIT.

ALL DEMANDS FOR PAYMENT SHALL BE MADE BY PRESENTATION OF THE ORIGINAL APPROPRIATE DOCUMENTS DURING REGULAR BUSINESS HOURS, ON A BUSINESS DAY AT OUR OFFICE (THE "BANK'S OFFICE") AT: SILICON VALLEY BANK, 3003 TASMAN DRIVE, MAIL SORT HF210, SANTA CLARA, CALIFORNIA 95054, ATTENTION: GLOBAL FINANCIAL SERVICES - STANDBY LETTER OF CREDIT DEPARTMENT OR BY FACSIMILE TRANSMISSION AT: (408) 496-2418 OR (408) 969-6510 AND SIMULTANEOUSLY UNDER TELEPHONE ADVICE TO: (408) 654-6274, OR (408-654-7716 OR (408-654-3035, ATTENTION: STANDBY LETTER OF CREDIT NEGOTIATION DEPARTMENT WITH ORIGINALS OF DRAW DOCUMENTS TO FOLLOW BY OVERTIME COURIER SERVICE, PROVIDED, HOWEVER, THE BANK WILL DETERMINE HONOR OR DISHONOR ON THE BASIS OF PRESENTATION BY FACSIMILE ALONE, AND WILL NOT EXAMINE THE ORIGINALS.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS AND BONA FIDE HOLDERS THAT THE DRAFFTS DRAWN UNDER AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE, IF NEGOTIATED ON OR BEFORE THE EXPIRATION DATE OF THIS CREDIT.

IF ANY INSTRUCTIONS ACCOMPANYING A DRAWING UNDER THIS LETTER OF CREDIT REQUEST THAT PAYMENT IS TO BE MADE BY TRANSFER TO YOUR ACCOUNT WITH ANOTHER BANK, WE WILL ONLY EFFECT SUCH PAYMENT BY FED WIRE TO A U.S. REGULATED BANK, AND WE AND/OR SUCH OTHER BANK MAY RELY ON AN ACCOUNT NUMBER SPECIFIED IN SUCH INSTRUCTIONS EVEN IF THE NUMBER IDENTIFIES A PERSON OR ENTITY DIFFERENT FROM THE INTENDED PAYEE.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (ISP98), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 590.

---

EXHIBIT "A"

DATE :

REF . NO .

A T SIGHT OF THIS DRAFT

P AY TO THE ORDER OF US \$ US DOLLARS  
BANK , SANTA CLARA , CALIFORNIA , STANDBY LETTER OF CREDIT NUMBER NO . SVBSF

DRAWN UNDER SILICON VALLEY  
DATED , 20 -“

T SILICON VALLEY BANK  
O :  
3003 TASMAN DRIVE  
SANTA CLARA , CA 95054

( INSERT NAME OF BENEFICIARY )

---

Authorized Signature

**GUIDELINES TO PREPARE THE SIGHT DRAFT OR BILL OF EXCHANGE:**

1. DATE: INSERT ISSUANCE DATE OF DRAFT.
2. REF. NO.: INSERT YOUR REFERENCE NUMBER, IF ANY.
3. PAY TO THE ORDER OF: INSERT NAME OF THE BENEFICIARY AS INDICATED IN THE L/C (MAKE SURE BENEFICIARY ENSURES IT ON THE REVERSE SIDE)
4. US\$: INSERT AMOUNT OF DRAWING IN NUMERALS.
5. US DOLLARS: INSERT AMOUNT OF DRAWING IN WORDS.
6. LETTER OF CREDIT NUMBER: INSERT SILICON VALLEY BANK'S STANDBY L/C NUMBER THAT PERTAINS TO THE DRAWING.
7. DATED: INSERT THE ISSUANCE DATE OF THE STANDBY L/C.
8. BENEFICIARY'S NAME: INSERT NAME OF BENEFICIARY AS INDICATED IN THE L/C.
9. AUTHORIZED SIGNATURE: SIGNED BY AN AUTHORIZED SIGNER OF BENEFICIARY.

IF YOU NEED FURTHER ASSISTANCE IN COMPLETING THIS DRAFT, PLEASE CALL OUR L/C PAYMENT SECTION AND ASK FOR: 408-654-6274 OR 408-654-7716 OR 408-654-7127 OR 408-654-3035.

---

**EXHIBIT "B"**

DATE:

TO: SILICON VALLEY BANK  
3003 TASMAN DRIVE  
SANTA CLARA, CA 95054  
ATTN: INTERNATIONAL DIVISION.  
STANDBY LETTERS OF CREDIT

RE: IRREVOCABLE STANDBY LETTER OF CREDIT  
NO. ISSUED BY SILICON  
VALLEY BANK, SANTA CLARA L/C AMOUNT:

GENTLEMEN:

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

(NAME OF TRANSFeree)  
(ADDRESS)

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE LETTER OF CREDIT UP TO ITS AVAILABLE AMOUNT AS SHOWN ABOVE AS OF THE DATE OF THIS TRANSFER.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFeree. TRANSFeree SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS, AND WHETHER NOW EXISTING OR HERAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED DIRECT TO THE TRANSFeree WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH LETTER OF CREDIT IS RETURNED HEREWITH, AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE THEREOF, AND FORWARD IT DIRECTLY TO THE TRANSFeree WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

SINCERELY,

SIGNATURE AUTHENTICATED

---

(BENEFICIARY'S NAME)

---

(SIGNATURE OF BENEFICIARY)

---

(NAME AND TITLE)

The name(s), title(s), and signature(s) conform to that/those on file with us for the company and the signature(s) is/are authorized to execute this instrument. We further confirm that the company has been identified applying the appropriate due diligence and enhanced due diligence as required by BSA and all its subsequent amendments.

---

(Name of Bank)

---

(Address of Bank)

---

(City, State, ZIP Code)

---

(Authorized Name and Title)

---

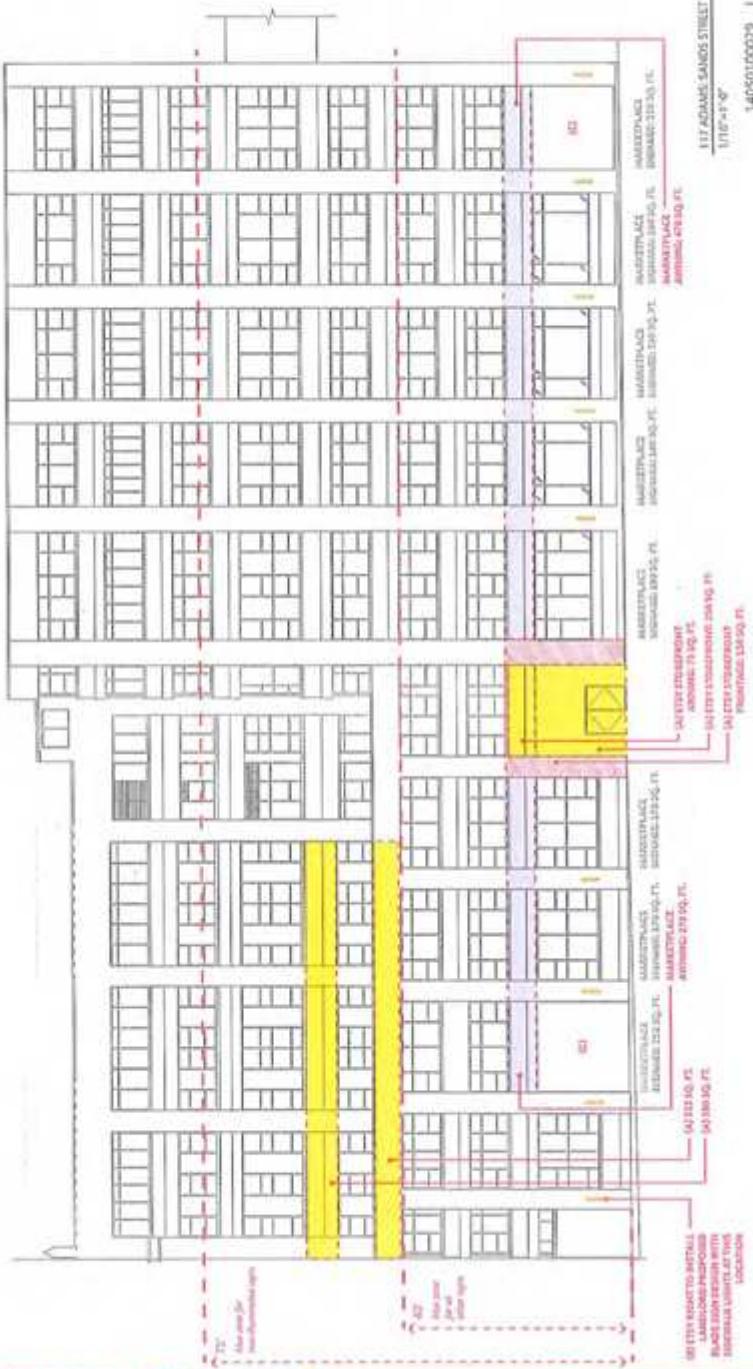
**EXHIBITS “H-1, H-2 and H-3”**

**LOCATION OF EXTERIOR SIGNAGE**

SEE ATTACHED



The present article is the first step towards the development of a new methodology for drawing 3D objects from 2D images. The proposed technique is based on the use of a 3D reconstruction module that takes as input a set of 2D images of an object and produces a 3D model of the object. The proposed technique is able to handle graphics in all formats used in **Figure 1**.  
The main idea of our technique is to use a 3D reconstruction module that takes as input a set of 2D images of an object and produces a 3D model of the object. The proposed technique is able to handle graphics in all formats used in **Figure 1**.  
The main idea of our technique is to use a 3D reconstruction module that takes as input a set of 2D images of an object and produces a 3D model of the object. The proposed technique is able to handle graphics in all formats used in **Figure 1**.



This statement of condition rights is based on all evidence  
available to us at the time of writing, including written  
agreements between ourselves and the customer.  
It is not intended to be comprehensive or legal advice.  
Please remember to have written evidence when you need to record  
what has been agreed. We are not responsible for any damage  
or loss of your property if you do not take this advice.



Digitized by srujanika@gmail.com

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**EXHIBIT "T"**

**FORM OF MEMORANDUM OF LEASE**

**MEMORANDUM OF LEASE**

NAME AND ADDRESS OF LANDLORD:

117 Adams Owner LLC and  
55 Prospect Owner LLC  
c/o Kushner Companies  
666 Fifth Avenue, 15th Floor  
New York, New York 10103

NAME AND ADDRESS OF TENANT:

Etsy, Inc.  
55 Washington Street  
Brooklyn, New York 11201

DATE OF EXECUTION OF LEASE:

As of May , 2014

DESCRIPTION OF LEASED PREMISES:

The Lease Premises consist of (i) a portion of the ground floor, a portion of the 2<sup>nd</sup> floor and the entire rentable area of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> floors of the building located at 117 Adams Street, Brooklyn New York (the "Adams Street Building"), and (ii) the entire rentable area of the 6<sup>th</sup> floor of the building located at 55 Prospect Street, Brooklyn, New York (the "Prospect Street Building"). The Adams Street Building and the Prospect Street Building are both located in the City of New York, County of Brooklyn and State of New York, respectively on those parcels of land that are more particularly described on Exhibit A-1 and Exhibit A-2 annexed hereto and made a part hereof.

TERM OF LEASE:

The term of the Lease commences on the date that certain conditions as set forth in Article 1 of the Lease are satisfied, and the initial term thereof is scheduled to expire on the date that is the last day of the month in which the ten (10) year anniversary of the later to occur of the Adams Street Rent Commencement Date and the Prospect Street Rent Commencement Date (as such terms are defined in the Lease).

RENEWAL OPTIONS:

Subject to the provisions of Article 31 of the Lease, the Lease contains two (2), five (5) year extension options or one (1) five (5) year extension option. The extension option(s) are more particularly described in Article 31 of the Lease.

---

**OPTIONS TO EXPAND:**

The Lease contains Tenant options to add additional space to the Leased Premises. The expansion options are more particularly described in Article 33 of the Lease.

**RIGHTS OF FIRST OFFER:**

The Lease contains Tenant rights of first offer to add additional space to the Leased Premises. These rights of first offer are more particularly described in Article 34 and Article 35 of the Lease.

**TERM OF LEASE GOVERN:**

The rights, obligations and remedies of Landlord and Tenant, respectively, with reference to each other and the Leased Premises shall be fixed, determined and governed solely by the terms of the Lease, this being a Memorandum of Lease executed by the parties hereto solely for the purpose of providing an instrument for recording pursuant to Section 291-c of the Real Property Law, in lieu of recording the Lease.

SIGNATURES APPEAR ON IMMEDIATELY FOLLOWING PAGE

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum of Lease as of the      day of May, 2014.

LANDLORD:

**117 ADAMS OWNER, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT:

**ETSY, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**55 PROSPECT OWNER LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

---

State of New York

} SS:

County of

On the    day of May in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

State of New York

} SS:

County of

On the    day of May in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

State of New York

} SS:

County of

On the    day of May in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

---

## **MEMORANDUM OF LEASE**

117 Adams Owner LLC

And

55 Prospect Owner LLC,

collectively, Landlord

Etsy, Inc.,  
Tenant

County: Kings  
Section:  
Block: 63 and 76  
Lot: 1

### **RECORD AND RETURN TO :**

Paul Hastings LLP  
75 East 55<sup>th</sup> Street  
New York, New York 10022

Attn: David M. Brooks, Esq.

**CONFORMED COPY**  
As amended by Amendment No. 1  
Dated March 4, 2015

---

**REVOLVING CREDIT AND GUARANTY AGREEMENT**

dated as of

May 16, 2014

among

ETSY, INC.,  
as Borrower,

The GUARANTORS Party Hereto,

The LENDERS Party Hereto

and

MORGAN STANLEY SENIOR FUNDING, INC.,  
as Administrative Agent and Collateral Agent

---

MORGAN STANLEY SENIOR FUNDING, INC.,  
GOLDMAN SACHS BANK USA  
and  
J.P. MORGAN SECURITIES LLC,  
as Joint Lead Arrangers and Joint Bookrunners

GOLDMAN SACHS BANK USA  
and  
JPMorgan Chase Bank, N.A.,  
as Syndication Agents

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This REVOLVING CREDIT AND GUARANTY AGREEMENT, dated as of May 16, 2014, among ETSY, INC., as the Borrower, the GUARANTORS from time to time party hereto, the LENDERS from time to time party hereto and MORGAN STANLEY SENIOR FUNDING, INC., as administrative agent (in such capacity, the “**Administrative Agent**”) and as collateral agent (in such capacity, the “**Collateral Agent**”).

The Borrower (such term and each other capitalized term used and not otherwise defined herein having the meaning assigned to it in Article 1), has requested the Lenders to make Loans to the Borrower on a revolving credit basis on and after the date hereof and at any time and from time to time prior to the Maturity Date.

The proceeds of borrowings hereunder are to be used for the purposes described in Section 5.09. The Lenders are willing to establish the credit facility referred to in the preceding paragraph upon the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

## ARTICLE 1 DEFINITIONS

Section 1.01. *Defined Terms*. As used in this Agreement, the following terms have the meanings specified below:

“**ABR**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**Acquisition**” means any transaction or series of related transactions resulting in the acquisition by the Borrower or any of its Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person.

“**Additional Secured Obligations**” means (i) all obligations arising under Hedging Transactions and (ii) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Obligor or any affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“**Adjusted LIBO Rate**” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the Eurodollar Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“**Administrative Agent**” means Morgan Stanley Senior Funding, Inc., in its capacity as administrative agent for the Lenders hereunder, or any successor administrative agent.

---

**“Administrative Questionnaire”** means an Administrative Questionnaire in a form supplied by the Administrative Agent.

**“Affected Lender”** as defined in Section 2.16(b).

**“Affiliate”** means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

**“Agents”** means the Administrative Agent and Collateral Agent or any of their respective successors or assigns.

**“Agreed L/C Cash Collateral Amount”** means the Dollar Equivalent of 105% of the total outstanding Letter of Credit Usage.

**“Aggregate Total Exposure”** means, as at any date of determination, the sum of the Dollar Equivalent of (i) the aggregate principal amount of all outstanding Revolving Loans (other than Revolving Loans made for the purpose of repaying any Refunded Swing Line Loans or reimbursing Issuing Bank for any amount drawn under any Letter of Credit, but not yet so applied), (ii) the aggregate principal amount of all outstanding Swing Line Loans and (iii) the Letter of Credit Usage.

**“Agreement”** means this Revolving Credit and Guaranty Agreement, as the same may hereafter be modified, supplemented, extended, amended, restated or amended and restated from time to time.

**“Alternate Base Rate”** means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day *plus*  $1/2$  of 1% and (c) the Adjusted LIBO Rate for an Interest Period of 1 month commencing on such day (or if such day is not a Business Day, the immediately preceding Business Day) *plus* 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

**“Amendment No. 1”** means Amendment No. 1 to this Agreement and the Security Agreement, dated as of March 4, 2015.

**“Amendment No. 1 Effective Date”** means March 4, 2015, the date of effectiveness of Amendment No. 1.

**“Anti-Corruption Laws”** means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Affiliates, in effect, from time to time concerning or relating to bribery or corruption.

**“Applicable Percentage”** means, with respect to any Lender, the percentage of the total Revolving Commitments represented by such Lender’s Revolving Commitment; *provided* that if any Defaulting Lender exists at such time, the Applicable Percentage shall be calculated disregarding such Defaulting Lender’s Revolving Commitment. If the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments.

**“Applicable Rate”** means the following percentages per annum, based upon the Total Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(c):

<b>Applicable Rate</b>				
Pricing Level	Total Leverage Ratio	Commitment Fee Rate	LIBO Rate Margin	Base Rate Margin
1	≥ 1.50 to 1.00	0.25%	1.25%	0.25%
2	< 1.50 to 1.00	0.125%	1.00%	0%

Any increase or decrease in the Applicable Rate resulting from a change in the Total Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 5.01(c); *provided* that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 1 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered. The Applicable Rate in effect from the Effective Date through the date immediately preceding the first Business Day following delivery of the Compliance Certificate for the first full Fiscal Quarter of the Borrower following the Effective Date shall be determined based upon Pricing Level 1.

**“Application”** means the Application and Agreement for Irrevocable Standby Letter of Credit in the form attached hereto as Exhibit L.

**“Approved Fund”** has the meaning set forth in Section 11.04.

**“Arrangers”** means Morgan Stanley Senior Funding, Inc., Goldman Sachs Bank USA and J.P. Morgan Securities LLC, in their capacities as joint lead arrangers and joint bookrunners, and any successors thereto.

**“Asset Sale”** means a sale, lease (as lessor or sublessor), sale and leaseback or license (as licensor or sublicensor), exchange, transfer or other disposition to, any Person, in one transaction or a series of transactions, of all or any part of the Borrower’s or any of its Restricted Subsidiaries’ businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including with respect to the Borrower, the Equity Interests of any of the Borrower’s Restricted Subsidiaries (but, for the avoidance of doubt, not including Equity Interests of Borrower), other than (i) inventory (or other assets, including intangible assets) sold, leased or licensed out in the ordinary course of business (for the avoidance of doubt, including any arrangements established in connection with transfer pricing arrangements cost plus arrangements or cost-sharing arrangements), (ii) obsolete, surplus or worn-out property, (iii) sales of Cash Equivalents for the fair market value thereof, (iv) dispositions of property (including the sale of any Equity Interest owned by such Person) from (A) any Restricted Subsidiary that is not a Guarantor to any other Restricted Subsidiary that is not a Guarantor or to any Obligor or (B) any Obligor to any other Obligor; (v) dispositions of property in connection with casualty or condemnation events; (vi) dispositions of past due

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accounts receivable in connection with the collection, write down or compromise thereof in the ordinary course of business, (vii) dispositions of the Equity Interests in any Unrestricted Subsidiary so long as the consideration received for such Equity Interests shall be in an amount at least equal to the Fair Market Value thereof, (viii) dispositions of property to the extent that (x) such property is exchanged for credit against the purchase price of similar replacement property or (y) the proceeds of such disposition are promptly applied to the purchase price of such replacement property, (ix) any abandonment, failure to maintain, non-renewal or other disposition of any intellectual property (or rights relating thereto) that the Borrower or any of its Restricted Subsidiaries determines in good faith is desirable in the conduct of its business, (x) any sale of property or series of related sales of property where the total consideration received by the Borrower and its Subsidiaries (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at the fair market value thereof in the case of other non-cash proceeds) does not exceed \$500,000 for any single sale or series of related sales and (xi) the granting of any Lien permitted by Section 6.02 (to the extent constituting a transfer or other disposition of property) or any disposition permitted by Section 6.06.

**“Assignment and Assumption”** means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 11.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

**“Availability”** means, as of any time of determination, an amount equal to (a) the aggregate amount of Revolving Commitments in effect at such time minus (b) the Aggregate Total Exposure at such time.

**“Bankruptcy Code”** means Chapter 11 of Title 11 of the United States Code, as amended from time to time and any successor statute and all rules and regulations promulgated thereunder.

**“Bankruptcy Event”** means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or institutes, applies for or consents to any such proceeding or appointment; *provided* that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof; *provided, further*, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

**“Base Rate Loan”** means a Loan that bears interest at the Alternate Base Rate.

**“Base Rate Margin”** means for any day, the amount in the applicable column under (and determined for such day in accordance with) the definition of “Applicable Rate”.

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**“ Beneficiary ”** means each Agent, Lender and Issuing Bank and each other Secured Party.

**“ Board ”** means the Board of Governors of the Federal Reserve System of the United States of America.

**“ Board of Directors ”** means the board of directors of the Borrower.

**“ Borrower ”** means Etsy, Inc., a Delaware corporation.

**“ Borrowing ”** means Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Rate Loans, as to which a single Interest Period is in effect.

**“ Business Day ”** means a day (other than a Saturday or Sunday) on which banks are open for general business in New York City; *provided* that, when used in connection with a Eurodollar Loan, the term **“ Business Day ”** shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

**“ Capital Lease Obligations ”** of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP; *provided* that, for the avoidance of doubt, any obligations relating to a lease that was accounted for by such Person as an operating lease as of the Effective Date and any similar lease entered into after the Effective Date by such Person shall be accounted for as obligations relating to an operating lease and not as Capital Lease Obligations.

**“ Cash ”** means money, currency or a credit balance in any demand or Deposit Account.

**“ Cash Equivalents ”** means:

(a) United States dollars;

(b) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government Obligations with maturities not exceeding one year from the date of acquisition;

(c) (i) demand deposits, (ii) time deposits and certificates of deposit with maturities of one year or less from the date of acquisition, (iii) bankers’ acceptances with maturities not exceeding one year from the date of acquisition and (iv) overnight bank deposits, in each case with any bank or trust company organized or licensed under the laws of the United States or any State thereof having capital, surplus and undivided profits in excess of \$500 million whose short-term debt is rated “A-2” or higher by S&P or higher by Moody’s;

(d) repurchase obligations with a term of not more than seven days for underlying securities of the type described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above;

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(e) commercial paper rated at least P-1 by Moody's or A-1 by S&P and maturing within one year after the date of acquisition;

(f) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A-1 by Moody's; and

(g) money market funds at least 95% of the assets of which consist of investments of the type described in clauses (a) through (f) above.

“**Cash Collateralize**” means, in respect of an Obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in Dollars, at a location and pursuant to documentation in form and substance satisfactory to Administrative Agent and the Issuing Bank (and “**Cash Collateralization**” has a corresponding meaning). “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**CFC**” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“**Change in Control**” means (a) prior to an IPO, the failure by the holders of the Borrower’s Equity Interests as of the date hereof to own, beneficially and of record, Equity Interests in the Borrower representing at least 50.1% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the Borrower; (b) after an IPO, the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act and the rules of the Securities and Exchange Commission thereunder), other than the holders of the Borrower’s Equity Interests as of the date hereof, of Equity Interests in the Borrower representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the Borrower; or (c) persons who were (i) directors of the Borrower on the date hereof, (ii) nominated by the board of directors of the Borrower or (iii) appointed by directors that were directors of the Borrower on the date hereof (or, in the case of such Person, directors of such Person on the date of an IPO) or directors nominated as provided in the preceding clause (ii), in each case other than any person whose initial nomination or appointment occurred as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors on the board of directors of the Borrower (other than any such solicitation made by the board of directors of the Borrower), ceasing to occupy a majority of the seats (excluding vacant seats) on the board of directors of the Borrower.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of, or compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.17(b), any lending

office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with, any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "**Change in Law**", regardless of the date enacted, adopted or issued.

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Equity Interests) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"**Collateral Agent**" as defined in the preamble hereto.

"**Collateral Documents**" means the Security Agreement, in the form attached hereto as Exhibit K, and all other instruments, documents and agreements delivered by or on behalf of any Obligor pursuant to this Agreement or any of the other Loan Documents in order to grant to, or perfect in favor of, the Collateral Agent, for the benefit of the Secured Parties, a first priority security interest and Lien on the Collateral.

"**Commitment Fee Rate**" means for any day, the amount in the applicable column under (and determined for such day in accordance with) the definition of "Applicable Rate".

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. §1 *et seq.*).

"**Connection Income Taxes**" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"**Consolidated Adjusted EBITDA**" means, for any period, Consolidated Net Income for such period plus, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense, (b) interest expense, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including the Loans), (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and organization costs, (e) any extraordinary charges or losses determined in accordance with GAAP, (f) non-cash stock option and other equity-based compensation expenses and (g) any other non-cash charges, non-cash expenses or non-cash losses of the Borrower or any Restricted Subsidiaries for such period (excluding any such charge, expense or loss incurred in the ordinary course of business that constitutes an accrual of, or a reserve for, cash charges for any future period); *provided*, however that cash payments made in such period or in any future period in respect of such non-cash charges, expenses or losses (excluding any such charge, expense or loss incurred in the ordinary course of business that constitutes an accrual of, or a reserve for, cash charges for any future period) shall be subtracted from

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Consolidated Net Income in calculating Consolidated Adjusted EBITDA in the period when such payments are made, and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (a) income tax benefit, (b) interest income, (c) any extraordinary income or gains determined in accordance with GAAP and (d) any other non-cash income (excluding any items that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period that are described in the parenthetical to clause (g) above), all as determined on a consolidated basis.

**“ Consolidated Capital Expenditures ”** means, for any period, the aggregate of all expenditures of the Borrower and its Restricted Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in “purchase of property and equipment”, “development of internal use software” or similar items, or which should otherwise be capitalized, reflected in the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

**“ Consolidated Current Assets ”** means, as at any date of determination, the total assets of the Borrower and its Restricted Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash (Unrestricted cash and restricted cash) and Permitted Investments.

**“ Consolidated Current Liabilities ”** means, as at any date of determination, the total liabilities of the Borrower and its Restricted Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

**“ Consolidated Net Debt ”** means, at any time, Consolidated Total Debt *minus* the aggregate amount of Unrestricted cash held by the Borrower and its Restricted Subsidiaries, each determined at such time.

**“ Consolidated Net Income ”** means, for any period, the net income or loss of the Borrower and its Restricted Subsidiaries for such period, determined on a consolidated basis in conformity with GAAP; *provided* that there shall be excluded (a) the income of any Person that is not a Restricted Subsidiary except to the extent of the amount of cash dividends or similar cash distributions actually paid by such Person to the Borrower or, subject to clauses (b) and (c) below, any Restricted Subsidiary during such period, (b) the income of, and any amounts referred to in clause (a) above paid to, any Restricted Subsidiary of the Borrower to the extent that, on the date of determination, the declaration or payment of cash dividends or similar cash distributions by such Restricted Subsidiary is not permitted without any prior approval of any Governmental Authority that has not been obtained or is not permitted by the operation of the terms of the organizational documents of such Restricted Subsidiary, any agreement or other instrument binding upon such Subsidiary or any law applicable to such Subsidiary, unless such restrictions with respect to the payment of cash dividends and other similar cash distributions have been legally and effectively waived, and (c) the income or loss of, and any amounts referred to in clause (a) above paid to, any Restricted Subsidiary that is not wholly owned by the Borrower to the extent such income or loss or such amounts are attributable to the noncontrolling interest in such Restricted Subsidiary.

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**“ Consolidated Total Assets ”** means, as of any date of determination, the amount that would, in conformity with GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries at such date.

**“ Consolidated Total Debt ”** of the Borrower and its Restricted Subsidiaries, on any date, means all Indebtedness of the Borrower and its Restricted Subsidiaries on such date, as would be required to appear as a liability on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries, prepared as of such date in accordance with GAAP.

**“ Consolidated Working Capital ”** means, as at any date of determination, the excess of Consolidated Current Assets of the Borrower and its Restricted Subsidiaries over Consolidated Current Liabilities of the Borrower and its Restricted Subsidiaries.

**“ Consolidated Working Capital Adjustment ”** means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period. In calculating the Consolidated Working Capital Adjustment there shall be excluded the effect of reclassification during such period of current assets to long term assets and current liabilities to long term liabilities and the effect of any Acquisition and the designation of any Unrestricted Subsidiary as a Restricted Subsidiary or any Restricted Subsidiary as an Unrestricted Subsidiary during such period; *provided* that (i) there shall be included with respect to any Acquisition during such period an amount (which may be a negative number) equal to the difference between the Consolidated Working Capital acquired in such Acquisition as at the time of such Acquisition and the Consolidated Working Capital from such Acquisition at the end of such period and (ii) there shall be included with respect to any Unrestricted Subsidiary that is designated as a Restricted Subsidiary during such period an amount (which may be a negative number) equal to the difference between the Consolidated Working Capital gained in such designation as at the time of such designation and the Consolidated Working Capital from such designation at the end of such period.

**“ Control ”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“ Controlling ”** and **“ Controlled ”** have meanings correlative thereto.

**“ Credit Date ”** means the date of a Credit Extension.

**“ Credit Event ”** means each Borrowing, Credit Extension, New Commitment or extension of a Letter of Credit.

**“ Credit Extension ”** means the making of a Loan, the issuing of a Letter of Credit or a Letter of Credit Disbursement.

**“ Debtor Relief Laws ”** means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

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**“ Declining Lender ”** has the meaning set forth in Section 2.21.

**“ Default ”** means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

**“ Defaulting Lender ”** means, subject to Section 2.19(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder, (ii) fund within two Business Days any portion of its participation in Letters of Credit or Swing Line Loans or (iii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless, in each case, such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to such funding or payment (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (b) has notified the Borrower, any Lender or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations and participation in the outstanding Letters of Credit and Swing Line Loans hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.19(b)) upon delivery of written notice of such determination to the Borrower and each Lender.

**“ Deposit Account ”** means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

**“ Designation Notice ”** has the meaning set forth in Article 10.

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**“Disclosed Matters”** means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

**“Disclosure Letter”** means the disclosure letter, dated as of the Amendment No. 1 Effective Date, as amended or supplemented from time to time by Borrower with the written consent of the Administrative Agent (or as supplemented by the Borrower pursuant to the terms of this Agreement), delivered by the Borrower to Administrative Agent for the benefit of the Administrative Agent and Lenders.

**“Disqualified Equity Interest”** means any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to 181 days after the Revolving Commitment Termination Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to this definition, in each case at any time on or prior to 181 days after the Revolving Commitment Termination Date or (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations; *provided, however,* that any Equity Interests that would not constitute Disqualified Equity Interests but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a change in control or an asset sale occurring prior to the 181<sup>st</sup> day after the Revolving Commitment Termination Date shall not constitute Disqualified Equity Interests.

**“Dollars”** or “\$” refers to lawful money of the United States of America.

**“Domestic Subsidiary”** means any Subsidiary that is organized under the laws of any political subdivision of the United States.

**“Effective Date”** means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 11.02).

**“Eligible Assignee”** as defined in Section 2.23.

**“Environmental Laws”** means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters.

**“Environmental Liability”** means any liability, contingent or otherwise (including any liability for damages, costs of investigation, reclamation or remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) compliance or noncompliance with any Environmental Law, (b) the generation, use,

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handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the presence, release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Equity Interests**” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest; *provided* that Equity Interests shall not include any debt securities that are convertible into or exchangeable for any combination of Equity Interests and/or cash until any such conversion or exchange.

“**ERISA**” means the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“**ERISA Affiliate**” means any person that for purposes of Title I or Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be a single employer or otherwise aggregated with the Borrower or a Guarantor or a Restricted Subsidiary under Section 414 (b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

“**Eurodollar**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“**Eurodollar Borrowing**” means a Borrowing made at the Adjusted LIBO Rate.

“**Eurodollar Rate Loan**” means a Loan that bears interest at a rate based on clause (a) of the definition of “LIBO Rate”.

“**Event of Default**” has the meaning set forth in Article 9.

“**Excess Cash Flow**” means, for any period, an amount (if positive) equal to:

(a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, *plus*, (ii) to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts for non-cash charges reducing Consolidated Net Income, including for depreciation and amortization (excluding any such non-cash charge to the extent that it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash gain that was paid in a prior period), *plus* (iii) the Consolidated Working Capital Adjustment (if positive), *minus*

(b) the sum, without duplication, of (i) the amounts for such period paid from internally generated cash of (x) repayments of Indebtedness for borrowed money (excluding repayments of the Loans except to the extent the Commitments are permanently reduced in connection with such repayments) and repayments of Capital Lease Obligations (excluding any interest expense portion thereof), (y) Consolidated Capital Expenditures and (z) Acquisitions, *plus* (ii) other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for potential cash gain in any prior period), *plus* (iii) the absolute amount of the Consolidated Working Capital Adjustment (if negative).

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**“ Exchange Act ”** means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

**“ Excluded Swap Obligation ”** means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant under a Loan Document by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to any and all guarantees of such Guarantor’s Swap Obligations by other Obligors) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest becomes illegal.

**“ Excluded Taxes ”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Commitment (other than pursuant to an assignment request by the Borrower under Section 2.20) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.19, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.18(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

**“ Exposure ”** means, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Loans of such Lender.

**“ FATCA ”** means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

**“ Federal Funds Effective Rate ”** means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as

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published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“**FEMA**” means the Federal Emergency Management Agency.

“**Financial Officer**” means a director, the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“**Fiscal Quarter**” means a fiscal quarter of any Fiscal Year.

“**Fiscal Year**” means the fiscal year of the Borrower and its Subsidiaries ending on the Sunday closest to December 31 of each calendar year.

“**Flood Hazard Property**” as defined in Section 5.10.

“**Flood Insurance**” as defined in Section 5.10

“**Foreign Lender**” means a Lender that is not a U.S. Person.

“**Foreign Subsidiary**” means any Subsidiary other than a Domestic Subsidiary.

“**FSHCO**” means any Domestic Subsidiary that owns no material assets other than the equity interests of one or more Foreign Subsidiaries that are “controlled foreign corporations” within the meaning of Section 957(a) of the Code and/or one or more FSHCOS.

“**Funding Notice**” means a notice substantially in the form of Exhibit G.

“**GAAP**” means generally accepted accounting principles in the United States of America.

“**Governmental Acts**” means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

“**Governmental Authority**” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Guarantee**” of or by any Person (the “**guarantor**”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other

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obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; *provided*, that the term **Guarantee** shall not include endorsements for collection or deposit in the ordinary course of business, or customary indemnification obligations entered into in connection with any acquisition or disposition of assets or of other entities (other than to the extent that the primary obligations that are the subject of such indemnification obligation would be considered Indebtedness hereunder).

“**Guaranteed Obligations**” as defined in Article 8.

“**Guarantor**” means (a) those Subsidiaries listed on Schedule 5.11 and party hereto and any future Domestic Subsidiary of the Borrower that has delivered a joinder agreement pursuant to Section 5.11 hereof and (b) with respect to (i) obligations with respect to Secured Agreements owing by any Obligor (other than the Borrower) and (ii) payment and performance by each Specified Obligor of its obligations under the Guaranty with respect to all Swap Obligations, the Borrower.

“**Guaranty**” has the meaning set forth in Article 8.

“**Hazardous Materials**” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“**Hedging Transaction**” means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap, collar or floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted) and (b) any currency exchange-rate transaction, including any cross-currency interest-rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks.

“**Increased Amount Date**” as defined in Section 2.23.

“**Indebtedness**” of any Person at any date means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of bankers’ acceptances, letters of credit, surety bonds or similar arrangements, (g) all Guarantees of such Person in respect of obligations of the kind referred to in clauses (a) through (f) above, and (h) all obligations of the kind referred to in clauses (a) through (g) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned or acquired by such Person, whether or not such Person has assumed or become liable for the payment of such obligation. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

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**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Obligor under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Indemnitee”** has the meaning set forth in Section 11.03(b).

**“Intellectual Property Rights”** has the meaning set forth in Section 3.05(b).

**“Interest Election Request”** means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.15.

**“Interest Payment Date”** means (a) with respect to any Base Rate Loan, the last Business Day of each March, June, September and December and (b) with respect to any Eurodollar Rate Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

**“Interest Period”** means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months (or, with the consent of each Lender, twelve months or less than one month) thereafter, as the Borrower may elect; *provided* that there shall be no more than 15 one month Interest Periods permitted in any given calendar year; *provided further*, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

**“Interest Rate Determination Date”** means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

**“Investment”** means (a) any purchase or other acquisition by the Borrower or any of its Restricted Subsidiaries of any of the securities or other equity interests of any other Person, (b) the acquisition by purchase or otherwise (other than any purchase or other acquisition of inventory, materials, supplies and/or equipment in the ordinary course of business) of all or a substantial portion of the business, property or fixed assets of any other Person or any division or line of business or other business unit of any other Person and (c) any loan, advance or capital contribution by the Borrower or any of its Restricted Subsidiaries to any other Person. Subject to Section 5.12, the amount of any Investment shall be the original cost of such Investment, plus the cost of any addition thereto that would otherwise constitute an Investment, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto, but giving effect to any repayments of principal in the case of any Investment in the form of a loan and any return of capital or return on Investment in the case of any equity Investment (whether as a distribution, dividend, redemption or sale but not in excess of the amount of the relevant initial Investment).

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**“IPO”** means a bona fide underwritten sale to the public of common stock of the Borrower on an internationally recognized securities exchange.

**“IRS”** means the United States Internal Revenue Service.

**“Issuance Notice”** means an Issuance Notice substantially in the form of Exhibit H.

**“Issuing Bank”** means Morgan Stanley Bank, N.A., as Issuing Bank hereunder, and any other Lender (or affiliate thereof) that shall agree in writing, at the request of the Borrower and with the consent of the Administrative Agent, to become an “Issuing Bank”, in each case together with its permitted successors and assigns in such capacity.

**“Joinder Agreement”** as defined in Section 5.11.

**“Joint Venture”** means a joint venture, partnership or other similar arrangement whether in corporate, partnership or other legal form; *provided*, in no event shall any Subsidiary of any Person be considered to be a Joint Venture.

**“Lenders”** means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or pursuant to a transaction contemplated by Section 2.23, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

**“Letter of Credit”** means a standby letter of credit issued or to be issued by Issuing Bank pursuant to this Agreement in such form as may be approved from time to time by the Issuing Bank. Letters of Credit shall be issued in Dollars.

**“Letter of Credit Disbursement”** means a payment made by the Issuing Bank pursuant to a Letter of Credit.

**“Letter of Credit Sublimit”** means the lesser of (i) \$10,000,000 and (ii) the aggregate unused amount of the Revolving Commitments then in effect.

**“Letter of Credit Usage”** means, as at any date of determination, the sum of (i) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding and (ii) the aggregate amount of all drawings under Letters of Credit honored by Issuing Bank and not theretofore reimbursed by or on behalf of the Borrower.

**“LIBO Rate”** means:

(a) with respect to any Eurodollar Borrowings for any Interest Period, the rate appearing on Bloomberg screen LIBOR01 (or any successor to or substitute for such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately

11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; *provided* that in the event such rate is not available at such time for any reason, then the “LIBO Rate” with respect to such Eurodollar Borrowing for such Interest Period shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period; and

(b) For any rate calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBO Rate described in paragraph (a) above, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day;

*provided* that to the extent that any such rate is below zero, the LIBO Rate described in paragraph (a) above will be deemed to be zero; *provided, further* that to the extent a comparable or successor rate is approved by the Administrative Agent in connection with any rate set forth in this definition, the approved rate shall be applied in a manner consistent with market practice; *provided, further* that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

“**LIBO Rate Margin**” means for any day, the amount in the applicable column under (and determined for such day in accordance with) the definition of “Applicable Rate”.

“**Lien**” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities. For the avoidance of doubt, the term “Lien” shall not include any license of intellectual property entered into in the ordinary course of business.

“**Loan Documents**” means this Agreement (including any amendment hereto or waiver hereunder), the Notes (if any), any Joinder Agreement, the Collateral Documents, and any documents or certificates executed by the Borrower in favor of the Issuing Bank relating to Letters of Credit.

“**Loans**” means the loans (including any Base Rate Loan or Eurodollar Rate Loan) made by the Lenders to the Borrower pursuant to this Agreement including any Swing Line Loan.

“**Margin Stock**” as defined in Regulation U of the Board of Governors as in effect from time to time.

“**Material Adverse Effect**” means a material adverse effect on (a) the business, property, condition (financial or otherwise) or results of operations of the Borrower and its Subsidiaries

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taken as a whole, (b) the ability of the Borrower and its Subsidiaries, taken as a whole, to make payments of principal and interest on the Loans, or (c) the rights of or remedies available to the Lenders under any Loan Document.

**“ Material Indebtedness ”** means Indebtedness (other than any Indebtedness under the Loan Documents), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower or any Restricted Subsidiary in a principal amount exceeding \$5,000,000. For purposes of determining Material Indebtedness, the “ **principal amount** ” of the obligations of the Borrower or any Restricted Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

**“ Material Real Estate Asset ”** means any domestic fee owned Real Estate Asset having a fair market value in excess of \$1,000,000.

**“ Maturity Date ”** means May 16, 2019 (and if such date is not a Business Day, then the preceding Business Day).

**“ Moody’s ”** means Moody’s Investor Services, Inc.

**“ Mortgage ”** means a mortgage, deed of trust or other similar instrument reasonably satisfactory to the Collateral Agent.

**“ Mortgaged Property ”** means any Material Real Estate Asset acquired by the Borrower or any Obligor after the Effective Date or any Real Estate Asset that becomes a Material Real Estate Asset (whether by renovation to, addition to or otherwise).

**“ Multiemployer Plan ”** any multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is or could be an obligation to contribute of) the Borrower, a Guarantor, a Restricted Subsidiary or an ERISA Affiliate, and each such plan for the five- year period immediately following the latest date on which the Borrower, a Guarantor, a Restricted Subsidiary or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

**“ Net Asset Sale Cash Proceeds”** means, with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by the Borrower or any of its Restricted Subsidiaries from such Asset Sale, minus (ii) any bona fide direct costs and expenses incurred in connection with such Asset Sale, including (a) income or gains taxes estimated to be payable by the seller as a result of any gain recognized in connection with such Asset Sale and (b) payment of the outstanding principal amount of, premium or penalty on, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale.

**“ New Revolving Loan Commitments ”** as defined in Section 2.23.

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**“ New Revolving Loan ”** as defined in Section 2.23.

**“ New Revolving Loan Lender ”** as defined in Section 2.23.

**“ NFIP ”** as defined in Section 5.10.

**“ Non-Consenting Lender ”** means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.02 and (ii) has been approved by the Required Lenders.

**“ Non-Defaulting Lender ”** means, at any time, each Lender that is not a Defaulting Lender at such time.

**“ Non-U.S. Plan ”** means any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by the Borrower or one or more Restricted Subsidiaries or Guarantors primarily for the benefit of employees of the Borrower or such Restricted Subsidiaries or Guarantors residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

**“ Non-U.S. Plan Event ”** means with respect to any Non-U.S. Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable law, on or before the due date for such contributions or payments, (c) the receipt of a notice by a Governmental Authority relating to the intention to terminate any such Non-U.S. Plan or to appoint a trustee or similar official to administer any such Non-U.S. Plan, or alleging the insolvency of any such Non-U.S. Plan, (d) the incurrence of any liability by the Borrower , Guarantor or any Restricted Subsidiary under applicable law on account of the complete or partial termination of such Non-U.S. Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction that is prohibited under any applicable law and that could reasonably be expected to result in the incurrence of any liability by the Borrower, Guarantor or any of the Restricted Subsidiaries, or the imposition on the Borrower, the Guarantor or any of the Restricted Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any applicable law.

**“ Note ”** has the meaning set forth in Section 2.05.

**“ Notice ”** means a Funding Notice, Issuance Notice or Interest Election Request.

**“ Obligations ”** means all amounts owing by any Obligor to the Agents (including former Agents), Arrangers, the Issuing Bank, any Lender or the Other Secured Counterparties pursuant to the terms of (i) this Agreement or any other Loan Document or (ii) any Secured Agreement, in each case whether for principal, interest (including, in each case, all interest which accrues after the commencement of any case or proceeding in bankruptcy after the insolvency of, or for the reorganization of the Borrower or any of its Subsidiaries, whether or not allowed in such case or

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proceeding), reimbursement of amounts drawn on Letters of Credit, payments for early termination of Hedging Transactions, fees, expenses, indemnification, overdrafts and related liabilities under any treasury or cash management services, clearing, corporate credit card or related services, or otherwise. For the avoidance of doubt, all “Additional Secured Obligations” are “Obligations.”

“**Obligors**” means, collectively, the Borrower and the Guarantors.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Secured Counterparties**” means each Lender or Affiliate of a Lender in its capacity as a counterparty to a Secured Agreement (regardless of whether such Lender subsequently ceases to be a Lender for any reason).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.20).

“**Participant**” has the meaning set forth in Section 11.04.

“**Participant Register**” has the meaning set forth in Section 11.04.

“**Pension Plan**” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA maintained or contributed to by the Borrower, a Guarantor, a Restricted Subsidiary or any ERISA Affiliate or to which the Borrower, a Guarantor, a Restricted Subsidiary or an ERISA Affiliate has or could have an obligation to contribute, and each such plan subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA for the five-year period immediately following the latest date on which the Borrower, a Guarantor, a Restricted Subsidiary or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to (or is deemed under Section 4069 of ERISA to have maintained or contributed to or to have had an obligation to contribute to, or otherwise to have liability with respect to) such plan.

“**Perfection Certificate**” has the meaning assigned to that term in the Security Agreement.

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**“ Permitted Encumbrances ” means:**

- (a) Liens imposed by law for taxes, assessments or governmental charges or levies that are not yet due or are being contested in compliance with Section 5.04;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, landlord’s, supplier’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days or are being contested in compliance with Section 5.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business;
- (e) Uniform Commercial Code financing statements filed (or similar filings under applicable law) solely as a precautionary measure in connection with operating leases;
- (f) judgment liens and deposits to secure obligations under appeal bonds or letters of credit in respect of judgments that do not constitute an Event of Default under clause (k) of Article 9;
- (g) easements, zoning restrictions, rights-of-way, encroachments and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary; and
- (h) Liens representing any interest or title of a licensor, lessor or sublicensor or sublessor, or a licensee, lessee or sublicensee or sublessee, in the property subject to any lease (including Capital Lease Obligations subject to Section 6.01(c)), license or sublicense or concession agreement, in each case to the extent permitted by this Agreement.

**“ Permitted Investments ” shall mean:**

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of issuance thereof and having, at such date of acquisition, a rating of at least “ **Prime 1** ” (or the then equivalent grade) by Moody’s or “ **A-1** ” (or the then equivalent grade) by S&P;
- (c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent or any domestic office of any commercial bank organized under the laws of the United States of

America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000 and that issues (or the parent of which issues) commercial paper rated at least “**Prime 1**” (or the then equivalent grade) by Moody’s or “**A-1**” (or the then equivalent grade) by S&P;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria of clause (c) above;

(e) investments in “**money market funds**” within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (d) above; and

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

“**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Plan**” means any “employee benefit plan” as defined in Section 3(3) of ERISA maintained for employees of the Borrower, Guarantor, Restricted Subsidiary or any of their respective ERISA Affiliates.

“**Prime Rate**” means the rate of interest per annum from time to time published in the “**Money Rates**” or successor section of The Wall Street Journal as being the “**Prime Lending Rate**” or, if more than one rate is published as the “**Prime Lending Rate**”, then the highest of such rates (each change in the Prime Rate to be effective as of the date of publication in The Wall Street Journal of a “**Prime Lending Rate**” that is different from that published on the preceding Business Day); *provided* that in the event that The Wall Street Journal shall, for any reason, fail or cease to publish the “**Prime Lending Rate**”, the Administrative Agent shall choose a reasonably comparable index or source to use as the basis for the “**Prime Lending Rate**”.

“**Principal Office**” for each of the Administrative Agent, Swing Line Lender and Issuing Bank, means such Person’s “Principal Office” as set forth on Appendix B, or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to the Borrower, the Administrative Agent and each Lender.

“**Pro Forma Basis**” means, with respect to any determination of the Total Leverage Ratio, (i) that such determination of Consolidated Adjusted EBITDA is made for the relevant Test Period, but that (x) all material acquisitions or dispositions, mergers, amalgamations, consolidations and discontinuance of operations during such Test Period or subsequent thereto and on or prior to the date of determination or with the proceeds of or in connection with the incurrence of Indebtedness for which the Total Leverage Ratio is being determined (each, a “**Pro Forma Event**”) shall be deemed for this purpose to have occurred on the first day of such Test

Period, and (y) if since the beginning of such Test Period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have undertaken any Pro Forma Event that would have required adjustment pursuant to clause (x) above if taken by a Restricted Subsidiary, then such ratio or amount shall be calculated giving pro forma effect thereto for such Test Period as if such Pro Forma Event had occurred at the beginning of such Test Period and (ii) that such determination of Consolidated Net Debt is determined after giving effect to the incurrence of the Indebtedness (and all simultaneous incurrences of Indebtedness) for which such ratio is being tested, and the application of proceeds thereof.

**“Pro Rata Share”** means (i) with respect to all payments, computations and other matters relating to the Revolving Commitment or Revolving Loans of any Lender or any Letters of Credit issued or participations purchased therein by any Lender or any participations in any Swing Line Loans purchased by any Lender, the percentage obtained by dividing (a) the Revolving Exposure of that Lender by (b) the aggregate Revolving Exposure of all Lenders and (ii) with respect to all payments, computations and other matters relating to New Term Loan Commitments or New Term Loans of a particular Series, the percentage obtained by dividing (a) the New Term Loan Exposure of that Lender with respect to that Series by (b) the aggregate New Term Loan Exposure of all Lenders with respect to that Series. For all other purposes with respect to each Lender, “Pro Rata Share” means the percentage obtained by dividing (A) the Revolving Exposure of that Lender, by (B) the aggregate Revolving Exposure of all Lenders.

**“Qualified Equity Interest”** of any person shall mean any Equity Interests of such person that are not Disqualified Equity Interest.

**“Real Estate Asset”** means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by the Borrower or any Obligor in any real property.

**“Recipient”** means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

**“Refunded Swing Line Loans”** as defined in Section 2.02(b)(iv).

**“Register”** has the meaning set forth in Section 2.05(b).

**“Reimbursement Date”** as defined in Section 2.03(d).

**“Related Parties”** means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

**“Required Lenders”** means, at any time, Lenders both (i) having more than 50% of the aggregate amount of the Revolving Commitments or, if the Revolving Commitments shall have been terminated, holding more than 50% of the aggregate outstanding principal amount of the Loans at such time and (ii) representing no less than three Lenders in number; *provided, however* that if any two Lenders have or hold at least 66.67% of the Revolving Commitments or aggregate outstanding principal amount (as applicable), then “Required Lenders” shall mean at least two Lenders having or holding at least 66.67% of the Revolving Commitments or aggregate outstanding principal amount (as applicable). The Revolving Commitment and Loans of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

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**“ Responsible Officer ”** means any of the President, Chief Executive Officer, Senior Vice President, Treasurer, director, General Counsel and Chief Financial Officer of the applicable Obligor, or any person designated by any such Obligor in writing to the Administrative Agent from time to time, acting singly.

**“ Restricted Payment ”** means any dividend or other distribution (whether in cash, securities or other property other than Qualified Equity Interests of such Person) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property other than Qualified Equity Interests of such Person), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any option, warrant or other right to acquire any such Equity Interests in the Borrower.

**“ Restricted Subsidiary ”** means any Subsidiary other than an Unrestricted Subsidiary; *provided* that upon the occurrence of any Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of “ **Restricted Subsidiary** ”.

**“ Revolving Commitment ”** means, with respect to each Lender, the commitment of such Lender to make Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Loans hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.11 or Section 2.12, (b) increased from time to time pursuant to Section 2.23 and (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 2.18 or Section 11.04. The amount of each Lender’s Commitment as of the Amendment No. 1 Effective Date is set forth on Schedule 2.01. The aggregate amount of the Lenders’ Revolving Commitments as of the Amendment No. 1 Effective Date is \$50,000,000.

**“ Revolving Commitment Period ”** means the period from the Effective Date to but excluding the Revolving Commitment Termination Date.

**“ Revolving Commitment Termination Date ”** means the earliest to occur of (i) the Maturity Date, (ii) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.12 or 2.13, and (iii) the date of the termination of the Revolving Commitments pursuant to Section 9.01.

**“ Revolving Exposure ”** means, with respect to any Lender as of any date of determination, (i) prior to the termination of the Revolving Commitments, that Lender’s Revolving Commitment; and (ii) after the termination of the Revolving Commitments, the sum of (a) the aggregate outstanding principal amount of the Revolving Loans of that Lender, (b) in the case of Issuing Bank, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender (net of any participations by Lenders in such Letters of Credit), (c) the aggregate amount of all participations by that Lender in any outstanding Letters of Credit or any unreimbursed drawing under any Letter of Credit, (d) in the case of Swing Line Lender, the aggregate outstanding principal amount of all Swing Line Loans (net of any participations therein by other Lenders), and (e) the aggregate amount of all participations by that Lender in any outstanding Swing Line Loans.

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**“Revolving Loan”** means a Loan made by a Lender to the Borrower pursuant to Section 2.01(a) and/or a New Revolving Loan.

**“Revolving Loan Note”** means a promissory note in the form of Exhibit D-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

**“S&P”** means Standard and Poor’s, a Division of the McGraw Hill Financial, Inc.

**“Sanctioned Country”** means, at any time, a country or territory which is itself, or whose government is, the subject or target of any Sanctions.

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons.

**“Sanctions”** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

**“Secured Agreements”** means, to the extent designated as such by the Borrower in writing to the Agent from time to time in accordance with Article 10, (a) all agreements and other documents relating to any treasury or cash management services, clearing, corporate credit card and related services provided to the Borrower or any of its Subsidiaries and entered into by the Borrower or any of its Subsidiaries with any Lender or any of its Affiliates (regardless of whether such Lender subsequently ceases to be a Lender for any reason), (b) all agreements governing Hedging Transactions entered into with the Borrower or any of its Subsidiaries by any Lender or any of its Affiliates (regardless of whether such Lender subsequently ceases to be a Lender for any reason) and (c) each agreement or instrument delivered by any Obligor or Subsidiary of the Borrower pursuant to any of the foregoing, as the same may be amended from time to time in accordance with the provisions thereof.

**“Secured Parties”** means the Agents, the Issuing Bank, any Lender, any Indemnitee or any Other Secured Counterparty (or any of their respective successors or assigns).

**“Security Agreement”** means the Pledge and Security Agreement to be executed between Etsy, Inc. and the Collateral Agent (as such agreement may be amended, amended and restated, supplemented or otherwise modified from time to time).

**“Security Supplement”** has the meaning assigned to that term in the Security Agreement.

**“ Series ”** means a series of Loans.

**“ Solvency Certificate ”** means a Solvency Certificate of a Financial Officer of the Borrower substantially in the form of Exhibit E.

**“ Solvent ”** means, with respect to the Obligors on a particular date, that on such date (a) the fair value of the present assets of the Obligors, taken as a whole, is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of the Obligors, taken as a whole, (b) the present fair saleable value of the assets of the Obligors, taken as a whole, is not less than the amount that will be required to pay the probable liability of the Obligors, taken as a whole, on their debts as they become absolute and matured, (c) the Borrower and its Subsidiaries, taken as a whole, do not intend to, and do not believe that they will, incur debts or liabilities (including current obligations and contingent liabilities) beyond their ability to pay such debts and liabilities as they mature in the ordinary course of business and (d) the Borrower and its Subsidiaries, taken as a whole, are not engaged in business or a transaction, and are not about to engage in business or a transaction, in relation to which their property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

**“ Special Loan Party ”** means any Obligor that is not an “eligible contract participant” under the Commodity Exchange Act.

**“ Statutory Reserve Rate ”** means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one *minus* the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for Eurodollar funding (currently referred to as **“ Eurocurrency Liabilities ”** in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

**“ Subsidiary ”** means any subsidiary of the Borrower.

**“ subsidiary ”** means, with respect to any Person (the **“ parent ”**) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or

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(b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent and which is required by GAAP to be consolidated in the consolidated financial statements of the parent.

**“ Swap Agreement ”** means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

**“ Swap Obligations ”** means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

**“ Swing Line Exposure ”** means, at any time, the aggregate principal amount of all Swing Line Loans outstanding at such time. The Swing Line Exposure of any Lender at any time shall be its Applicable Percentage of the total Swing Line Exposure at such time.

**“ Swing Line Lender ”** means Morgan Stanley Senior Funding, Inc., in its capacity as Swing Line Lender hereunder, together with its permitted successors and assigns in such capacity.

**“ Swing Line Loan ”** means a Loan made by Swing Line Lender to the Borrower pursuant to Section 2.02. Swing Line Loans may only be made in Dollars.

**“ Swing Line Note ”** means a promissory note in the form of Exhibit D-2, as it may be amended, restated, supplemented or otherwise modified from time to time.

**“ Swing Line Sublimit ”** means the lesser of (i) \$15,000,000 and (ii) the aggregate unused amount of Revolving Commitments then in effect.

**“ Syndication Agents ”** means Goldman Sachs Bank USA and JPMorgan Chase Bank, N.A.

**“ Taxes ”** means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholdings), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

A **“ Test Period ”** in effect at any time means the period of four consecutive Fiscal Quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each Fiscal Quarter or Fiscal Year were required to be delivered pursuant to Section 5.01.

**“ Title Insurance Company ”** as defined in Section 5.10.

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**“ Title Policy ”** as defined in Section 5.10.

**“ Total Exposure ”** means, for any Lender at any time, the sum of the Dollar Equivalent of (i) the aggregate principal amount of all outstanding Revolving Loans of such Lender plus (ii) such Lender’s Applicable Percentage of(x) the aggregate principal amount of all outstanding Swing Line Loans and (y) the Letter of Credit Usage.

**“ Total Leverage Ratio ”** means, at any date, the ratio of (i) Consolidated Net Debt as of such date to (ii) Consolidated Adjusted EBITDA for the four Fiscal Quarter period ending on or most recently prior to such date.

**“ Transactions ”** means the execution, delivery and performance by the Obligors of each Loan Document to which it is a party, the borrowing of Loans and the use of the proceeds thereof.

**“ Type ”**, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

**“ Unreimbursed Amount ”** as defined in Section 2.03.

**“ Unrestricted ”** means, when referring to cash or Permitted Investments, that such cash or Permitted Investments (a) do not appear (or would be required to appear) as “restricted” on the consolidated balance sheet of the Borrower (unless such appearance is related to the Liens granted to secure the Obligations), (b) are not subject to any Lien in favor of any Person other than the Collateral Agent for the benefit of the Secured Parties and (c) are otherwise generally available for use by the Borrower or any other Obligor.

**“ Unrestricted Subsidiary ”** means any Subsidiary of the Borrower that at the time of determination has previously been designated, and continues to be, an Unrestricted Subsidiary in accordance with Section 5.12.

**“ USA Patriot Act ”** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended from time to time.

**“ U.S. Government Obligations ”** means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agent or instrumentality thereof, provided that the full faith and credit of the United States of America is pledged in support thereof.

**“ U.S. Person ”** means any Person that is a **“ United States Person ”** as defined in Section 7701(a)(30) of the Code.

**“ Withholding Agent ”** means any Obligor and the Administrative Agent.

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Section 1.02. *Classification of Loans and Borrowings*. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g. , a “**Eurodollar Rate Loan**”). Borrowings also may be classified and referred to by Type ( e.g. , a “**Eurodollar Borrowing**”).

Section 1.03. *Terms Generally* . The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, amendments and restatements, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) (i) all references herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement and (ii) all references herein to Schedules shall be construed to refer to Schedules to the Disclosure Letter, (e) the words “**asset**” and “**property**” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

Section 1.04. *Accounting Terms; GAAP* . Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided* that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

## ARTICLE 2 LOANS AND LETTERS OF CREDIT

Section 2.01. *Revolving Loans*. (a) *Revolving Commitments* . During the Revolving Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make Revolving Loans to the Borrower in Dollars from time to time, in an aggregate amount such that, after giving effect thereto, the Total Exposure of such Lender does not exceed such Lender’s Revolving Commitment; *provided* , that after giving effect to the making of any

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Revolving Loans in no event shall the Aggregate Total Exposure exceed the Revolving Commitments then in effect. Amounts borrowed pursuant to this Section 2.01(a) may be repaid and reborrowed during the Revolving Commitment Period. Each Lender's Revolving Commitment shall expire on the Revolving Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be paid in full no later than such date.

(b) Borrowing Mechanics for Revolving Loans.

(i) Except pursuant to Section 2.03(d), Revolving Loans that are Base Rate Loans shall be made in an aggregate minimum amount of \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount, and Revolving Loans that are Eurodollar Rate Loans shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) Subject to Section 2.24, whenever the Borrower desires that Lenders make Revolving Loans, Borrower shall deliver to the Administrative Agent a fully executed and delivered Funding Notice no later than 10:00 a.m. (New York City time) at least four Business Days in advance of the proposed Credit Date in the case of a Eurodollar Rate Loan and at least two Business Days in advance of the proposed Credit Date in the case of a Revolving Loan that is a Base Rate Loan. Except as otherwise provided herein, a Funding Notice for a Revolving Loan that is a Eurodollar Rate Loan shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to make a Borrowing in accordance therewith. Notwithstanding the foregoing, the Administrative Agent may agree to shorter time periods with respect to the Funding Notice to be delivered on the Effective Date.

(iii) Notice of receipt of each Funding Notice in respect of Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, shall be provided by the Administrative Agent to each applicable Lender by telefacsimile with reasonable promptness, but (*provided* Administrative Agent shall have received such Notice by 10:00 a.m. (New York City time)) not later than 11:00 a.m. (New York City time) on the same day as the Administrative Agent's receipt of such Notice from the Borrower.

(iv) Each Lender shall make the amount of its Revolving Loan available to the Administrative Agent not later than 12:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Principal Office of the Administrative Agent. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent shall make the proceeds of such Revolving Loans available to the Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by the Administrative Agent from Lenders to be credited to the account of the Borrower at the Principal Office designated by the Administrative Agent or such other account as may be designated in writing to the Administrative Agent by the Borrower.

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**Section 2.02. Swing Line Loans .**

(a) **Swing Line Loans Commitments.** During the Revolving Commitment Period, subject to the terms and conditions hereof, Swing Line Lender agrees to make Swing Line Loans to the Borrower in the aggregate amount up to but not exceeding the Swing Line Sublimit; provided, that after giving effect to the making of any Swing Line Loan, in no event shall the Aggregate Total Exposure exceed the Revolving Commitments then in effect. Amounts borrowed pursuant to this Section 2.02 may be repaid and reborrowed during the Revolving Commitment Period. Swing Line Lender's Revolving Commitment shall expire on the Revolving Commitment Termination Date and all Swing Line Loans and all other amounts owed hereunder with respect to the Swing Line Loans and the Revolving Commitments shall be paid in full no later than such date.

**(b) Borrowing Mechanics for Swing Line Loans.**

(i) Swing Line Loans shall be made in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount.

(ii) Subject to Section 2.24, whenever the Borrower desires that Swing Line Lender make a Swing Line Loan, the Borrower shall deliver to the Administrative Agent a Funding Notice no later than 1:00 p.m. (New York City time) on the proposed Credit Date.

(iii) Swing Line Lender shall make the amount of its Swing Line Loan available to the Administrative Agent not later than 2:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent shall make the proceeds of such Swing Line Loans available to the Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swing Line Loans received by the Administrative Agent from Swing Line Lender to be credited to the account of the Borrower at the Administrative Agent's Principal Office, or to such other account as may be designated in writing to the Administrative Agent by the Borrower.

(iv) With respect to any Swing Line Loans which have not been voluntarily prepaid by the Borrower pursuant to Section 2.11, Swing Line Lender may at any time in its sole and absolute discretion, deliver to the Administrative Agent (with a copy to the Borrower), no later than 1:00 p.m. (New York City time) at least one Business Day in advance of the proposed Credit Date, a notice (which shall be deemed to be a Funding Notice given by the Borrower) requesting that each Lender holding a Revolving Commitment make Revolving Loans that are Base Rate Loans to the Borrower on such Credit Date in an amount equal to the amount of such Swing Line Loans (the "Refunded Swing Line Loans") outstanding on the date such notice is given which Swing Line Lender requests Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding, (a) the proceeds of such Revolving Loans made by the Lenders other than Swing Line Lender shall be immediately delivered by the Administrative Agent to

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Swing Line Lender (and not to the Borrower) and applied to repay a corresponding portion of the Refunded Swing Line Loans and (b) on the day such Revolving Loans are made, Swing Line Lender's Pro Rata Share of the Refunded Swing Line Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by Swing Line Lender to the Borrower, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans and shall no longer be due under the Swing Line Note of Swing Line Lender but shall instead constitute part of Swing Line Lender's outstanding Revolving Loans to the Borrower and shall be due under the Revolving Loan Note issued by the Borrower to Swing Line Lender. The Borrower hereby authorizes the Administrative Agent and Swing Line Lender to charge the Borrower's accounts with the Administrative Agent and Swing Line Lender (up to the amount available in such account) in order to immediately pay Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by Lenders, including the Revolving Loans deemed to be made by Swing Line Lender, are not sufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to Swing Line Lender should be recovered by or on behalf of the Borrower from Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Lenders in the manner contemplated by Section 2.04.

(v) If for any reason Revolving Loans are not made pursuant to Section 2.02(b)(iv) in an amount sufficient to repay any amounts owed to Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by Swing Line Lender, each Lender holding a Revolving Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swing Line Loans, and in an amount equal to its Pro Rata Share of the applicable unpaid amount together with accrued interest thereon. Upon one Business Days' notice from Swing Line Lender, each Lender holding a Revolving Commitment shall deliver to Swing Line Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Principal Office of Swing Line Lender. In the event any Lender holding a Revolving Commitment fails to make available to Swing Line Lender the amount of such Lender's participation as provided in this paragraph, Swing Line Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by Swing Line Lender for the correction of errors among banks and thereafter at the Alternate Base Rate, as applicable.

(vi) Notwithstanding anything contained herein to the contrary, (c) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to the second preceding paragraph and each Lender's obligation to purchase a participation in any unpaid Swing Line Loans pursuant to the immediately preceding paragraph shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any set off, counterclaim, recoupment, defense or other right which such Lender may have against Swing Line Lender, any Obligor or any other Person for any reason whatsoever; (ii) the occurrence or continuation of a Default or Event of Default; (iii) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any

Obligor; (iv) any breach of this Agreement or any other Loan Document by any party thereto; or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Lender are subject to the condition that Swing Line Lender had not received prior notice from the Borrower or the Required Lenders that any of the conditions under Section 4.02 to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans, were not satisfied at the time such Refunded Swing Line Loans or unpaid Swing Line Loans were made; and (d) Swing Line Lender shall not be obligated to make any Swing Line Loans (i) if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default, (ii) it does not in good faith believe that all conditions under Section 4.02 to the making of such Swing Line Loan have been satisfied or waived by the Required Lenders or (iii) at a time when any Lender is a Defaulting Lender unless Swing Line Lender has entered into arrangements satisfactory to it and the Borrower to eliminate Swing Line Lender's risk with respect to the Defaulting Lender's participation in such Swing Line Loan, including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding Swing Line Loans.

(c) *Resignation and Removal of Swing Line Lender*. Swing Line Lender may resign as Swing Line Lender upon 30 days prior written notice to the Administrative Agent, Lenders and the Borrower. Swing Line Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent and the successor Swing Line Lender. The Administrative Agent shall notify the Lenders of any such replacement of Swing Line Lender. At the time any such replacement or resignation shall become effective, (2) the Borrower shall prepay any outstanding Swing Line Loans made by the resigning or removed Swing Line Lender, (3) upon such prepayment, the resigning or removed Swing Line Lender shall surrender any Swing Line Note held by it to the Borrower for cancellation, and (4) the Borrower shall issue, if so requested by the successor Swing Line Loan Lender, a new Swing Line Note to the successor Swing Line Lender, in the principal amount of the Swing Line Loan Sublimit then in effect and with other appropriate insertions. From and after the effective date of any such replacement or resignation, (x) any successor Swing Line Lender shall have all the rights and obligations of a Swing Line Lender under this Agreement with respect to Swing Line Loans made thereafter and (y) references herein to the term "Swing Line Lender" shall be deemed to refer to such successor or to any previous Swing Line Lender, or to such successor and all previous Swing Line Lenders, as the context shall require

#### Section 2.03. *Issuance of Letters of Credit and Purchase of Participations Therein.*

(a) *Letters of Credit*. During the Revolving Commitment Period, subject to the terms and conditions hereof, Issuing Bank agrees to issue Letters of Credit (or amend, renew or extend an outstanding Letter of Credit) for the account of the Borrower in the aggregate amount up to but not exceeding the Letter of Credit Sublimit; *provided*, (i) each Letter of Credit shall be denominated in Dollars; (ii) the stated amount of each Letter of Credit shall not be less than \$250,000 or such lesser amount as is acceptable to Issuing Bank; (iii) after giving effect to such issuance, in no event shall the Aggregate Total Exposure exceed the Revolving Commitments then in effect; (iv) after giving effect to such issuance, in no event shall the Letter of Credit Usage exceed the Letter of Credit Sublimit then in effect and (v) in no event shall any Letter of Credit have an expiration date later than the earlier of (A) the fifth Business Day prior to the

Maturity Date and (B) the date which is twelve months from the original date of issuance of such Letter of Credit. Subject to the foregoing, Issuing Bank may agree that a standby Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each, unless Issuing Bank elects not to extend for any such additional period; *provided*, Issuing Bank shall not extend any such Letter of Credit if it has received written notice that an Event of Default has occurred and is continuing at the time Issuing Bank must elect to allow such extension; *provided, further*, if any Lender is a Defaulting Lender, Issuing Bank shall not be required to issue any Letter of Credit unless Issuing Bank has entered into arrangements satisfactory to it and the Borrower to eliminate Issuing Bank's risk with respect to the participation in Letters of Credit of the Defaulting Lender, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the Letter of Credit Usage.

(b) *Notice of Issuance*. Subject to Section 2.24, whenever the Borrower desires the issuance of a Letter of Credit, it shall deliver to each of the Administrative Agent and Issuing Bank an Issuance Notice and Application no later than 12:00 p.m. (New York City time) at least five Business Days in advance of the proposed date of issuance or such shorter period as may be agreed to by the Issuing Bank in any particular instance. Such Application shall be accompanied by documentary and other evidence of the proposed beneficiary's identity as may reasonably be requested by the Issuing Bank to enable the Issuing Bank to verify the beneficiary's identity or to comply with any applicable laws or regulations, including, without limitation, the USA Patriot Act or as otherwise customarily requested by the Issuing Bank. Upon satisfaction or waiver of the conditions set forth in Section 4.02, the Issuing Bank shall issue the requested Letter of Credit only in accordance with Issuing Bank's standard operating procedures. Upon the issuance of any Letter of Credit or amendment or modification to a Letter of Credit, Issuing Bank shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each Lender with a Revolving Commitment of such issuance, which notice shall be accompanied by a copy of such Letter of Credit or amendment or modification to a Letter of Credit and the amount of such Lender's respective participation in such Letter of Credit pursuant to Section 2.03(e).

(c) *Responsibility of Issuing Bank With Respect to Requests for Drawings and Payments*. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, Issuing Bank shall be responsible only to accept the documents delivered under such Letter of Credit that appear on their face to be in accordance with the terms and conditions of such Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary. As between the Borrower and Issuing Bank, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by Issuing Bank, by the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, Issuing Bank shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or

delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of Issuing Bank, including any Governmental Acts; none of the above shall affect or impair, or prevent the vesting of, any of Issuing Bank's rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by Issuing Bank under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not give rise to any liability on the part of Issuing Bank to the Borrower. Notwithstanding anything to the contrary contained in this Section 2.03(c), the Borrower shall retain any and all rights it may have against Issuing Bank for any liability arising solely out of the gross negligence or willful misconduct of Issuing Bank as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(d) *Reimbursement by the Borrower of Amounts Drawn or Paid Under Letters of Credit*. In the event Issuing Bank has determined to honor a drawing under a Letter of Credit, it shall immediately notify the Borrower and the Administrative Agent, and the Borrower shall reimburse Issuing Bank on or before the Business Day immediately following the date on which such drawing is honored (the “**Reimbursement Date**”) in an amount in Dollars and in same day funds equal to the amount of such honored drawing. If the Company fails to timely reimburse the Issuing Bank on the Reimbursement Date, the Administrative Agent shall promptly notify each Lender of the Reimbursement Date, the amount of the unreimbursed drawing (the “**Unreimbursed Amount**”), and the amount of such Lender’s Applicable Percentage thereof. In such event, the Company shall be deemed to have requested a Borrowing of Base Rate Loans to be disbursed on the Reimbursement Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.01 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the Issuing Bank or the Administrative Agent pursuant to this Section 2.03(d) may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice. Anything contained herein to the contrary notwithstanding, (i) unless the Borrower shall have notified the Administrative Agent and Issuing Bank prior to 1:00 p.m. (New York City time) on the date such drawing is honored that the Borrower intends to reimburse Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, the Borrower shall be deemed to have given a timely Funding Notice to the Administrative Agent requesting Lenders with Revolving Commitments to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars or Dollar Equivalents equal to the amount of such honored drawing, and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.02, Lenders with Revolving Commitments shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such honored drawing, the proceeds of which shall be applied directly by the Administrative Agent to reimburse Issuing Bank for the amount of such honored drawing; and *provided further*, if for any reason proceeds of Revolving Loans are not received by Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing,

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the Borrower shall reimburse Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Section 2.03(d) shall be deemed to relieve any Lender with a Revolving Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and the Borrower shall retain any and all rights it may have against any such Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.03(d).

(e) *Lenders' Purchase of Participations in Letters of Credit*. Immediately upon the issuance of each Letter of Credit, each Lender having a Revolving Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from Issuing Bank a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Pro Rata Share (with respect to the Revolving Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that the Borrower shall fail for any reason to reimburse Issuing Bank as provided in Section 2.03(d), Issuing Bank shall promptly notify each Lender with a Revolving Commitment of the unreimbursed amount of such honored drawing and of such Lender's respective participation therein based on such Lender's Pro Rata Share of the Revolving Commitments. Each Lender with a Revolving Commitment shall make available to the Administrative Agent, for the account of Issuing Bank, an amount equal to its respective participation, in Dollars and in same day funds, no later than 12:00 p.m. (New York City time) on the first Business Day (under the laws of the jurisdiction in which the Principal Office of the Administrative Agent is located) after the date notified by Issuing Bank. In the event that any Lender with a Revolving Commitment fails to make available to the Administrative Agent on such Business Day the amount of such Lender's participation in such Letter of Credit as provided in this Section 2.03(e), Issuing Bank shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by Issuing Bank for the correction of errors among banks and thereafter at the Alternate Base Rate. Nothing in this Section 2.03(e) shall be deemed to prejudice the right of any Lender with a Revolving Commitment to recover from Issuing Bank any amounts made available by such Lender to Issuing Bank pursuant to this Section 2.03 in the event that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence or willful misconduct (as determined by a final, non-appealable judgment of a court of competent jurisdiction) on the part of Issuing Bank. In the event Issuing Bank shall have been reimbursed by other Lenders pursuant to this Section 2.03(e) for all or any portion of any drawing honored by Issuing Bank under a Letter of Credit, such Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under this Section 2.03(e) with respect to such honored drawing such Lender's Pro Rata Share of all payments subsequently received by Issuing Bank from the Borrower in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Lender at its primary address set forth below its name on Appendix B or at such other address as such Lender may request.

(f) *Obligations Absolute*. The obligation of the Borrower to reimburse Issuing Bank for drawings honored under the Letters of Credit issued by it and to repay any Revolving Loans made by Lenders pursuant to Section 2.03(d) and the obligations of Lenders under Section 2.03(e) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack

of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set off, defense or other right which the Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), Issuing Bank, Lender or any other Person or, in the case of a Lender, against the Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or one of its Restricted Subsidiaries and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Borrower or any Restricted Subsidiaries; (vi) any breach hereof or any other Loan Document by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or (viii) the fact that an Event of Default or a Default shall have occurred and be continuing.

(g) *Indemnification*. Without duplication of any obligation of the Borrower under Section 11.03, in addition to amounts payable as provided herein, the Borrower hereby agrees to protect, indemnify, pay and save harmless Issuing Bank from and against any and all claims, demands, liabilities, damages and losses, and all reasonable and documented costs, charges and out-of-pocket expenses (including reasonable fees, out-of-pocket expenses and disbursements of one primary counsel (with exceptions for conflicts of interest), allocated costs of internal counsel and one local counsel in each relevant jurisdiction), which Issuing Bank may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit by Issuing Bank, other than as a result of (ii) the gross negligence or willful misconduct of Issuing Bank as determined by a final, non-appealable judgment of a court of competent jurisdiction or (A) the wrongful dishonor by Issuing Bank of a proper demand for payment made under any Letter of Credit issued by it, or (iii) the failure of Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(h) *Resignation and Removal of Issuing Bank*. An Issuing Bank may resign as Issuing Bank upon 60 days prior written notice to the Administrative Agent, Lenders and the Borrower. An Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank (*provided* that no consent will be required if the replaced Issuing Bank has no Letters of Credit or reimbursement obligations with respect thereto outstanding) and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of such Issuing Bank. At the time any such replacement or resignation shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank. From and after the effective date of any such replacement or resignation, (i) any successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "**Issuing Bank**" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement or resignation of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto to the extent that Letters of Credit issued by it remain outstanding and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement or resignation, but shall not be required to issue additional Letters of Credit.

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(i) *Cash Collateral*. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with Letter of Credit Usage representing greater than 50% of the total Letter of Credit Usage) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the Agreed L/C Cash Collateral Amount plus any accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 9.01(h) or Section 9.01(i). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for any disbursements under Letters of Credit made by it and for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the Letter of Credit Usage at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with Letter of Credit Usage representing greater than 50% of the total Letter of Credit Usage), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within ten Business Days after all Events of Default have been cured or waived.

(j) *Application*. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 2.03, the provisions of this Section 2.03 shall apply.

#### Section 2.04. *Pro Rata Shares; Availability of Funds.*

(a) *Pro Rata Shares*. All Loans shall be made, and all participations purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Revolving Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

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(b) *Availability of Funds* . Unless the Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to the Administrative Agent the amount of such Lender's Loan requested on such Credit Date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such Credit Date and the Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to the Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the customary rate set by the Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Alternate Base Rate. In the event that (i) the Administrative Agent declines to make a requested amount available to the Borrower until such time as all applicable Lenders have made payment to the Administrative Agent, (ii) a Lender fails to fund to the Administrative Agent all or any portion of the Loans required to be funded by such Lender hereunder prior to the time specified in this Agreement and (iii) such Lender's failure results in the Administrative Agent failing to make a corresponding amount available to the Borrower on the Credit Date, at the Administrative Agent's option, such Lender shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for receipt of payment by the Borrower through and including the time of the Borrower's receipt of the requested amount. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor and the Administrative Agent has already made such corresponding amount available to the Borrower, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Type of Loans. Nothing in this Section 2.04(b) shall be deemed to relieve any Lender from its obligation to fulfill its Revolving Commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder.

#### Section 2.05. *Evidence of Debt; Register; Lenders' Books and Records; Notes.*

(a) *Lenders' Evidence of Debt* . Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of the Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on the Borrower, absent manifest error; *provided* , that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Commitments or the Borrower's Obligations in respect of any applicable Loans; and *provided further* , in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) *Register* . The Administrative Agent (or its agent or sub-agent appointed by it) shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and the Revolving Commitments and Loans of, and principal amount of and interest on the Loans owing to, and drawings under Letters of Credit owing to, each Lender from time to time (the " **Register** "). The entries in the Register shall be conclusive, absent manifest error, and

the Borrower, the Administrative Agent, the Issuing Bank and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice; *provided* that the information contained in the Register which is shared with each Lender (other than the Administrative Agent and its Affiliates) shall be limited to the entries with respect to such Lender including the Revolving Commitment of, or principal amount of and stated interest on the Loans owing to such Lender. The Administrative Agent shall record, or shall cause to be recorded, in the Register the Revolving Commitments and the Loans in accordance with the provisions of Section 11.04, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on the Borrower and each Lender, absent manifest error; *provided*, that failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Commitments or the Borrower's Obligations in respect of any Loan. The Borrower hereby designates the Administrative Agent to serve as the Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.05, and the Borrower hereby agrees that, to the extent the Administrative Agent serves in such capacity, the Administrative Agent and its officers, directors, employees, agents, sub-agents and Affiliates shall constitute "**Indemnities**" entitled to the benefits of Section 11.03.

(c) *Notes*. If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent) at least two Business Days prior to the Effective Date, or at any time thereafter, the Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 11.04) on the Effective Date (or, if such notice is delivered after the Effective Date, promptly after the Borrower's receipt of such notice) a note or notes in substantially the form of Exhibit D to evidence such Lender's Revolving Loan, New Revolving Loan or Swing Line Loan, as the case may be (each, a "**Note**").

#### Section 2.06. *Interest on Loans.*

(a) Except as otherwise set forth herein, each Type of Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) In the case of Revolving Loans:

- (A) if a Base Rate Loan, at the Alternate Base Rate plus the Base Rate Margin; or
- (B) if a Eurodollar Rate Loan, at the LIBO Rate plus the LIBO Rate Margin;

(ii) in the case of Swing Line Loans, at the Alternate Base Rate plus the Base Rate Margin; and

(b) The basis for determining the rate of interest with respect to any Loan (except a Swing Line Loan which can be made and maintained as Base Rate Loans only), and the Interest

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Period with respect to any Eurodollar Rate Loan shall be selected by the Borrower and notified to the Administrative Agent and Lenders pursuant to the applicable Funding Notice or Interest Election Request, as the case may be.

(c) In the event the Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or Interest Election Request, such Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event the Borrower fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Funding Notice or Interest Election Request, the Borrower shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing) to the Borrower and each Lender

(d) Interest payable pursuant to Section 2.06(a) shall be computed (i) in the case of Base Rate Loans on the basis of a 365 day or 366 day year and (ii) in the case of Eurodollar Rate Loans, on the basis of a 360 day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; *provided*, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such payment date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans; *provided, however,* with respect to any voluntary prepayment of a Base Rate Loan, accrued interest shall instead be payable on the applicable Interest Payment Date.

(f) The Borrower agrees to pay to Issuing Bank, with respect to drawings honored under any Letter of Credit, interest on the amount paid by Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of the Borrower at a rate equal to (i) for the period from the date such drawing is honored to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans, and (ii) thereafter, a rate which is 2% per annum in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans or Eurodollar Rate Loans (as applicable).

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(g) Interest payable pursuant to Section 2.06(f) shall be computed on the basis of a 365/366 day year for the actual number of days elapsed in the period during which it accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by Issuing Bank of any payment of interest pursuant to Section 2.06(f), Issuing Bank shall distribute to the Administrative Agent, for the account of each Lender, out of the interest received by Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event Issuing Bank shall have been reimbursed by Lenders for all or any portion of such honored drawing, Issuing Bank shall distribute to the Administrative Agent, for the account of each Lender which has paid all amounts payable by it under Section 2.03(e) with respect to such honored drawing such Lender's Pro Rata Share of any interest received by Issuing Bank in respect of that portion of such honored drawing so reimbursed by Lenders for the period from the date on which Issuing Bank was so reimbursed by Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by the Borrower.

**Section 2.07. [Reserved] .**

**Section 2.08. *Default Interest* .** Upon the occurrence and during the continuance of an Event of Default, or any Default relating to payment, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on demand at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans that are Revolving Loans); provided, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.08 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lender.

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## Section 2.09. Fees.

(a) The Borrower agrees to pay to Lenders (other than Defaulting Lenders) having Revolving Exposure:

(i) unused commitment fees equal to (A) the average of the daily difference between (1) the Revolving Commitments and (2) the aggregate principal amount of (x) all outstanding Revolving Loans (for the avoidance of doubt, excluding Swing Line Loans) plus (y) the Letter of Credit Usage, *multiplied by* (B) the Commitment Fee Rate (calculated on an actual/360-day basis); and

(ii) a Letter of Credit participation fee equal to the Commitment Fee Rate, *multiplied by* the aggregate undrawn amount of the Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination), calculated on an actual/360-day basis.

All fees referred to in this Section 2.09(a) shall be paid to the Administrative Agent at its Principal Office and upon receipt, the Administrative Agent shall promptly distribute to each Lender its Pro Rata Share thereof.

(b) The Borrower agrees to pay directly to Issuing Bank, for its own account, the following fees:

(i) a fronting fee equal to 0.125%, per annum, *multiplied by* the face amount of such Letters of Credit issued during such year without regard to whether any such Letter of Credit remains outstanding; and

(ii) such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with Issuing Bank's standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

(c) All fees referred to in Section 2.09(a) and Section 2.09(b)(i) shall be calculated on the basis of a 360 day year and the actual number of days elapsed (including the first day but excluding the last day) and shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year during the Revolving Commitment Period, commencing on the first such date to occur after the Effective Date, and on the Revolving Commitment Termination Date.

(d) The Borrower agrees to pay on the Effective Date an upfront fee to the Administrative Agent for the account of each Lender in amounts separately agreed in writing by the Borrower.

(e) In addition to any of the foregoing fees, the Borrower agrees to pay to Agents such other fees in the amounts and at the times separately agreed upon.

Section 2.10. *Prepayment of Loans.* Except as otherwise provided herein, the Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (subject to the requirements of Section 2.11), subject to prior notice as provided for herein.

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Section 2.11. *Voluntary Prepayments/Commitment Reductions.*

(a) Voluntary Prepayments.

(i) Any time and from time to time:

(A) with respect to Base Rate Loans, the Borrower may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount;

(B) with respect to Eurodollar Rate Loans, the Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount; and

(C) with respect to Swing Line Loans, the Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of \$500,000, and in integral multiples of \$100,000 in excess of that amount.

(ii) All such prepayments shall be made:

(A) upon not less than one Business Day's prior written notice in the case of Base Rate Loans;

(B) upon not less than three Business Days' prior written notice in the case of Eurodollar Rate Loans; and

(C) upon written or notice on the date of prepayment, in the case of Swing Line Loans;

in each case given to the Administrative Agent or Swing Line Lender, as the case may be, by 12:00 p.m. (New York City time) on the date required (and the Administrative Agent will promptly transmit such original notice by telefacsimile to each Lender or Swing Line Lender, as the case may be). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein; provided, however, if a notice of prepayment is given in connection with a conditional notice of termination, such notice may be revoked, subject to Section 2.16(c). Any such voluntary prepayment shall be applied as specified in Section 2.13 (a).

(b) Voluntary Commitment Reductions.

(i) The Borrower may, upon not less than three Business Days' prior written notice to the Administrative Agent (which original written notice the Administrative Agent will promptly transmit by telefacsimile to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Commitments in an amount up to the amount by which the Revolving Commitments exceed the Aggregate Total Exposure at the time of such proposed termination or reduction; *provided*, any such partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount.

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(ii) The Borrower's notice to the Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in the Borrower's notice and shall reduce the Revolving Commitment of each Lender proportionately to its Pro Rata Share thereof; provided, however, if a notice of commitment reduction is given in connection with a conditional transaction or financing, such notice may be revoked, subject to Section 2.16(c).

(iii) If, after giving effect to any reduction of the Revolving Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Commitments, such Sublimit shall be automatically reduced by the amount of such excess.

#### *Section 2.12. Mandatory Prepayments/Commitment Reductions .*

(a) The Revolving Commitments shall be terminated in the amount of any Net Asset Sale Cash Proceeds from any Asset Sale, and no later than the fifth Business Day following the date of receipt by the Borrower or any of its Restricted Subsidiaries of any Net Asset Sale Cash Proceeds from any Asset Sale, the Borrower shall apply all such Net Asset Sale Cash Proceeds as set forth in Section 2.13(a); *provided* that, if the Borrower provides written notice to the Administrative Agent within three Business Days of its receipt of any such Net Asset Sale Cash Proceeds of its intention to undertake such an investment, then so long as no Default shall have occurred and be continuing, the Borrower shall have the option, directly or indirectly or through one or more of its Restricted Subsidiaries, to invest such Net Asset Sale Cash Proceeds within 12 months of receipt thereof in long term productive assets of the general type used in the business of the Borrower and its Restricted Subsidiaries.

(b) If at any time, the Aggregate Total Exposure exceeds the aggregate Revolving Commitments then in effect, the Borrower shall forthwith prepay *first*, the Swing Line Loans, and *second*, the Revolving Loans, and *third* Cash Collateralize the outstanding amount of Letter of Credit Usage at the Agreed L/C Cash Collateral Amount, to the extent necessary so that the Aggregate Total Exposure shall not exceed the Revolving Commitments then in effect (or, in the case of Letter of Credit Usage, such amounts are fully Cash Collateralized in compliance with the Agreed Cash Collateral Amount).

#### *Section 2.13. Application of Prepayments/Reductions.*

(a) Any prepayment of any Loan pursuant to Section 2.11 or Section 2.12 shall be applied as specified by the Borrower in the applicable notice of prepayment; *provided*, in the event the Borrower fails to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied as follows:

first, to repay outstanding Swing Line Loans to the full extent thereof;

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*second*, to repay outstanding Base Rate Loans to the full extent thereof; and

*third*, to repay outstanding Eurodollar Rate Loans to the full extent thereof, as the Administrative Agent may determine.

(b) Application of Prepayments of Loans to Base Rate Loans and Eurodollar Rate Loans. Considering each Type of Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.16(c).

*Section 2.14. General Provisions Regarding Payments.*

(a) All payments by the Borrower of principal, interest, fees and other Obligations shall be made in Dollars then owed in same day funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to the Administrative Agent not later than 9:00 a.m. (New York City time); for purposes of computing interest and fees, funds received by the Administrative Agent after that time on such due date shall be deemed to have been paid by the Borrower on the next succeeding Business Day.

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest and any other related amounts owed, including pursuant to Section 2.16(c), on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) The Administrative Agent (or its agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by the Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Interest Election Request is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, the Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "Interest Period" as they may apply to Loans, whenever any payment to be made hereunder with respect to any Loan shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the Revolving Commitment fees hereunder.

(f) The Borrower hereby authorizes the Administrative Agent to charge the Borrower's accounts with the Administrative Agent in order to cause timely payment to be made to the Administrative Agent of all principal, interest, fees and expenses due hereunder (subject to sufficient funds being available in its accounts for that purpose).

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(g) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Applicable Percentage of such Borrowing, the Administrative Agent may assume that such Lender has made such Applicable Percentage available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its Applicable Percentage of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to Base Rate Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

**Section 2.15. Interest Elections.**

(a) Each Borrowing initially shall be of the Type specified in the Funding Notice and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Funding Notice. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated among the Lenders holding the Loans comprising such Borrowing in accordance with their respective Applicable Percentages, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Funding Notice would be required under Section 2.01(b) if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic request shall be irrevocable and shall be confirmed promptly by hand delivery or telexcopy to the Administrative Agent of a written request (an "**Interest Election Request**") in substantially the form of Exhibit C attached hereto and signed by the Borrower.

(c) Each written Interest Election Request shall specify the following information in compliance with Section 2.01(b):

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

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- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;
  - (iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and
  - (iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Borrowing with an Interest Period of one month's duration. Notwithstanding any contrary provision hereof, if a Default has occurred and is continuing, (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

#### *Section 2.16. Making or Maintaining Eurodollar Rate Loans*

(a) *Inability to Determine Applicable Interest Rate*. In the event that the Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto, absent manifest error), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of Adjusted LIBO Rate, the Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Eurodollar Rate Loans until such time as the Administrative Agent notifies the Borrower and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Interest Election Request given by the Borrower with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by the Borrower or, at the Borrower's request, made as a Base Rate Loan.

(b) *Illegality or Impracticability of Eurodollar Rate Loans*. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto) that the making, maintaining or continuation of its Eurodollar Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any

such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an “**Affected Lender**” and it shall on that day give notice (by e-mail, telefacsimile or by telephone confirmed in writing) to the Borrower and the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each other Lender). If the Administrative Agent receives a notice from (x) any Lender pursuant to clause (i) of the preceding sentence or (y) a notice from Lenders constituting the Required Lenders pursuant to clause (ii) of the preceding sentence, then (i) the obligation of the Lenders (or, in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender) to make Loans as, or to convert Loans to, Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by each Affected Lender, (ii) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by the Borrower pursuant to a Funding Notice or an Interest Election Request, the Lenders (or in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender) shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (iii) the Lenders’ (or in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender’s) obligations to maintain their respective outstanding Eurodollar Rate Loans (the “**Affected Loans**”) shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (iv) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by the Borrower pursuant to a Funding Notice or an Interest Election Request, the Borrower shall have the option, subject to the provisions of Section 2.16(c), to rescind such Funding Notice or Interest Election Request as to all Lenders by giving written or telephonic notice (promptly confirmed by delivery of written notice thereof) to the Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission the Administrative Agent shall promptly transmit to each other Lender).

(c) *Compensation for Breakage or Non Commencement of Interest Periods*. The Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth in reasonable detail the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or payable by such Lender to Lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in an Interest Election Request or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Eurodollar Rate Loans (including in connection with the replacement of a Lender pursuant to Section 2.20) occurs on a date prior to the last day of an Interest Period applicable to that Loan; or (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by the Borrower.

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(d) *Booking of Eurodollar Rate Loans*. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

**Section 2.17. Increased Costs.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the Issuing Bank or the applicable interbank market any other condition, cost or expense (other than Indemnified Taxes and Excluded Taxes) affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making or maintaining any Eurodollar Rate Loan (or, in the case of a Change in Law with respect to Taxes, any Loan) or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Revolving Commitments hereunder or the Loans made by, or participations in Letters of Credit held by, such Lender to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

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(c) A certificate of a Lender or the Issuing Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 15 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefore; *provided further* that, if the Change in Law giving rise to such increased costs or reductions is retroactive (or has retroactive effect), then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

#### Section 2.18. Taxes .

(a) For purposes of this Section 2.18, the term "Lender" includes any Issuing Bank and the term "applicable law" includes FATCA.

(b) Any and all payments by or on account of any obligation of any Obligor under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) The Obligors shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) The Obligors shall jointly and severally indemnify each Recipient, within 10 days after demand therefore, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient

and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability shall be delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, and such shall be conclusive absent manifest error.

(e) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Obligor has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Obligors to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) As soon as practicable after any payment of Taxes by any Obligor to a Governmental Authority pursuant to this Section 2.18, such Obligor shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.18(g)(ii) (A), (ii)(B), (ii)(D) and (iii) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

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(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN (or W-8BEN-E, if applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or W-8BEN-E, if applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit M-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN (or W-8BEN-E, if applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or W-8BEN-E, if applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-2 or Exhibit M-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-4 on behalf of each such direct and indirect partner;

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(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the applicable indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the

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indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Each party's obligations under this Section 2.18 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(j) For purposes of determining withholding Taxes imposed under FATCA, from and after the Amendment No. 1 Effective Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) each of the Loans and the Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

*Section 2.19. Pro Rata Treatment; Sharing of Set-offs.*

(a) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(b) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements

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may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(c) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(d) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.23(b) or paragraph (d) of this Section, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

*Section 2.20. Mitigation Obligations; Replacement of Lenders.* (a) If any Lender requests compensation under Section 2.16 or Section 2.17, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.18, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.16, Section 2.17 or Section 2.18, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.17, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, (iii) any Lender is a Defaulting Lender or a Non-Consenting Lender or (iv) any Lender is a Declining Lender under Section 2.21, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents,

from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.18, such assignment will result in a reduction in such compensation or payments, (iv) such assignment does not conflict with applicable law and (v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, (x) the applicable assignee shall have consented to, or shall consent to, the applicable amendment, waiver or consent and (y) the Borrower exercises its rights pursuant to this clause (b) with respect to all Non-Consenting Lenders relating to the applicable amendment, waiver or consent. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 2.21. *[Reserved].*

Section 2.22. *Defaulting Lenders*. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.09 (a);

(b) the Revolving Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 11.02); *provided*, that this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of each Lender or each Lender affected thereby;

(c) if any Swing Line Exposure or Letter of Credit Usage exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the Swing Line Exposure and Letter of Credit Usage of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that (x) the sum of all non-Defaulting Lenders' Revolving Exposures plus such Defaulting Lender's Swing Line Exposure and Letter of Credit Usage does not exceed the total of all non-Defaulting Lenders' Revolving Commitments, (y) the sum of any non-Defaulting Lender's Revolving Exposure plus its Pro Rata Share of such Defaulting Lender's Swing Line Exposure and Letter of Credit Usage does not exceed such non-Defaulting Lender's Revolving Commitment and (z) the conditions set forth in Section 4.02 are satisfied at such time;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by Administrative Agent (x) first, prepay such Swing Line Exposure and (y) second, cash collateralize for the benefit of the Issuing Bank only the Borrower's obligations

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corresponding to such Defaulting Lender's Letter of Credit Usage (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.03(i) for so long as such Letter of Credit Usage is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's Letter of Credit Usage pursuant to clause (i) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.09(a)(ii) with respect to such Defaulting Lender's Letter of Credit Usage during the period such Defaulting Lender's Letter of Credit Usage is cash collateralized;

(iv) if the Letter of Credit Usage of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Section 2.09(a)(i) and Section 2.09(a)(ii) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's Letter of Credit Usage is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.09(a)(ii) with respect to such Defaulting Lender's Letter of Credit Usage shall be payable to the Issuing Bank until and to the extent that such Letter of Credit Usage is reallocated and/or cash collateralized; and

(d) so long as such Lender is a Defaulting Lender, the Swing Line Lender shall not be required to fund any Swing Line Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding Letter of Credit Usage will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.22(c), and participating interests in any newly made Swing Line Loan or any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.22(c)(i) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event with respect to a Parent of any Lender shall occur following the date hereof and for so long as such event shall continue or (ii) the Swing Line Lender or the Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Swing Line Lender shall not be required to fund any Swing Line Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Swing Line Lender or the Issuing Bank, as the case may be, shall have entered into arrangements with the Borrower or such Lender, reasonably satisfactory to the Swing Line Lender or the Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that the Administrative Agent, the Borrower, the Swing Line Lender and the Issuing Bank each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swing Line Exposure and Letter of Credit Usage of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swing Line Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

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**Section 2.23. Incremental Facilities.**

(a) The Borrower may by written notice to the Administrative Agent elect to request prior to the Revolving Commitment Termination Date, an increase to the existing Revolving Loan Commitments (any such increase, the “**New Revolving Loan Commitments**”) by an amount not in excess of \$50,000,000 in the aggregate and not less than \$10,000,000 individually (or such lesser amount which shall be approved by the Administrative Agent). Each such notice shall specify (A) the date (each, an “**Increased Amount Date**”) on which the Borrower proposes that the New Revolving Loan Commitments shall be effective, and (B) the identity of each Lender or other Person that is an Eligible Assignee (each, a “**New Revolving Loan Lender**”) to whom the Borrower proposes any portion of such New Revolving Loan Commitments be allocated and the amounts of such allocations. The Borrower shall first seek New Revolving Loan Commitments from the then existing Lenders (each of whom shall be entitled to agree or decline to participate in its sole discretion) and, thereafter, from additional banks and financial institutions and other institutional lenders, reasonably acceptable to the Administrative Agent, who will become Lenders in connection therewith. Such New Revolving Loan Commitments shall become effective, as of such Increased Amount Date; *provided* that (1) both before and after giving effect to such New Revolving Loan Commitments, as applicable, each of the conditions set forth in Section 4.02 (with the exception of Section 4.02(a)) shall be satisfied, including, for the avoidance of doubt, the making of the representations and warranties contained in Section 3.04(b) and compliance with the financial covenant contained in Article 7 hereof; and (2) any New Revolving Loans shall be on the terms set forth in (including, for the avoidance of doubt, with respect to maturity date and pricing) and pursuant to the Loan Documents, with such additional amendments thereto as may be necessary or appropriate in the judgment of the Administrative Agent to effect such New Revolving Loan Commitments. Each joinder agreement with a New Revolving Loan Lender not previously a Lender shall be subject to the consent (not to be unreasonably withheld or related) of the Issuing Bank and the Swing Line Lender.

(b) On any Increased Amount Date on which New Revolving Loan Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (i) each of the Lenders with Revolving Exposure shall assign to each of the New Revolving Loan Lenders, and each of the New Revolving Loan Lenders shall purchase from each of the Revolving Loan Lenders, at the principal amount thereof (together with accrued interest), such interests in the Revolving Loans outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans will be held by existing Revolving Loan Lenders and New Revolving Loan Lenders ratably in accordance with their Revolving Loan Commitments after giving effect to the addition of such New Revolving Loan Commitments to the Revolving Loan Commitments, (ii) each New Revolving Loan Commitment shall be deemed for all purposes a Revolving Loan Commitment and each Loan made thereunder (a “New Revolving Loan”) shall be deemed, for all purposes, a Revolving Loan and (iii) each New Revolving Loan Lender shall become a Lender with respect to the New Revolving Loan Commitment and all matters relating thereto. For the avoidance of doubt, any costs associated with the foregoing and referred to in Section 2.16 shall be payable by the Borrower.

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(c) The Administrative Agent shall notify Lenders promptly upon receipt of the Borrower's notice of each Increased Amount Date and in respect thereof (x) the New Revolving Loan Commitments and the New Revolving Loan Lenders and (y) in the case of each notice to any Lender with Revolving Exposure, the respective interests in such Lender's Revolving Loans, in each case subject to the assignments contemplated by this Section.

**Section 2.24. Notices .** Any Notice shall be executed by an Authorized Officer in a writing delivered to the Administrative Agent. In lieu of delivering a Notice, the Borrower may give the Administrative Agent telephonic notice by the required time of any proposed borrowing, conversion/continuation or issuance of a Letter of Credit, as the case may be; provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to the Administrative Agent on or before the close of business on the date that the telephonic notice is given. In the event of a discrepancy between the telephone notice and the written Notice, the written Notice shall govern. Neither the Administrative Agent nor any Lender shall incur any liability to the Borrower in acting upon any telephonic notice referred to above that the Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of the Borrower or for otherwise acting in good faith.

## ARTICLE 3 REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

**Section 3.01. Organization; Powers .** Each of the Borrower and its Subsidiaries is duly organized, validly existing and in good standing (to the extent the concept is applicable in such jurisdiction) under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

**Section 3.02. Authorization; Enforceability .** The Transactions are within the Borrower's and each Guarantor's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational and, if required, equity holder action. Each of the Borrower and the Guarantors has duly executed and delivered each of the Loan Documents to which it is party, and each of such Loan Documents constitute its legal, valid and binding obligations, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**Section 3.03. Governmental Approvals; No Conflicts .** The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and

effect and (ii) those approvals, consents, registrations, filings or other actions, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect, (b) except as could not reasonably be expected to have a Material Adverse Effect, will not violate any applicable law or regulation or any order of any Governmental Authority, (c) will not violate any charter, by-laws or other organizational document of the Borrower or any of its Subsidiaries, (d) except as could not reasonably be expected to have a Material Adverse Effect, will not violate or result in a default under any indenture, agreement or other instrument (other than the agreements and instruments referred to in clause (c)) binding upon the Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries, and (e) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries.

*Section 3.04. Financial Condition; No Material Adverse Change.*

(b) The Borrower has heretofore furnished to the Administrative Agent its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal years ended 2012 and 2011, reported on by PricewaterhouseCoopers and (ii) as of and for the fiscal year ended December 31, 2013 and the fiscal quarter ended March 31, 2014, certified by a Financial Officer. As of the Amendment No. 1 Effective Date, other than as set forth on Schedule 3.04, such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since March 31, 2014, no event, development or circumstance exists or has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

*Section 3.05. Properties .* (a) Each of the Borrower and its Subsidiaries has good and marketable title to, or valid leasehold interests in or rights to use, all its real and tangible personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes. Such properties and assets are free and clear of Liens (other than Liens permitted by Section 6.02).

(a) Each of the Borrower and its Subsidiaries owns or is licensed to use or otherwise has the rights to use, all trademarks, tradenames, copyrights, patents, software, internet domain names, trade secrets, know-how and other intellectual property, including any registrations and applications for registration of, and all goodwill associated with, the foregoing (“ **Intellectual Property Rights** ”), reasonably necessary to the conduct of their respective businesses as currently conducted, and to the knowledge of the Borrower, the use thereof by the Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except to the extent such failure to own or be licensed or otherwise have the rights to use any such Intellectual Property Rights, or any such infringements, that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) As of the Amendment No. 1 Effective Date, Schedule 5.10 contains a true, accurate and complete list of all Material Real Estate Assets.

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**Section 3.06. *Litigation and Environmental Matters.*** (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, affecting the Borrower or threatened against the Borrower or any of its Subsidiaries (i) that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement, any other Loan Document or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, or (iii) has received notice of any claim with respect to any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in or could reasonably be expected to result in a Material Adverse Effect.

**Section 3.07. *No Defaults .*** Neither the Borrower nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its material Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except in each case or in the aggregate, where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

**Section 3.08. *Compliance with Laws and Agreements.*** Each of the Borrower and its Subsidiaries is in compliance with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

**Section 3.09. *Investment Company Status.*** None of the Borrower or any Subsidiary is or is required to be registered as an “**investment company**” under the Investment Company Act of 1940.

**Section 3.10. *Taxes .*** Except as would not reasonably be expected to result in a Material Adverse Effect, (i) each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed with respect to income, properties or operations of the Borrower and its Subsidiaries and (ii) such returns accurately reflect in all material respects all liability for Taxes of the Borrower and its Subsidiaries as a whole for the periods covered thereby.

**Section 3.11. *Disclosure .*** All written information or oral information provided in formal presentations or in any meeting or conference call with Lenders (other than any projected financial information and other than information of a general economic or industry specific nature) furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder or under any Loan

Document (as modified or supplemented by other information so furnished and when taken as a whole) when furnished, does not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not materially misleading; *provided* that, with respect to any projected financial information or other forward looking information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made (it being understood that such projected financial information is subject to significant uncertainties and contingencies, any of which are beyond the Borrower's control, that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projected financial information may differ significantly from the projected results and such differences may be material).

Section 3.12. *Subsidiaries* . Schedule 3.12 sets forth as of the Amendment No. 1 Effective Date a list of all Subsidiaries and the percentage ownership (directly or indirectly) of the Borrower therein. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the shares of capital stock or other ownership interests of all Subsidiaries of the Borrower are fully paid and non-assessable and are owned by the Borrower, directly or indirectly, free and clear of all Liens other than Liens permitted under Section 6.02.

Section 3.13. *ERISA* .

(a) Each Plan is in compliance in form and operation with its terms and with ERISA and the Code (including without limitation the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations, except where any failure to comply would not reasonably be expected to result in a Material Adverse Effect. Each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all applicable tax law changes or is comprised of a master or prototype plan that has received a favorable opinion letter from the IRS, and, nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of a Plan with no determination, nothing has occurred that would materially adversely affect the issuance of a favorable determination letter or otherwise materially adversely affect such qualification). No Non-U.S. Plan Event has occurred, or is reasonably expected to occur, other than as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) None of the Borrower, Guarantor, any Restricted Subsidiary or any ERISA Affiliate (nor any predecessor of any such entity) sponsors, maintains, administers or contributes to (or has any obligation to contribute to) or has within the past six years sponsored, maintained, administered or contributed to (or had any obligation to contribute to) or otherwise have any liability or reasonable expectation of liability with respect to any Pension Plan.

(c) None of the Borrower, Guarantor, any Restricted Subsidiary or any ERISA Affiliate (nor any predecessor of any such entity) is making or accruing an obligation to make contributions, or has in the past six years made or accrued an obligation to make contributions to any Multiemployer Plan.

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(d) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Borrower or any Restricted Subsidiary, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to result in a Material Adverse Effect.

(e) Each Non-U.S. Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except as would not reasonably be expected to result in a Material Adverse Effect. All contributions required to be made with respect to a Non-U.S. Plan have been timely made, except as would not reasonably be expected to result in a Material Adverse Effect. None of the Borrower, Guarantor nor any Restricted Subsidiary has incurred any obligation in connection with the termination of, or withdrawal from, any Non-U.S. Plan, except as would not reasonably be expected to result in a Material Adverse Effect. The present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan, determined as of the end of the Borrower's most recently ended fiscal year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities to the extent assets equivalent to such liabilities are required to be maintained by applicable law.

**Section 3.14. Solvency .** As of the Amendment No. 1 Effective Date, the Borrower and its Subsidiaries on a consolidated basis, are, and after giving effect to the incurrence of all Indebtedness and other Obligations being incurred in connection herewith will be, Solvent.

**Section 3.15. OFAC .** The Borrower, its Subsidiaries and their respective officers, directors and employees and to the knowledge of the Borrower, their respective agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary or any of their respective directors, officers or employees, or (b) any agent or affiliate of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or Sanctions.

**Section 3.16. Anti-Corruption Laws.** No part of the proceeds of the Loans or any Letter of Credit will be used, directly or indirectly, for any payments to any officer or employee of a government or government-controlled entity, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder or any other Anti-Corruption Laws.

**Section 3.17. USA Patriot Act.** To the extent applicable, each Obligor is in compliance, in all material respects, with the USA Patriot Act.

**Section 3.18. [Reserved.]**

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**Section 3.19. Federal Reserve Regulations.** None of the Borrower or any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock. No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board of Governors, including Regulation T, U or X.

**Section 3.20. Security Documents.**

(a) The Security Agreement, upon execution and delivery thereof by the parties thereto, will create in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral (as defined in the Security Agreement) and the proceeds thereof and (i) when the Pledged Collateral (as defined in the Security Agreement) is delivered to the Administrative Agent (together with a properly completed and signed stock power or endorsement), the Lien created under the Security Agreement shall constitute a fully perfected first priority Lien on, and security interest in, all right, title and interest of the Obligors in such Pledged Collateral to the extent security interests in such Pledged collateral can be perfected by such delivery, prior and superior in right to any other Person, and (ii) when financing statements in appropriate form are filed in the offices specified in the Perfection Certificate, the Lien created under the Security Agreement will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Obligors in such Collateral to the extent security interests in such Collateral can be perfected by the filing of financing statements, prior and superior in right to any other Person, other than with respect to Liens expressly permitted by Section 6.02.

(b) Upon the recordation of the Security Agreement (or a short-form security agreement in form and substance reasonably satisfactory to the Borrower and the Administrative Agent) with the United States Patent and Trademark Office and the United States Copyright Office, together with the financing statements in appropriate form filed in the offices specified in the Perfection Certificate, the Lien created under the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Obligors in the United States registered and applied for Intellectual Property (as defined in the Security Agreement) in which a security interest may be perfected by such filing in the United States and its territories and possessions, in each case prior and superior in right to any other Person, other than with respect to Liens expressly permitted by Section 6.02 (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks and patents, trademark and patent applications and registered copyrights acquired by the Obligors after the date hereof).

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## ARTICLE 4 C CONDITIONS

Section 4.01. *Effective Date*. This Agreement shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 11.02):

- (a) The Administrative Agent (or its counsel) shall have received from each party hereto a counterpart of this Agreement and each Loan Document to which any Obligor is a party, signed on behalf of such party.
- (b) The Administrative Agent shall have received a Note executed by the Borrower in favor of each Lender requesting a Note in advance of the Effective Date.
- (c) The Administrative Agent shall have received favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the date of the date hereof) of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP and Wollmuth Maher & Deutsch LLP, in form and substance reasonably satisfactory to the Administrative Agent. The Borrower and the Administrative Agent (as applicable) hereby requests such counsel to deliver such opinion.
- (d) The Administrative Agent shall have received (i) certified copies of the resolutions of the board of directors of the each Obligor approving the transactions contemplated by the Loan Documents to which such Obligor is a party and the execution and delivery of such Loan Documents to be delivered by such Obligor on the Effective Date, and all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to the Loan Documents and (ii) all other documents reasonably requested by the Administrative Agent relating to the organization, existence and good standing of such Obligor and authorization of the transactions contemplated hereby (including, but not limited to, a copy of the up-to-date constitutional documents of each Obligor).
- (e) The Administrative Agent shall have received a certificate of a Responsible Officer of each Obligor certifying the names and true signatures of the officers of the Borrower authorized to sign the Loan Documents to which it is a party, to be delivered by such Obligor on the Effective Date and the other documents to be delivered hereunder on the Effective Date.
- (f) The Administrative Agent shall have received a certificate, dated the Effective Date and signed on behalf of the Borrower by a Responsible Officer of the Borrower, confirming compliance with the conditions set forth in paragraphs (b) and (c) of Section 4.02 as of the Effective Date.
- (g) The Collateral Documents shall have been duly executed by each Obligor that is to be a party thereto and shall be in full force and effect on the Effective Date. The Administrative Agent on behalf of the Secured Parties shall have a first priority security interest in the Collateral (subject to Liens permitted by Section 6.02).
- (h) The Collateral Agent shall have received (i) from each party hereto a counterpart of each Collateral Document to which such party is a party, signed on behalf of such party and (ii) all other Collateral Documents, including as applicable, with respect to any Collateral Document, evidence of the filing thereof or the taking of other action with respect thereto, necessary to create and perfect the Collateral Agent's first priority security interest and lien on the Collateral.
- (i) The Lenders, the Administrative Agent and the Arrangers shall have received all fees required to be paid by the Borrower on the Effective Date, and all expenses required to be reimbursed by the Borrower for which invoices have been presented at least three Business Days prior to the Effective Date, on or before the Effective Date.

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(j) The Administrative Agent shall have received, to the extent reasonably requested by any of the Lenders at least five Business Days prior to the Effective Date, all documentation and other information required by bank regulatory authorities under applicable “**know-your-customer**” and anti-money laundering rules and regulations, including the USA Patriot Act.

(k) The Administrative Agent shall have received an executed Solvency Certificate in form, scope and substance reasonably satisfactory to the Administrative Agent and demonstrating that the Borrower and its Restricted Subsidiaries on a consolidated basis, are, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection herewith will be, Solvent.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Without limiting the generality of the provisions of Article 10, for purposes of determining compliance with the conditions specified in this Section, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

**Section 4.02. Each Credit Event.** The obligation of each Lender to make a Loan on the occasion of any Borrowing (other than a Borrowing consisting solely of a conversion of Loans of one Type to another Type or any Issuing Bank to issue or amend or extend a Letter of Credit, is subject to the satisfaction of the following conditions:

- (a) The Administrative Agent shall have received a fully executed and delivered Funding Notice or Issuance Notice, as the case may be;
- (b) The representations and warranties of the Borrower set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of such Credit Event; *provided* that (i) to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date and (ii) in each case such materiality qualifier shall not be applicable to any representations and warranties that are already qualified by materiality in the text thereof.
- (c) At the time of and immediately after giving effect to such Credit Event, no Default shall have occurred and be continuing.
- (d) On or before the date of issuance of any Letter of Credit, the Administrative Agent shall have received all other information required by the applicable Issuance Notice and Application.

Each Credit Event shall be deemed to constitute a representation and warranty by the Borrower that the conditions specified in paragraphs (b) and (c) of this Section 4.02 have been satisfied as of the date thereof.

**Section 4.03. Additional Condition.** Notwithstanding anything to the contrary herein, but without limiting any other condition or requirement for the making of any Loan or the issuance of any Letter of Credit, the obligation of each Lender to make any Loan, or any Issuing Bank to issue any Letter of Credit, after the Amendment No. 1 Effective Date, but only with respect to the first Loan or Letter of Credit requested after the Amendment No. 1 Effective Date, shall be subject to receipt by the Administrative Agent of customary lien search results in form and substance satisfactory to the Administrative Agent.

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**ARTICLE 5**  
**A FFIRMATIVE C OVENANTS**

Until the Revolving Commitments have expired or been terminated, the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and the cancellation or expiration or Cash Collateralization of all Letters of Credit on terms reasonably satisfactory to the Issuing Bank in an amount equal to 105% of all Letter of Credit Usage, the Borrower and each other Obligor covenants and agrees with the Lenders that:

*Section 5.01. Financial Statements; Ratings Change and Other Information.* The Borrower will furnish to the Administrative Agent (for distribution to each Lender):

- (a) within 120 days after the end of each fiscal year of the Borrower (or, in the case of the fiscal year ended December 31, 2013, by not later than June 15, 2014), its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by PricewaterhouseCoopers, or other independent public accountants of recognized international standing (without a "going concern" or like qualification or exception (other than a qualification related to the maturity of the Revolving Commitments and the Loans at the Maturity Date) and, except in the case of any Subsidiary or business acquired by the Borrower or the Subsidiaries, in respect of events prior to the acquisition thereof, without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;
- (b) within 60 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;
- (c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower in substantially the form of Exhibit F attached hereto (i) certifying as to whether a Default has occurred and is continuing as of the date thereof and, if a Default has occurred and is continuing as of the date thereof, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) if and to the extent that any change in GAAP that has occurred since the date of the audited financial statements referred to in Section 3.04 had an impact on such financial statements, specifying the effect of such change on the financial statements accompanying such certificate and (iii) setting forth the Total Net Leverage Ratio calculation;

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(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with any national securities exchange or regulator, including without limitation the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of its functions in each case that is not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) promptly following any request in writing (including any electronic message) therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request, subject to the restrictions in the last section of Section 5.06; and

(f) each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.01(a), the Borrower shall deliver to the Collateral Agent a certificate of its Authorized Officer (i) either confirming that there has been no change in the information contained in the Perfection Certificate since the Effective Date or the date of the most recent certificate delivered pursuant to this Section and/or identifying such changes in the form of a Security Supplement delivered pursuant to Section 4.2 of the Security Agreement and (ii) certifying that, to its knowledge, all Uniform Commercial Code financing statements (including fixtures filings, as applicable) and all supplemental intellectual property security agreements or other appropriate filings, recordings or registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified in the documents delivered pursuant to clause (i) above to the extent necessary to effect, protect and perfect the security interests under the Collateral Documents (except as noted therein with respect to any continuation statements to be filed within such period).

The Borrower and other Obligors will cooperate with requests by any Agent, Lender or Issuing Bank with respect to providing “know-your-customer” or similar information.

**Section 5.02. Notices of Material Events .** Promptly upon obtaining knowledge thereof, the Borrower will furnish to the Administrative Agent (for distribution to each Lender) prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Subsidiary thereof that could reasonably be expected to result in a Material Adverse Effect; and

(c) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

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*Section 5.03. Existence; Conduct of Business*. The Borrower and each other Obligor will, and will cause each of its Restricted Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights (charter and statutory), licenses, permits, privileges, approvals, franchises and Intellectual Property Rights material to the conduct of its business; *provided* that (a) the foregoing shall not prohibit any merger, consolidation, disposition, liquidation or dissolution permitted under Section 6.03 and (b) none of the Borrower or any other Obligor or any of their respective Restricted Subsidiaries shall be required to preserve, renew or keep in full force and effect its rights (charter and statutory), licenses, permits, privileges, approvals, franchises or Intellectual Property Rights where failure to do so could not reasonably be expected to result in a Material Adverse Effect.

*Section 5.04. Payment of Taxes and Performance of Other Obligations*.

(a) The Borrower and each other Obligor will, and will cause each of its Restricted Subsidiaries to, pay all Tax liabilities, including all Taxes imposed upon it or upon its income or profits or upon any properties belonging to it that, if not paid, could reasonably be expected to result in a Material Adverse Effect, before the same shall become delinquent or in default, and all lawful claims other than Tax Liabilities which, if unpaid, would become a Lien upon any properties of the Borrower or any other Obligor or any of their Restricted Subsidiaries not otherwise permitted under Section 6.02, in both cases except where (b) the validity or amount thereof is being contested in good faith by appropriate proceedings and (c) to the extent required by GAAP, the Borrower, any other Obligor or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

(b) The Borrower will, and will cause each of its Subsidiaries to, perform all of its obligations under the terms of each mortgage, indenture, security agreement, loan agreement or credit agreement and each other agreement, contract or instrument by which it is bound, except such nonperformance as, individually and in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect.

*Section 5.05. Maintenance of Properties; Insurance*. The Borrower and each other Obligor will, and will cause each of its Restricted Subsidiaries to, (a) keep and maintain all property used in the conduct of its business in good working order and condition, ordinary wear and tear and casualty events excepted, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect, and (b) maintain insurance with financially sound and reputable insurance companies in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations, including any Flood Insurance as required by Section 5.10. Except as otherwise agreed by the Collateral Agent, (i) each such policy shall (a) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear and (b) in the case of each casualty insurance policy, contain a loss endorsement, reasonably satisfactory in form and substance to the Collateral Agent, that names the Collateral Agent, on behalf of the Secured Parties, as the loss payee thereunder and provides for at least thirty days' prior written notice to the Collateral Agent of any material modification or cancellation of such policy and (ii) promptly deliver evidence reasonably satisfactory to the Collateral Agent of the requirements set forth in clause (i), but in any event, for policies existing on the Effective Date, within 30 days of the Effective Date.

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**Section 5.06. Books and Records; Inspection Rights .** The Borrower and each other Obligor will, and will cause each of its Restricted Subsidiaries to, keep proper books of record and account in which entries full, true and correct in all material respects are made and are sufficient to prepare financial statements in accordance with GAAP (other than as set forth in Schedule 3.04.). The Borrower and each other Obligor will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender (pursuant to the request made through the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts of its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants (*provided*, that the Borrower, other Obligor or such Subsidiary shall be afforded the opportunity to participate in any discussions with such independent accountants), all at such reasonable times and as often as reasonably requested (but no more than once annually if no Event of Default exists). Notwithstanding anything to the contrary in this Agreement, none of the Borrower or any other Obligor or any of their Subsidiaries shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives) is prohibited by applicable law or (c) is subject to attorney, client or similar privilege or constitutes attorney work-product.

**Section 5.07. Compliance with Laws and Agreements .**

- (a) The Borrower and each Obligor will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.
- (b) The Borrower and each Obligor will implement, as promptly as possible, and will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, each other Obligor and any of their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions and export control laws.

**Section 5.08. [Reserved] .**

**Section 5.09. Use of Proceeds .** The proceeds of the Loans or the Letters of Credit will be used only for working capital and general corporate purposes, including, without limitation, for permitted acquisitions, for permitted stock repurchases and to finance marketing partnerships. No part of the proceeds of any Loan or Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X or any other violations of any and rule or regulation of any Governmental Authority. The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, directly or indirectly, and shall procure that its Subsidiaries and its or

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their respective directors, officers, employees and agents shall not use, directly or indirectly, the proceeds of any Borrowing or Letter of Credit, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto (including any Person participating in the Loans, whether as lender, underwriter, advisor, investor or otherwise).

*Section 5.10. Further Assurances.*

(a) At any time or from time to time upon the reasonable request of the Administrative Agent, each Obligor will, at its expense, promptly execute, acknowledge and deliver such further documents and take such further actions as the Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Loan Documents. In furtherance and not in limitation of the foregoing, each Obligor shall take such actions as the Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations are (i) guaranteed by the Guarantors and (ii) are secured by (x) substantially all of the assets of the Borrower and its Domestic Restricted Subsidiaries (other than any FSHCO, unless such FSHCO shall act as a guarantor for any Material Indebtedness of the Borrower) (whether now owned or hereafter acquired) and (y) all of the outstanding Equity Interests of Borrower's Subsidiaries (subject, in each case to the limitations and exceptions contained in the Loan Documents and the Collateral Documents, including that only 65% of the outstanding voting equity interests of any CFC or FSHCO need be pledged). If at any time the Collateral Agent receives a notice from a Lender or otherwise becomes aware that any Mortgaged Property has become a Flood Hazard Property, the Collateral Agent shall, within 45 days of receipt of such notice, deliver such notice to the Borrower and the Borrower shall take all actions as described in Section 5.10(b)(iv) required as a result of such change.

(b) With respect to each Mortgaged Property, the Borrower or other Obligor (as applicable) shall deliver or cause to be delivered to the Collateral Agent, within 90 days of the date upon which the Mortgaged Property is acquired or becomes a Mortgaged Property:

(i) A fully executed Mortgage encumbering the Mortgaged Property in form suitable for recording or filing in all filing or recording offices that the Collateral Agent may reasonably deem necessary or desirable in order to create a valid and subsisting perfected Lien on the property and/or rights described therein in favor of the Collateral Agent for the benefit of the Secured Parties;

(ii) an opinion of counsel (which counsel shall be reasonably satisfactory to the Collateral Agent) in the state in which the Mortgaged Property is located with respect to the enforceability of the Mortgage to be recorded and such other matters as are customary and as the Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to the Collateral Agent;

(iii) (A) a lender's policy or policies or marked up unconditional binder of title insurance issued by a nationally recognized title insurance company reasonably satisfactory to the Collateral Agent (each, a " **Title Insurance Company** ") insuring the Lien of the Mortgage as a valid first Lien on the Mortgaged Property described therein, free of any other Liens except Permitted Encumbrances, in an amount acceptable to the Collateral Agent (but not to exceed the fair market value), together with such customary endorsements, coinsurance and reinsurance as the Collateral Agent may request and which are available at commercially reasonable rate in the jurisdiction where such Mortgaged Property is located (each, a " **Title Policy** "), and (B) evidence satisfactory to the Collateral Agent that the Borrower or such Obligor has paid to the title company or to the appropriate governmental authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgage for the Mortgaged Property;

(iv) (A) a completed standard "life of loan" flood hazard determination form, (B) if the improvement(s) to the Mortgaged Property is located in a special flood hazard area as set forth by FEMA (any such Mortgaged Property, a " **Flood Hazard Property** ") a notification to the Borrower or such Obligor, countersigned by the Borrower or such Obligor, that such improvement(s) is located in a special flood hazard area and (if applicable) notification that flood insurance coverage under the National Flood Insurance Program (" **NFIP** ") is not available because the community where the Mortgaged Property is located does not participate in the NFIP, and (C) if the notice described in clause (B) is required to be given and flood insurance is available in the community in which the property is located, a copy of one of the following: a flood insurance policy with such coverage reasonably acceptable to the Collateral Agent (" **Flood Insurance** "), the Borrower's or such Obligor's application for Flood Insurance plus proof of premium payment, a declaration page confirming that Flood Insurance has been issued, or such other evidence of Flood Insurance reasonably satisfactory to the Collateral Agent;

(v) a survey of the Mortgaged Property showing all improvements, easements and other customary matters for which all necessary fees (where applicable) have been paid and which is complying in all material respects with the minimum detail requirements of the American Land Title Association and American Congress of Surveying and Mapping as such requirements are in effect on the date of preparation of such survey, certified to the Collateral Agent and the Title Insurance Company and in a form sufficient for the Title Insurance Company to delete the standard survey exception; and

(vi) if requested by the Collateral Agent and required to comply with the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, an appraisal of the Mortgaged Property.

*Section 5.11. Guarantors .* If, as of the date of the most recently available financial statements delivered pursuant to Section 5.01(a) or (b), as the case may be, any Person shall have become a Domestic Restricted Subsidiary (other than a FSHCO, unless such FSHCO shall act as a guarantor for any Material Indebtedness of the Borrower), then the Borrower shall, within 30

days (or such longer period of time as the Administrative Agent may agree in its sole discretion) after delivery of such financial statements, cause such Domestic Subsidiary to enter into a joinder agreement (a “**Joinder Agreement**”) in substantially the form of Exhibit J hereto. If requested by the Administrative Agent, the Administrative Agent shall receive an opinion of counsel for the Borrower in form and substance reasonably satisfactory to the Administrative Agent in respect of matters reasonably requested by the Administrative Agent relating to any Joinder Agreement delivered pursuant to this Section, dated as of the date of such Joinder Agreement.

*Section 5.12. Designation of Restricted and Unrestricted Subsidiaries .*

(a) The Borrower may designate any Subsidiary, including a newly acquired or created Subsidiary, to be an Unrestricted Subsidiary if it meets the following qualifications:

(i) such Subsidiary does not own any Equity Interest of the Borrower or any Restricted Subsidiary;

(ii) the Borrower would be permitted to make an Investment at the time of the designation in an amount equal to the aggregate fair market value of all Investments of the Borrower or its Restricted Subsidiaries in such Subsidiary;

(iii) any guarantee or other credit support thereof by the Borrower or any Restricted Subsidiary is permitted under Section 6.01 or Section 6.06;

(iv) neither the Borrower nor any Restricted Subsidiary has any obligation to subscribe for additional Equity Interests of such Subsidiary or to maintain or preserve its financial condition or cause it to achieve specified levels of operating results except to the extent permitted by Section 6.01 or Section 6.06;

(v) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing or would result from such designation; and

(vi) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a “restricted subsidiary” or a “guarantor” (or any similar designation) for any other Indebtedness of the Borrower or a Restricted Subsidiary.

Once so designated, the Subsidiary will remain an Unrestricted Subsidiary, subject to subsection (b).

(b) (i) A Subsidiary previously designated as an Unrestricted Subsidiary which fails to meet the qualifications set forth in subsections 5.12(a)(i), 5.12(a)(iii), 5.12(a)(iv) or 5.12(a)(vi) of this Section 5.12 will be deemed to become at that time a Restricted Subsidiary, subject to the consequences set forth in subsection (d). (ii) The Borrower may designate an Unrestricted Subsidiary to be a Restricted Subsidiary if the designation would not cause an Event of Default.

(c) Upon a Restricted Subsidiary becoming an Unrestricted Subsidiary,

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- (i) all existing Investments of the Borrower and the Restricted Subsidiaries therein (valued at the Borrower's proportional share of the fair market value of its assets less liabilities) will be deemed made at that time;
  - (ii) all existing Equity Interest or Indebtedness of the Borrower or a Restricted Subsidiary held by it will be deemed incurred at that time, and all Liens on property of the Borrower or a Restricted Subsidiary held by it will be deemed incurred at that time;
  - (iii) all existing transactions between it and the Borrower or any Restricted Subsidiary will be deemed entered into at that time;
  - (iv) it is released at that time from the Loan Documents to which it is a party and all related security interests on its property shall be released; and
  - (v) it will cease to be subject to the provisions of this Agreement as a Restricted Subsidiary.
- (d) Upon an Unrestricted Subsidiary becoming, or being deemed to become, a Restricted Subsidiary pursuant to Section 5.12(b),
- (i) all of its Indebtedness and Disqualified Equity Interests will be deemed incurred at that time for purposes of Section 6.01;
  - (ii) Investments therein previously charged under Section 6.06 will be credited thereunder;
  - (iii) it may be required to become a Guarantor pursuant to this Agreement; and
  - (iv) it will thenceforward be subject to the provisions of this Agreement as a Restricted Subsidiary.
- (e) Any designation by the Borrower of a Subsidiary as an Unrestricted Subsidiary after the Effective Date will be evidenced to the Administrative Agent by promptly filing with the Administrative Agent a copy of the resolutions of the Borrower giving effect to the designation and a certificate of an officer of the Borrower certifying that the designation complied with the foregoing provisions.

## ARTICLE 6 NEGATIVE COVENANTS

Until the Revolving Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and the cancellation or expiration or Cash Collateralization of all Letters of Credit on

terms reasonably satisfactory to the Issuing Bank in an amount equal to 105% of all Letter of Credit Usage, the Borrower and each other Obligor covenants and agrees with the Lenders that:

Section 6.01. *Indebtedness*. The Borrower or any other Obligor will not and will not permit any of its Restricted Subsidiaries to, create, incur or assume, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) Obligations of the Obligors under the Loan Documents;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and any refinancing in respect thereof;

(c) Capital Lease obligations and purchase money Indebtedness of the Borrower or any Restricted Subsidiary incurred prior to or within 180 days after the acquisition, improvement or lease of the related asset or assets; *provided* (i) such Indebtedness does not exceed the purchase price plus expenses of the asset or assets acquired (or the improvement thereon, as applicable, (ii) any Lien that secures such Indebtedness does not apply to any other property or assets of the Borrower or its Restricted Subsidiaries and (iii) the aggregate principal amount of Indebtedness permitted by this clause (b) shall not exceed \$50 million.

(d) Indebtedness of any Restricted Subsidiary to the Borrower or to any other Restricted Subsidiary, or of the Borrower to any Restricted Subsidiary; *provided* (i) all such Indebtedness shall be unsecured and, if owed by an Obligor, subordinated in right of payment to payment in full of the Obligations, as set forth in the Intercompany Note, and (ii) such Indebtedness is permitted as an Investment under Section 6.06;

(e) Indebtedness incurred by the Borrower or any Restricted Subsidiary arising from agreements providing for indemnification, adjustment of purchase price or similar obligations (including, Indebtedness consisting of the deferred purchase price of property acquired in an Acquisition permitted hereunder), or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of the Borrower or any such Restricted Subsidiary pursuant to such agreements, in connection with permitted Acquisitions or permitted dispositions of any business or assets (including stock of a Subsidiary);

(f) Indebtedness in respect of any Hedging Transaction entered into for the purpose of hedging risks associated with the Borrower's and its Subsidiaries' operations and not for speculative purposes;

(g) Indebtedness which may be deemed to exist pursuant to any Guarantees, performance, statutory or similar obligations (including in connection with workers' compensation) or obligations in respect of letters of credit, surety bonds, bank guarantees or similar instruments related thereto incurred in the ordinary course of business, or pursuant to any appeal obligation, appeal bond or letter of credit in respect of judgments that do not constitute an Event of Default under clause (k) of Article 9;

(h) Guarantees by the Borrower of Indebtedness of a Restricted Subsidiary or Guarantees by a Restricted Subsidiary of Indebtedness of the Borrower or another Restricted Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.01;

(i) Indebtedness of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary in a transaction permitted hereunder) after the date hereof, and refinancing of such Indebtedness in respect thereof; *provided* that (i) such Indebtedness exists at the time such Person becomes a Subsidiary (or is so merged or consolidated) and is not created in contemplation of or in connection with such Person becoming a Subsidiary (or such merger or consolidation) and (ii) the aggregate principal amount of all such outstanding Indebtedness permitted by this clause (i) shall not exceed \$5,000,000 at any time;

(j) Indebtedness in respect of letters of credit or bankers' acceptances supporting facility leases in an aggregate principal or face amount not exceeding \$6,000,000 at any time outstanding; and

(k) other Indebtedness not otherwise permitted by this Section 6.01 so long, immediately after giving effect thereto, the Total Leverage Ratio determined on a Pro Forma Basis, would not exceed 3.5:1.0; and

(l) other unsecured Indebtedness not permitted by the foregoing in an aggregate principal amount outstanding at any time not exceeding \$35 million.

Section 6.02. *Liens*. The Borrower or any other Obligor will not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it except:

(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Borrower or any Restricted Subsidiary existing on the date hereof and set forth in Schedule 6.02 and any modifications, renewals and extensions thereof and any Lien granted as a replacement or substitute therefor; *provided* that (i) such Lien shall not apply to any other property or asset of the Borrower or any Restricted Subsidiary other than improvements thereon or proceeds thereof and (ii) such Lien shall secure only those obligations which it secures on the date hereof and any refinancing, extension, renewal or replacement thereof that does not increase the outstanding principal amount thereof;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Restricted Subsidiary or existing on any property or asset of any Person that becomes a Restricted Subsidiary after the date hereof prior to the time such Person becomes a Restricted Subsidiary; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Restricted Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Restricted Subsidiary, as the case may be, and any refinancing, extension, renewal or replacement thereof that does not increase the outstanding principal amount thereof;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Restricted Subsidiary; *provided* that (i) such Liens secure Indebtedness permitted under Section 6.01(c), (ii) such security interests and the Indebtedness secured thereby are incurred

prior to or within 180 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary;

(e) licenses, sublicenses, leases or subleases granted to others in the ordinary course of business not interfering in any material respect with the business of the Borrower or any of its Subsidiaries;

(f) the interest and title of a lessor under any lease, license, sublease or sublicense entered into by the Borrower or any Subsidiary in the ordinary course of its business and other statutory and common law landlords' Liens under leases;

(g) Liens deemed to exist in connection with the sale or transfer of any assets in a transaction not prohibited hereunder, customary rights and restrictions contained in agreements relating to such sale or transfer pending the completion thereof;

(h) in the case of any Joint Venture, any put and call arrangements related to its Equity Interests set forth in its organizational documents or any related Joint Venture or similar agreement;

(i) Liens securing Indebtedness to finance insurance premiums owing in the ordinary course of business to the extent such financing is not prohibited hereunder;

(j) Liens on earnest money deposits of cash or cash equivalents made in connection with any acquisition not prohibited hereunder;

(k) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by the Borrower or any Restricted Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank or banks with respect to cash management and operating account arrangements;

(l) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements not otherwise prohibited hereunder with the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(m) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or assets of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary, as the case may be; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, (ii) such Lien does not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien secures only (x) those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be and (y) any permitted refinancing of such obligations;

(n) Liens consisting of restricted cash balances not exceeding \$7,500,000 at any time to secure merchant credit card processing and similar services in the ordinary course of business;

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- (o) Liens on cash deposits in respect of rental agreements in the ordinary course of business;
  - (p) Liens on cash pledged to secure obligations in respect of letters of credit or banker's acceptances permitted under Section 6.01(j); and
  - (q) Liens securing the Obligations; and
- (r) Liens not otherwise permitted by the foregoing provisions of this Section 6.02 securing Indebtedness or other obligations of the Borrower and its Restricted Subsidiaries in an aggregate amount not to exceed \$50 million.

*Section 6.03. Fundamental Changes.*

- (a) The Borrower will not, and will not permit any Restricted Subsidiary to, (x) merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, (y) sell, transfer, license, lease, enter into any sale-leaseback transactions with respect to, or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or (z) liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing:
  - (i) any Subsidiary or any other Person may merge into or consolidate with the Borrower in a transaction in which the Borrower is the surviving corporation;
  - (ii) any Person (other than the Borrower) may merge into or consolidate with any Subsidiary in a transaction in which the surviving entity is a Subsidiary (provided that any such merger or consolidation involving a Guarantor must result in a Guarantor as the surviving entity);
  - (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to another Subsidiary; *provided* that any such sale, transfer, lease or other disposal must comply with Sections 6.05 and 6.06 hereof;
  - (iv) any Obligor may sell, transfer, lease or otherwise dispose of its assets to any other Obligor;
  - (v) in connection with any acquisition, any Subsidiary may merge into or consolidate with any other Person, so long as the Person surviving such merger or consolidation shall be a Subsidiary (provided that any such merger or consolidation involving a Guarantor must result in a Guarantor as the surviving entity); and
  - (vi) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; *provided* that if such Subsidiary is an Obligor, the entity receiving the assets of such Subsidiary upon such liquidation or dissolution shall also be an Obligor.

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Notwithstanding anything to the contrary herein, including the foregoing, no sale or other disposition of all or substantially all assets of the Borrower and its Subsidiaries taken as a whole shall be permitted. Further, no Obligor will, nor will it permit any of its Restricted Subsidiaries to, convey, sell, lease, enter into a sale and leaseback arrangement or license, exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property or any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, except (i) sales and other dispositions of assets that do not constitute Asset Sales and (ii) Asset Sales; provided that, in the case of clause (ii), the consideration for such assets shall be in an amount at least equal to the fair market value thereof, no less than 75% thereof shall be paid in Cash or Cash Equivalents and such Obligor shall comply with its obligations, if any, in respect of Asset Sales under Section 2.12.

(b) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, engage to any material extent in any business other than the type conducted by the Borrower and its Subsidiaries on the Effective Date or businesses reasonably connected or complementary thereto. The jurisdiction of organization and/or domicile of the Borrower shall not be changed.

Section 6.04. *Restricted Payments*. No Obligor shall, nor shall it permit any of its Restricted Subsidiaries to, declare, order, pay any sum for, or set apart assets for a sinking or other analogous fund for, any Restricted Payment except for:

(a) in the case of any Restricted Subsidiary, the declaration and payment of dividends or other distributions to its equity holders, so long as any such dividends or other distributions to the Borrower and other Restricted Subsidiaries that are equity holders are at least pro rata to the relevant portion of equity held by the Borrower and such other Restricted Subsidiaries;

(b) after any issuance by the Borrower of its Equity Interests after the date hereof, Restricted Payments by the Borrower to holders of its Equity Interests in an amount not exceeding 10% of the aggregate net cash proceeds thereof; *provided* that immediately prior to, and after giving effect thereto, no Default shall have occurred and be continuing or would result therefrom;

(c) Restricted Payments in an aggregate amount pursuant to this clause (c) equal to the sum of 50% of Excess Cash Flow for each Fiscal Year beginning with the Fiscal Year ended on or about December 31, 2014, for which financial statements pursuant to Section 5.01(a) have theretofore been delivered; *provided* that immediately prior to, and after giving effect thereto, no Default shall have occurred and be continuing or would result therefrom;

(d) any Subsidiary may make Restricted Payments to the Borrower, the Borrower's other Subsidiaries and other holders of its equity securities, provided that the portion of any Restricted Payments paid to holders of its equity securities other than the Borrower and its Subsidiaries is not greater than the percentage of equity securities of such Subsidiary owned by such other Persons;

(e) the Borrower may (i) repurchase Equity Interests upon the exercise of stock options if such Equity Interests represent a portion of the exercise price of such options and (ii) make cash payments in lieu of the issuance of fractional shares representing insignificant interests in the Borrower in connection with the exercise of warrants, options or other securities convertible into or exchangeable for capital stock in the Borrower; *provided* that the aggregate principal

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amount of all such Restricted Payments permitted by this clause (e) shall not exceed (x) \$10,000,000 in any fiscal year prior to an IPO or (y) 5% of the total market capitalization of the Borrower following an IPO;

(f) the Borrower may repurchases its Equity Interests owned by employees of the Borrower or its Subsidiaries or make payments to employees of the Borrower or its Subsidiaries upon termination of employment in connection with the exercise of stock options, stock appreciation rights or similar equity incentives or equity based incentives pursuant to management incentive plans or in connection with the death or disability of such employees in an aggregate amount not to exceed \$10,000,000 in any fiscal year and \$30,000,000 in the aggregate; and

(g) so long as no Default shall have occurred and be continuing or be caused thereby, other Restricted Payments not permitted by the foregoing provisions of this Section in an aggregate amount of \$15,000,000.

**Section 6.05. Transactions with Affiliates.** The Borrower will not, and will not permit any of its Restricted Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates except:

(a) any such transaction on terms and conditions not less favorable to the Borrower or such Restricted Subsidiary than could be obtained on an arm's-length basis from unrelated third parties; *provided* that any such transaction or series of transactions with an aggregate fair market value exceeding \$25,000,000 shall be approved by a majority of the disinterested members of the Borrower's Board of Directors;

(b) payment of reasonable directors' fees, customary out-of-pocket expense reimbursement, indemnities (including the provision of directors and officers insurance) and compensation arrangements for members of the board of directors, officers or other employees of the Borrower or any of its Subsidiaries;

(c) transactions between or among Obligors;

(d) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods and services, in each case in the ordinary course of business and otherwise not prohibited hereby; and

(e) Restricted Payments permitted by Section 6.04 and Investments permitted by Section 6.06.

**Section 6.06. Investments.** No Obligor shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

(a) Investments existing on the date hereof and, except in the case of Investments by the Borrower and the Subsidiaries in the Borrower and the Subsidiaries, set forth on Schedule 6.06;

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(b) Investments in any Restricted Subsidiary that is a Guarantor;

(c) Investments in Joint Ventures, Unrestricted Subsidiaries and Restricted Subsidiaries that are not Guarantors in an aggregate amount for all Investments under this clause (c) not exceeding \$25 million;

(d) payroll, travel and similar advances to directors and employees of the Borrower or any Subsidiary to cover matters that are expected at the time of such advances to be treated as expenses of the Borrower or such Subsidiary for accounting purposes and that are made in the ordinary course of business;

(e) loans or advances to directors and employees of the Borrower or any Subsidiary made in the ordinary course of business; *provided* that the aggregate amount of such loans and advances outstanding at any time shall not exceed \$500,000;

(f) to the extent constituting Investments, transfers of Intellectual Property Rights to one or more Foreign Subsidiaries that are Restricted Subsidiaries;

(g) the acquisition of Incubart SAS; and

(h) Investments not otherwise permitted by the foregoing provisions of this Section 6.06 in an aggregate amount in an aggregate amount for all such Investments under this clause (c) not to exceed the greater of (x) \$25,000,000 and (y) 15% of Consolidated Total Assets of the Borrower and its Restricted Subsidiaries, as set forth on the consolidated balance sheet most recently delivered by the Borrower pursuant to Section 5.01 (but determined on a pro forma basis for any acquisitions or dispositions subsequent thereto, including in connection with such Investment).

## ARTICLE 7 F INANCIAL C OVENANT

Section 7.01. *Maximum Total Leverage Ratio.* The Borrower shall not permit the Total Leverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending June 30, 2014, to exceed 3.50 to 1.00.

## ARTICLE 8 G UARANTY

Section 8.01. *Guaranty of the Obligations.* Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to the Administrative Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations and Additional Secured Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of any automatic stay or similar provision of any Debtor Relief Law) (collectively, the “**Guaranteed Obligations**”).

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**Section 8.02. *Payment by Guarantors***. Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of the Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of any automatic stay or similar provision of any Debtor Relief Law), Guarantors will upon demand pay, or cause to be paid, in Cash, to the Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for the Borrower's becoming the subject of a case under any Debtor Relief Law, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against the Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

**Section 8.03. *Liability of Guarantors Absolute***. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

- (a) this Guaranty is a guaranty of payment when due and not of collectability and this Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;
- (b) the Administrative Agent may enforce this Guaranty during the continuation of an Event of Default notwithstanding the existence of any dispute between the Borrower and any Beneficiary with respect to the existence of such Event of Default;
- (c) the obligations of each Guarantor hereunder are independent of the obligations of the Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against the Borrower or any of such other guarantors and whether or not the Borrower is joined in any such action or actions;
- (d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;
- (e) any Beneficiary, upon such terms as it deems appropriate under the relevant Loan Document, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any

Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Obligor or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made and the cancellation or expiration or cash collateralization of all Letters of Credit in the Agreed L/C Cash Collateral Amount on terms reasonably satisfactory to the Issuing Bank)), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Loan Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any

Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Borrower or any of its Restricted Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set offs or counterclaims which the Borrower may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

Anything contained in this Agreement to the contrary notwithstanding, the obligations of each Guarantor under this Agreement shall be limited to an aggregate amount equal to the largest amount that would not render its obligations under this Agreement subject to avoidance as a fraudulent transfer or conveyance under applicable law.

**Section 8.04. *Waivers by Guarantors***. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against the Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from the Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of any Obligor or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith, gross negligence or willful misconduct; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set offs, recoupments and counterclaims, (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto, and (v) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to the Borrower and notices of any of the matters referred to in Section 8.03 and any right to consent to any thereof; and (f) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

**Section 8.05. Guarantors' Rights of Subrogation, Contribution, Etc.** . Until the Guaranteed Obligations shall have been paid in full (other than contingent indemnification obligations for which no claim has been made) and the Revolving Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled or cash collateralized, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against the Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (i) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against the Borrower with respect to the Guaranteed Obligations, (ii) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against the Borrower, and (iii) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been paid in full (other than contingent indemnification obligations for which no claim has been made) and the Revolving Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled or cash collateralized in the Agreed L/C Cash Collateral Amount on terms reasonably satisfactory to the Issuing Bank, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against the Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against the Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made) shall not have been paid in full, such amount shall be held in trust for the Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

**Section 8.06. Subordination of Other Obligations** . Any Indebtedness of the Borrower or any Guarantor now or hereafter held by any Guarantor (the “**Obligee Guarantor**”) is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

**Section 8.07. Continual Guaranty** . This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full and the

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Revolving Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled or cash collateralized in the Agreed L/C Cash Collateral Amount. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

**Section 8.08. Authority of Guarantors or the Borrower .** It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or the Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

**Section 8.09. Financial Condition of the Borrower .** Any Credit Extension may be made to the Borrower or continued from time to time without notice to or authorization from any Guarantor regardless of the financial or other condition of the Borrower at the time of any such grant or continuation, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of the Borrower. Each Guarantor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of the Borrower and its ability to perform its obligations under the Loan Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower now known or hereafter known by any Beneficiary.

**Section 8.10. Bankruptcy, Etc.**

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of the Administrative Agent acting pursuant to the instructions of Required Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against the Borrower or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower or any other Guarantor or by any defense which the Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause 8.10(a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve the Borrower of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

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(c) In the event that all or any portion of the Guaranteed Obligations are paid by the Borrower, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

Section 8.11. *Discharge of Guaranty Upon Sale of Guarantor*. If all of the Equity Interests of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such sale or disposition.

## ARTICLE 9 E VENTS OF D EFAULT

Section 9.01. *Events of Default*. If any of the following events (each, an “**Event of Default**”) shall occur:

(a) the Borrower shall fail to pay (i) any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof, the Maturity Date, or at a date fixed for prepayment thereof or otherwise (as applicable) or (ii) when due any amount payable to any Issuing Bank in reimbursement of any drawing under any Letter of Credit;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under any of the Loan Documents, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement, any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower or any other Obligor shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, Section 5.03, Section 5.09, Article 6, or in Article 7;

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(e) the Borrower or any other Obligor shall fail to observe or perform any covenant, condition or agreement contained any of the Loan Documents (other than those specified in clause (a), (b) or (d) of this Article of this Agreement), and such failure shall continue unremedied for a period of 30 days after the earlier of (i) notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender) or (ii) receipt by the Administrative Agent of the notice required to be given by the Borrower pursuant to Section 5.02(a);

(f) the Borrower or any Restricted Subsidiary shall (i) fail to pay any principal, interest or other amount, regardless of amount, due in respect of any Material Indebtedness (other than the Obligations), when and as the same shall become due and payable (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) beyond any applicable grace period or (ii) after giving effect to any grace period, fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Material Indebtedness, if the failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Material Indebtedness or a trustee or other representative on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Material Indebtedness to become due prior to its stated maturity or become subject to a mandatory offer purchase by the obligor; *provided* that this clause (f) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Restricted Subsidiary or its debts, or of a substantial part of its assets, under any Debtor Relief Law or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Restricted Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Restricted Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Restricted Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Restricted Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

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(k) one or more judgments for the payment of money in excess of \$20,000,000 in the aggregate shall be rendered against the Borrower, any Restricted Subsidiary or any combination thereof (to the extent not paid or covered by a reputable and solvent independent third-party insurance company which has not disputed coverage) and the same shall remain undischarged or unpaid for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Restricted Subsidiary to enforce any such judgment and such action shall not be stayed;

(l) a Change in Control shall occur;

(m) one or more Non-U.S. Plan Events shall have occurred that has had a Material Adverse Effect; or

(n) at any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any material portion of the Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any Obligor shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders or Letters of Credit to be issued, under any Loan Document to which it is a party or shall contest in writing the validity or perfection of any Lien in any material portion of the Collateral purported to be covered by the Collateral Documents;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Revolving Commitments and the obligations of the Issuing Bank to issue any Letter of Credit, and thereupon the Revolving Commitments shall terminate immediately, (ii)(A) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and (B) require that the Borrower Cash Collateralize the Letters of Credit in the amount of the then Letter of Credit Usage; and in case of any event with respect to the Borrower or any Guarantor described in clause (h) or (i) of this Article, the Revolving Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower or such Guarantor accrued hereunder, shall automatically

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become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower or such Guarantor, and (iii) Administrative Agent may cause the Collateral Agent to enforce any and all Liens and security interests created pursuant to the Collateral Documents.

*Section 9.02. Application of Funds.* After the exercise of remedies provided for in Section 9.01 (or after the Loans have automatically become immediately due and payable and the Letter of Credit Usage shall have automatically been required to be Cash Collateralized as set forth in Section 9.01), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including fees, charges and disbursements of counsel to the Agents and amounts payable pursuant to Sections 2.17 and 2.18) payable to the Agents in their capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and fees payable to the Lenders and the Issuing Bank (including fees, charges and disbursements of counsel to the respective Lenders and the Issuing Bank and amounts payable pursuant to Sections 2.17 and 2.18)), ratably among them in proportion to the respective amounts described in this clause *Second* payable to them;

*Third*, to payment of that portion of the Obligations constituting accrued and unpaid fees and interest on the Loans, Letter of Credit Usage and other Obligations, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Third* payable to them;

*Fourth*, to payment of that portion of the Obligations constituting unpaid principal and Letter of Credit Usage, ratably among the Secured Parties, in proportion to the respective amounts described in this clause *Fourth* held by them;

*Fifth*, to the Administrative Agent for the account of the Issuing Bank, to Cash Collateralize that portion of Letter of Credit Usage comprised of the aggregate undrawn amount of Letters of Credit at the Agreed L/C Cash Collateral Amount;

*Sixth*, to Cash Collateralize any remaining obligations with respect to any Secured Agreements; and

*Last*, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit or any remaining obligations with respect to any Secured Agreements pursuant to clauses *Fifth* and *Sixth* above shall be applied to satisfy drawings under such Letters of Credit or amounts due on account of such Secured Obligations as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired and all Secured Agreements have been terminated or cancelled, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above, and thereafter applied as provided in clause “*Last*” above.

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Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor, but appropriate adjustments shall be made with respect to payments from other Obligors to preserve the allocation to Secured Obligations otherwise set forth above in this Section.

## ARTICLE 10 THE AGENTS

Each of the Lenders (including in any Lender's other capacity hereunder), the Issuing Bank and each of the Other Secured Counterparties (each of the foregoing referred to as the "Lenders" for purposes of this Article 10) hereby irrevocably appoints Morgan Stanley Senior Funding, Inc. as each of the Administrative Agent and Collateral Agent and authorizes each Agent to take such actions on its behalf and to exercise such powers as are delegated to any Agent by the terms of this Agreement or any other Loan Document, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each Agent is hereby expressly authorized by the Lenders to (i) execute any and all documents (including any release) with respect to the Collateral, as contemplated by and in accordance with the provisions of this Agreement and any other Loan Document, (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the discretion of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Lender and (iii) to approve or disapprove of any transaction described in Section 6.03. Except, in each case, as set forth in the sixth paragraph of this Article, the provisions of this Article are solely for the benefit of the Agents and the Lenders, and the Borrower shall not have rights as a third party beneficiary of any such provisions.

The Person serving as the Administrative Agent and/or the Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term "**Lender**" or "**Lenders**" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as an Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent hereunder and without any duty to account therefor to the Lenders.

Neither Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, neither Agent: (a) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02 or in the other Loan Documents); *provided* that such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan

Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law, and (c) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity. Neither Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Agents shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to such Agent by the Borrower or a Lender, and such Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection herewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

Each Agent and each Arranger shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent and each Arranger may also rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. Each Agent and each Arranger may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent.

Subject to the appointment and acceptance of a successor Agent as provided in this paragraph, either Agent may resign at any time by notifying the Lenders and the Borrower.

Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States; provided that, in the event that such successor or Administrative Agent appointed by the Required Lenders is not one of Morgan Stanley Senior Funding, Inc., Goldman Sachs Bank USA or J.P. Morgan Securities LLC, or any of their respective affiliates, and so long as no Event of Default shall have occurred and be continuing, the Borrower shall have the right to consent to such successor Administrative Agent (such consent not to be unreasonably withheld or delayed). If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above. Upon the acceptance of its appointment as either Administrative Agent or Collateral Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent or Collateral Agent (as applicable), and the retiring Administrative Agent or Collateral Agent (as applicable) shall be discharged from its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Article). The fees payable by the Borrower to any successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article and Section 11.03 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as an Agent.

Each Lender acknowledges that it has, independently and without reliance upon either Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

Anything herein to the contrary notwithstanding, none of the Arrangers shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, Collateral Agent or a Lender hereunder.

The Borrower, any Lender and any Affiliate of a Lender may from time to time designate a qualifying agreement as a Secured Agreement upon written notice (a “**Designation Notice**”) to the Administrative Agent from the Borrower and such Lender and such Affiliate, in form reasonably satisfactory to the Agent. No Other Secured Counterparty that obtains the benefits of any Loan Document or any Collateral by virtue of this paragraph shall have any right in connection with the management or release of the Collateral or of the obligations of any Obligor under the Loan Documents, including, without limitation, any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article 10 to the contrary, no Agent

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shall be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Agreements. By accepting the benefits of the Collateral, each Other Secured Counterparty shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

Further, each Secured Party hereby irrevocably authorizes the Collateral Agent:

- (a) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon satisfaction of any conditions to release specified in any Collateral Document, (ii) that is disposed of or to be disposed of as part of or in connection with any disposition permitted hereunder or under any other Loan Document to any Person other than an Obligor, (iii) subject to Section 11.02, if approved, authorized or ratified in writing by the Required Lenders, (iv) owned by a Guarantor upon release of such Guarantor from its obligations under this Agreement, or (v) as expressly provided in the Collateral Documents;
- (b) to release any Guarantor from its obligations hereunder if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and
- (c) upon request of the Borrower, to take such actions as shall be required to subordinate any Lien on any property granted to the Collateral Agent to the holder of a Lien permitted by Section 6.02 or to enter into any intercreditor agreement with the holder of any such Lien.

Upon request by the Collateral Agent at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations hereunder pursuant to this paragraph. In each case as specified in this Article 10, the Collateral Agent will, at the Borrower's expense, execute and deliver to the applicable Obligor such documents as such Obligor may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted pursuant to the Loan Documents, or to release such Guarantor from its obligations hereunder, in each case in accordance with the terms of this Article 10.

Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent, the Collateral Agent, each Lender and each other Secured Party hereby agree that no Secured Party (other than the Collateral Agent) shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Collateral Agent, on behalf of the Secured Parties in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent.

Any such release of Guaranteed Obligations or otherwise shall be deemed subject to the provision that such Guaranteed Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or

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reorganization of Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

## ARTICLE 11

### M ISCELLANEOUS

Section 11.01. *Notices.* Except in the case of notices and other communications expressly permitted to be given by telephone, (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

- (i) if to the Borrower, to it at:

Etsy, Inc.  
55 Washington Street, Suite 512  
Brooklyn, NY 11201  
Attention: Jordan Breslow  
Email Address:  
Telephone No.:

with a copy (which shall not constitute notice) to:

Gunderson Dettmer Stough Villeneuve Franklin &  
Hachigian, LLP  
220 West 42nd Street, 17th Floor  
New York, NY 10036  
Attention: Kenneth McVay  
Facsimile No.:  
Telephone No.:

(ii) if to the Administrative Agent, to it at Morgan Stanley Senior Funding, Inc., 1 New York Plaza, 41<sup>st</sup> Floor, New York, New York, 10004, Attention: Agency Team, with a copy to Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, Attention: James A. Florack; and

(iii) if to any other Lender, Swing Line Lender or Issuing Bank to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Notices and other communications to the Lenders, Swing Line Lender or Issuing Bank hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender, Swing Line Lender or Issuing Bank. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

The Borrower agrees that the Administrative Agent may make the Communications (as defined below) available to the Lenders, Swing Line Lender or Issuing Bank by posting the Communications on IntraLinks, the Internet or another similar electronic system (the “**Platform**”). THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications effected thereby (the “**Communications**”). No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) be responsible or liable for damages arising from the unauthorized use by others of information or other materials obtained through internet, electronic, telecommunications or other information transmission, except to the extent that such damages have resulted from the wilful misconduct or gross negligence of such Agent Party (as determined in a final, non-appealable judgment by a court of competent jurisdiction).

**Section 11.02. Waivers; Amendments.** No failure or delay by the Administrative Agent, the Swing Line Lender, Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, Swing Line Lender, Issuing Bank and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (a) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, Swing Line Lender, Issuing Bank or any Lender may have had notice or knowledge of such Default at the time.

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(a) None of this Agreement, any other Loan Document or any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; *provided, however,*, that no such amendment, waiver or consent shall: (i) extend or increase the Revolving Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or Letter of Credit or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender or Issuing Bank directly affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, postpone the scheduled date of expiration of any Revolving Commitment, or extend the expiration date for any Letter of Credit beyond the Maturity Date, without the written consent of each Lender or Issuing Bank directly affected thereby; *provided, however,*, that notwithstanding clause (ii) or (iii) of this Section 11.02(a), only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the default rate set forth in Section 2.08, (iv) change Section 2.19(a), Section 2.19(b) or any other Section hereof providing for the ratable treatment of the Lenders, in each case in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) release all or substantially all of the value of any Guaranty, or the Collateral without the written consent of each Lender and Issuing Bank, except to the extent the release of any Guarantor or Collateral is permitted pursuant to Article 10 or Section 11.17 (in which case such release may be made by the Administrative Agent acting alone), (vi) change any of the provisions of this Section or the percentage referred to in the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender or (vii) waive any condition set forth in Section 4.01 (other than as it relates to the payment of fees and expenses of counsel), or, in the case of any Loans made or Letters of Credit issued on the Effective Date, Section 4.02, without the written consent of each Lender with a Revolving Commitment and the Issuing Bank (as applicable). Notwithstanding anything to the contrary herein, (i) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent, (ii) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender and (iii) this Agreement may be amended to provide for a New Commitment in the manner contemplated by Section 2.23 without the consent of the Required Lenders and (iv) the provisions of Section 11.02 requiring the Borrower to offer a New Commitment to the Lenders prior to any other Person may be amended or waived with the consent of the Required Lenders.

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*Section 11.03. Expenses; Indemnity; Damage Waiver.*

(a) The Borrower shall pay or reimburse all reasonable and documented out of pocket expenses incurred by the Administrative Agent, Syndication Agents, the Collateral Agent, the Arrangers and their respective affiliates and the Joint Book-Runners in connection with the syndication of the Loans and with the preparation, negotiation, execution and delivery of the Loan Documents and any security arrangements in connection therewith, including without limitation, the reasonable and documented fees, disbursements and other charges of one firm of counsel for the Administrative Agent, the Collateral Agent, the Arrangers, the Joint Book-Runners and the Lenders, taken as a whole, and, if reasonably necessary (as determined by the Administrative Agent in consultation with the Borrower), of a single regulatory counsel and a single local counsel in each appropriate jurisdiction in an amount not to exceed that set forth in the Engagement Letter. The Borrower shall further agree to pay (x) all reasonable and documented out of pocket expenses incurred by the Administrative Agent, Syndication Agents, the Collateral Agent, the Issuing Bank, the Lenders and their respective Affiliates (including, without limitation, the fees, disbursements and other charges of one firm of counsel for the Administrative Agent, the Collateral Agent, the Issuing Bank, the Lenders and their respective affiliates, and, if reasonably necessary (as determined by the Administrative Agent in consultation with the Borrower), of a single regulatory counsel and a single local counsel in each appropriate jurisdiction (and, in the case of an actual or potential conflict of interest where the Administrative Agent or any Arranger, the Collateral Agent, the Issuing Bank, the Lenders and their respective Affiliates affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected person)) in connection with the enforcement or protection of its rights in connection with this Agreement or any other Loan Document, including its rights under this Section, or in connection with the Loans made hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans. Notwithstanding the forgoing, the Borrower shall not be liable to pay or reimburse the Lenders, the Arrangers, the Administrative Agent, the Collateral Agent, the Syndication Agents or any Issuing Bank or any of their respective affiliates for out-of-pocket costs and expenses in excess of \$10,000, with the exception of all fees, expenses and costs of all firms and counsels described above.

(b) The Borrower shall indemnify the Administrative Agent, the Syndication Agents, the Collateral Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, costs or reasonable and documented expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee by any third party or by the Borrower or any other Obligor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and

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regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by a third party or the Borrower or any Affiliate of the Borrower); *provided* that such indemnity shall not, as to any Indemnitee, be available (w) with respect to Taxes (and amounts relating thereto) (other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim), the indemnification for which shall be governed solely and exclusively by Section 2.18, (x) to the extent that such losses, claims, damages, liabilities, costs or reasonable and documented expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, or a material breach of the obligations of such Indemnitee or any of its Related Parties under this Agreement or any other Loan Document or (y) in any proceeding that does not involve an act or omission by the Borrower or any of its Subsidiaries or Affiliates and is brought solely by an Indemnitee against any other Indemnitee other than the Administrative Agent, the Arrangers or any Issuing Bank in its capacity as such.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such.

(d) Without limiting in any way the indemnification obligations of the Borrower pursuant to Section 11.03(b) or of the Lenders pursuant to Section 11.03(c), to the extent permitted by applicable law, each party hereto shall not assert, and hereby waives, any claim against any Indemnitee or the Borrower or any of its Subsidiaries, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the Transactions or any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

#### *Section 11.04. Successors and Assigns.*

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and the Issuing Bank (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may

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assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (but not to the Borrower or an Affiliate thereof or any natural person) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee and provided further that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) days after having received notice thereof;

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of any Revolving Commitment (or New Revolving Loan Commitment) to an assignee that is a Lender with a Revolving Commitment (or New Revolving Commitment) immediately prior to giving effect to such assignment, an Affiliate of a Lender, or an Approved Fund; and

(C) the Issuing Bank, provided that no consent of the Issuing Bank shall be required for an assignment of any Revolving Commitment to an assignee that is a Lender with a Revolving Commitment immediately prior to giving effect to such assignment, an Affiliate of a Lender, or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment or Loans, the amount of the Revolving Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 (or a greater amount that is an integral multiple of \$1,000,000) unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

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(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Related Parties or its securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws;

(E) no such assignment shall be made to (1) any Obligor nor any Affiliate of a Obligor or (2) any Defaulting Lender or any of its subsidiaries, or any Person, who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (2); and

(F) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

For the purposes of this Section, the term "**Approved Fund**" has the following meaning:

"**Approved Fund**" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

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(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.16, Section 2.17, Section 2.18 and Section 11.03); *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a Register for the recordation of the names and addresses of the Lenders, and the Revolving Commitment of, and amounts on the Loans owing to, each Lender pursuant to the terms hereof from time to time. The entries in the Register shall be conclusive (absent manifest error), and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Borrower agrees to indemnify the Administrative Agent from and against any and all losses, claims, damages and liabilities of whatsoever nature which may be imposed on, asserted against or incurred by the Administrative Agent in performing its duties under this Section 11.04(b)(iv), except to the extent that such losses, claims, damages or liabilities are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of the Administrative Agent. The Loans (including principal and interest) are registered obligations and the right, title, and interest of any Lender or its assigns in and to such Loans shall be transferable only upon notation of such transfer in the Register.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the

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information contained therein in the Register; *provided* that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.14(g), Section 2.19(d) or Section 11.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c)(i) Any Lender may, without the consent of, or notice to, the Borrower, the Administrative Agent or the Issuing Bank, sell participations to one or more banks or other entities (but not to the Borrower or an Affiliate thereof or any natural person) (a “**Participant**”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and the Loans owing to it); *provided* that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 11.03(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.16, Section 2.17 and Section 2.18 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.19(b) as though it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.17 or Section 2.18 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “**Participant Register**”); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United

States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or Central Bank, and this Section shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**Section 11.05. *Survival***. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Revolving Commitments have not expired or terminated. The provisions of Section 2.16, Section 2.17, Section 2.18 and Section 11.03 and Article 10 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Revolving Commitments or the Letters of Credit, the resignation of the Administrative Agent, the replacement of any Lender, or the termination of this Agreement or any provision hereof.

**Section 11.06. *Counterparts; Integration; Effectiveness***. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

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**Section 11.07. Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

**Section 11.08. Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower and each other Obligor against any of and all the obligations of the Borrower and each other Obligor now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.22 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

**Section 11.09. Governing Law; Jurisdiction; Consent to Service of Process.**

(a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

(b) THE BORROWER AND EACH OTHER OBLIGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT.

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EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST THE BORROWER OR ANY OTHER OBLIGOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. THE BORROWER AND EACH OTHER OBLIGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.01. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

**Section 11.10. WAIVER OF JURY TRIAL . EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

Section 11.11. *Headings* . Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**Section 11.12. *Confidentiality*.**

(a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below) and to not use the Information for any purpose except in connection with the Loan Documents, except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors, or to any credit insurance provider relating to the

Borrower and its obligations, in each case whom it reasonably determines needs to know such information in connection with this Agreement and the transactions contemplated hereby (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority or to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which case (except in connection with any request as part of any regulatory audit or examination conducted by bank accountants or any governmental or bank regulatory authority exercising or purporting to exercise examination or regulatory authority) the Administrative Agent or such Lender, as applicable, agrees, to the extent practicable and permitted by applicable law, to (A) inform the Borrower promptly thereof and (B) reasonably cooperate with Borrower in order for Borrower to exercise its right to protect the confidentiality of the Information before any tribunal or governmental agency or for Borrower, in its sole discretion, to waive compliance with the provisions of this Section 11.12.), (iii) to any other party to this Agreement, (iv) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (v) subject to an agreement containing provisions substantially the same as those of this Section 11.12, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (B) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; *provided* that such Participant, prospective Participant, prospective assignee, actual or prospective counterparty or advisor is advised of and agrees, in advance of such disclosure, in writing (pursuant to a confidentiality agreement or otherwise) to be bound by either the provisions of this Section 11.12 or other provisions that are at least as restrictive as the provisions contained in this Section 11.12, (vi) with the written consent of the Borrower or (vii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower other than as a result of a breach of any confidentiality obligation known to the Administrative Agent or such Lender. For the purposes of this Section, “**Information**” means all information received from the Borrower, relating to the Borrower or its business, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information, but not less than a reasonable degree of care.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 11.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

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(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER AND ITS RELATED PARTIES OR ITS SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

Section 11.13. *Interest Rate Limitation*. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “**Charges**”), shall exceed the maximum lawful rate (the “**Maximum Rate**”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 11.14. *No Advisory or Fiduciary Responsibility*. In connection with all aspects of each Transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Subsidiaries’ understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers, the Issuing Bank and the Lenders are arm’s-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers, the Issuing Bank and the Lenders, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the Transactions contemplated hereby and by the other Loan Documents; (b) (i) each of the Administrative Agent, the Arrangers, the Issuing Bank and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Subsidiaries, or any other Person and (ii) neither the Administrative Agent, any Arranger, the Issuing Bank nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the Transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent, any Arranger, the Issuing Bank nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by

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law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, the Arrangers, the Issuing Bank and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**Section 11.15. *Electronic Execution of Assignments and Certain Other Documents***. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 11.16. *USA PATRIOT Act***. Each Lender that is subject to the requirements of the USA Patriot Act hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the USA Patriot Act. The Borrower shall, promptly following a request by the Administrative Agent, the Issuing Bank or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act.

**Section 11.17. *Release of Guarantors***. In the event that all the equity interests in any Guarantor are sold, transferred or otherwise disposed of, the Borrower or its Subsidiaries in a transaction permitted under this Agreement, the Administrative Agent shall, at the Borrower’s expense, promptly take such action and execute such documents as the Borrower may reasonably request to terminate the guarantee of such Guarantor.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ETSY, INC.,  
as Borrower

By: /s/ Chad Dickerson  
Name: Chad Dickerson  
Title: President and Chief Executive Officer

JARVIS LABS, INC.,  
as Guarantor

By: /s/ Chad Dickerson  
Name: Chad Dickerson  
Title: President and Chief Executive Officer

Signature Page to Etsy, Inc. Revolving Credit Agreement

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MORGAN STANLEY SENIOR FUNDING, INC.,  
as Administrative Agent, Collateral  
Agent and Swing Line Lender

By: /s/ Jonathon Rauen  
Name: Jonathon Rauen  
Title: Vice President

Signature Page to Etsy, Inc. Revolving Credit Agreement

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MORGAN STANLEY BANK, N.A., as  
Issuing Bank and as a Lender

By: /s/ Jonathon Rauen  
Name: Jonathon Rauen  
Title: Vice President

Signature Page to Etsy, Inc. Revolving Credit Agreement

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Goldman Sachs Bank USA,  
as a Lender

By: /s/ Mark Walton  
Name: Mark Walton  
Title: Authorizing Signatory

Signature Page to Etsy, Inc. Revolving Credit Agreement

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JPMORGAN CHASE BANK, N.A.,  
as a Lender

By: /s/ Goh Siew Tan  
Name: Goh Siew Tan  
Title: Executive Director

Signature Page to Etsy, Inc. Revolving Credit Agreement

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**EXHIBIT A**

**FORM OF  
ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between [NAME OF ASSIGNOR] (the “**Assignor**”) and [NAME OF ASSIGNEE] (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Revolving Credit and Guaranty Agreement identified below (as amended, restated, amended and restated, supplemented, extended and/or otherwise modified from time to time, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the facility identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_  
[Assignor [is] [is not] a Defaulting Lender]
2. Assignee: \_\_\_\_\_  
[and is an Affiliate of [identify Lender]]
3. Borrower: Etsy, Inc. (the “Borrower”)
4. Administrative Agent: Morgan Stanley Senior Funding, Inc., as Administrative Agent under the Credit Agreement

5. Credit Agreement: Revolving Credit and Guaranty Agreement, dated as of May 16, 2014, among Etsy, Inc., as Borrower, the Guarantors party thereto, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., as Administrative Agent, and the other parties party thereto.

6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans <sup>1</sup>
Revolving Facility	\$	\$	%

Effective Date: , 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: \_\_\_\_\_

Name:  
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: \_\_\_\_\_

Name:  
Title:

<sup>1</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

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Consented to and Accepted:

MORGAN STANLEY SENIOR FUNDING, INC., AS  
ADMINISTRATIVE AGENT

By: \_\_\_\_\_  
Name:  
Title:

[MORGAN STANLEY BANK, N.A.], AS ISSUING  
BANK

By: \_\_\_\_\_  
Name:  
Title:

[Consented to:

ETSY, INC.

By: \_\_\_\_\_  
Name:  
Title:]<sup>2</sup>

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<sup>2</sup> To be added only if the consent of the Company is required by the terms of the Credit Agreement.

ETSY, INC. CREDIT AGREEMENTStandard Terms and Conditions for  
Assignment and Assumption1. Representations and Warranties .

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received and/or had the opportunity to review a copy of the Credit Agreement to the extent it has in its sole discretion deemed necessary, together with copies of the most recent financial statements delivered pursuant to Section 5.01(a) and 5.01(b) thereof, as applicable, and such other documents and information as it has in its sole discretion deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) attached to this Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; (b) agrees that it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (c) appoints and authorizes each of the Administrative Agent and the Syndication Agents to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and the other Loan Documents as are delegated to or otherwise conferred upon the Administrative Agent or the Syndication Agents, as the case may be, by the terms thereof, together with such powers as are

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reasonably incidental thereto; and (d) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender, including compliance with the confidentiality provisions of Section 11.12.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. Effect of Assignment. Upon the delivery of a fully executed original hereof to the Administrative Agent, as of the Effective Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Assumption, have the rights and obligations of a Lender thereunder and under the other Loan Documents and (ii) the Assignor shall, to the extent provided in this Assignment and Assumption, relinquish its rights and be released from its obligations under the Credit Agreement and the other Loan Documents.

4. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or other means of electronic imaging shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. THIS ASSIGNMENT AND ASSUMPTION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

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**EXHIBIT B**



## Administrative Details Reply Form

Morgan Stanley Senior Funding, Inc.  
 Loan Documentation and Operations  
 1633 Broadway, 25th Floor  
 New York, NY 10036

Return to:  
 Telephone:  
 Fax:  
 E-mail:  
 (cc: )

**ADMINISTRATIVE QUESTIONNAIRE FOR:**

Etsy, Inc.

Please accurately complete the following information and return via e-mail or fax to the attention of John Leidner at Morgan Stanley as soon as possible. It is very important that all of the requested information is accurately completed and returned promptly.

**LEGAL NAME OF LENDING INSTITUTION TO APPEAR IN DOCUMENTATION:**

NUMBER OF LINES NEEDED FOR SIGNATURE PAGE: \_\_\_\_\_

**GENERAL INFORMATION—DOMESTIC LENDING OFFICE:**

Institution Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

**CREDIT CONTACTS/NOTIFICATION METHODS:**

Contact Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**TAX STATUS:**

Is your institution a non-Resident Alien, foreign corporation or partnership?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes:

- What is the country of incorporation or organization?
- Tax Form W-8BEN or W-8ECI should be enclosed as per the Tax Section of the referenced Credit Agreement. Failure to properly complete and return the applicable form will subject your institution to withholding tax.

Morgan Stanley

If no:

- Please submit Tax Form W-9

Lender's Tax Identification Number: \_\_\_\_\_

**CONTACTS/NOTIFICATION METHODS:****ADMINISTRATIVE CONTACTS—BORROWINGS, PAYDOWNS, INTEREST, FEES, ETC.**

Contact Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**BID LOAN NOTIFICATION: (IF APPLICABLE)**

Contact Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**PAYMENT INSTRUCTIONS:**

Name of Bank where funds are to be transferred: \_\_\_\_\_

Routing Transit/ABA Number of Bank where funds are to be transferred: \_\_\_\_\_

Name of Account, if applicable: \_\_\_\_\_

Account Number: \_\_\_\_\_

Additional Information: \_\_\_\_\_

Swift Code: \_\_\_\_\_

Wiring Contact Name and Phone Number: \_\_\_\_\_

Morgan Stanley

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**EXHIBIT C**

**FORM OF  
INTEREST ELECTION REQUEST**

Morgan Stanley Senior Funding, Inc., as Administrative Agent  
for the Lenders party to the  
Credit Agreement referred to below

1 New York Plaza  
41<sup>st</sup> Floor  
New York, New York 10004  
Attention: Agency Team

[Date]

Ladies and Gentlemen:

The undersigned, Etsy, Inc. (the “**Borrower**”), refers to the Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as the same may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “**Credit Agreement**”, the terms defined therein being used herein as therein defined), among the Borrower, the lenders from time to time party thereto (the “**Lenders**”) and you, as Administrative Agent for such Lenders, and hereby gives you notice, irrevocably, pursuant to Section 2.15 of the Credit Agreement, that the undersigned hereby requests to [convert] [continue] the Borrowing of Loans referred to below, and in that connection sets forth below the information relating to such [conversion] [continuation] (the “**Proposed [Conversion] [Continuation]**”) as required by Section 2.15 of the Credit Agreement:

(i) The Proposed [Conversion] [Continuation] relates to the Borrowing of Loans originally made on \_\_\_\_\_, 20\_\_\_\_ (the “**Outstanding Borrowing**”) in the principal amount of \$\_\_\_\_\_ and currently maintained as a Borrowing of [Base Rate Loans] [Eurodollar Rate Loans with an Interest Period ending on \_\_\_\_\_, \_\_\_\_].

(ii) The Business Day of the Proposed [Conversion] [Continuation] is \_\_\_\_\_, \_\_\_\_.<sup>1</sup>

(iii) The Outstanding Borrowing shall be [continued as a Borrowing of Eurodollar Rate Loans with an Interest Period of \_\_\_\_\_] [converted into a Borrowing of [Base Rate Loans] [Eurodollar Rate Loans with an Interest Period of [one/two/three/six/twelve months] [*insert period less than one month*] ].<sup>2</sup>].<sup>3</sup>

<sup>1</sup> Shall be a Business Day at least [two] Business Day[s] in the case of Base Rate Loans and at least [four] Business Days in the case of Eurodollar Rate Loans after the date hereof, provided that any such notice shall be deemed to have been given on a certain day only if given before [10:00 a.m.] (New York City time) on such day.

<sup>2</sup> Interest Periods of twelve months or less than one month only available with the consent of each Lender.

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[The undersigned hereby certifies that no Default or Event of Default has occurred and will be continuing on the date of the Proposed [Conversion] [Continuation] or will have occurred and be continuing on the date of the Proposed [Conversion] [Continuation]].<sup>4</sup>

[Signature Page Follows]

(continued....)

- <sup>3</sup> In the event that either (x) only a portion of the Outstanding Borrowing is to be so converted or continued or (y) the Outstanding Borrowing is to be divided into separate Borrowings with different Interest Periods, the Borrower should make appropriate modifications to this clause to reflect same.
- <sup>4</sup> In the case of a Proposed Conversion or Continuation, insert this sentence only in the event that the conversion is from a Base Rate Loan to a Eurodollar Rate Loan or in the case of a continuation of a Eurodollar Rate Loan.

---

The Borrower has caused this Interest Election Request to be executed and delivered by its duly authorized officer as of the date first written above.

Very truly yours,

ETSY, INC.

By: \_\_\_\_\_  
Name:  
Title:

C-3

---

**EXHIBIT D-1**

**FORM OF  
REVOLVING NOTE**

New York, New York

FOR VALUE RECEIVED, ETSY, INC., a corporation organized and existing under the laws of Delaware (the “**Borrower**”), hereby promises to pay to [ ] or its registered assigns (the “**Lender**”), in Dollars, in immediately available funds, at the office of MORGAN STANLEY SENIOR FUNDING, INC. (the “**Administrative Agent**”) located at 1 New York Plaza, 41<sup>st</sup> Floor, New York, New York 10004 the unpaid principal amount of all Loans (as defined in the Credit Agreement referred to below) made by the Lender to the Borrower pursuant to the Credit Agreement, payable at such times and in such amounts as are specified in the Credit Agreement.

The Borrower promises also to pay to the Lender interest on the unpaid principal amount of each Loan incurred by the Borrower from the Lender in like money at said office from the date such Loan is made until paid in full at the rates and at the times specified in the Credit Agreement.

This Note is one of the Notes referred to in the Revolving Credit and Guaranty Agreement, dated as of May 16, 2014, among the Borrower, the Guarantors party thereto, the lenders party thereto (including the Lender) and Morgan Stanley Senior Funding, Inc., as Administrative Agent (as the same may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “**Credit Agreement**”) and is entitled to the benefits thereof and of the other Loan Documents (as defined in the Credit Agreement). As provided in the Credit Agreement, this Note is subject to voluntary prepayment, in whole or in part, prior to the Maturity Date (as defined in the Credit Agreement) and the Loans may be converted from one Type (as defined in the Credit Agreement) into another Type to the extent provided in the Credit Agreement.

In case an Event of Default (as defined in the Credit Agreement) shall occur and be continuing, the principal of and accrued interest on this Note may be declared to be immediately due and payable in the manner and with the effect provided in the Credit Agreement.

The Borrower hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

**THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK.**

---

ETSY, INC.

By: \_\_\_\_\_  
Name:  
Title:

D-1-2

---

**EXHIBIT D-2**

**FORM OF  
SWING LINE NOTE**

New York, New York

FOR VALUE RECEIVED, ETSY, INC., a corporation organized and existing under the laws of Delaware (the “**Borrower**”), hereby promises to pay to [ ] or its registered assigns (the “**Swing Line Lender**”), in Dollars, in immediately available funds, at the office of MORGAN STANLEY SENIOR FUNDING, INC. (the “**Administrative Agent**”) located at 1 New York Plaza, 41<sup>st</sup> Floor, New York, New York 10004 the unpaid principal amount of all Swing Line Loans (as defined in the Credit Agreement referred to below) made by the Swing Line Lender to the Borrower pursuant to the Credit Agreement, payable at such times and in such amounts as are specified in the Credit Agreement.

The Borrower promises also to pay to the Swing Line Lender interest on the unpaid principal amount of each Swing Line Loan incurred by the Borrower from the Swing Line Lender in like money at said office from the date such Swing Line Loan is made until paid in full at the rates and at the times specified in the Credit Agreement.

This Note is one of the Swing Line Notes referred to in the Revolving Credit and Guaranty Agreement, dated as of May 16, 2014, among the Borrower, the Guarantors party thereto, the lenders party thereto (including the Lender) and Morgan Stanley Senior Funding, Inc., as Administrative Agent (as the same may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the “**Credit Agreement**”) and is entitled to the benefits thereof and of the other Loan Documents (as defined in the Credit Agreement). As provided in the Credit Agreement, this Note is subject to voluntary prepayment, in whole or in part, prior to the Maturity Date (as defined in the Credit Agreement).

In case an Event of Default (as defined in the Credit Agreement) shall occur and be continuing, the principal of and accrued interest on this Note may be declared to be immediately due and payable in the manner and with the effect provided in the Credit Agreement.

The Borrower hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

**THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK.**

---

ETSY, INC.

By: \_\_\_\_\_  
Name:  
Title:

D-2-2

---

**EXHIBIT E**

**FORM OF  
SOLVENCY CERTIFICATE**

**THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:**

1. I am the [Chief Financial Officer] of ETSY, INC., a Delaware corporation (the “**Borrower**”).

2. Reference is made to that certain Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as it may be amended, supplemented or otherwise modified from time to time, the “**Credit Agreement**”); the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Etsy, Inc., as Borrower, the Guarantors party thereto, the Lenders party thereto from time to time and Morgan Stanley Senior Funding, Inc., as Administrative Agent.

3. I have reviewed the terms of Articles 3 and 4 of the Credit Agreement and the definitions and provisions contained in the Credit Agreement relating thereto, together with each of the Loan Documents, and, in my opinion, have made, or have caused to be made under my supervision, such examination or investigation as is necessary to enable me to express an informed opinion as to the matters referred to herein.

4. Based upon my review and examination described in paragraph 3 above, I certify in my capacity as an officer of the Borrower and not in any individual capacity that as of the date hereof, after giving effect to the consummation of the transactions contemplated by the Loan Documents, the Borrower and its Restricted Subsidiaries are, on a consolidated basis, Solvent.

The foregoing certifications are made and delivered as of May [ ], 2014.

---

Name:  
Title: [Chief Financial Officer]

---

**EXHIBIT F**

**FORM OF  
COMPLIANCE CERTIFICATE**

This Compliance Certificate is delivered to you pursuant to Section 5.01(c) of the Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as the same may be amended, restated, amended and restated, supplemented, extended or modified from time to time, the “**Credit Agreement**”), among Etsy, Inc. (the “**Borrower**”), the Guarantors party thereto, the lenders from time to time party thereto, Morgan Stanley Senior Funding, Inc., as Administrative Agent, and the other parties thereto from time to time. Terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

1. I am the duly elected, qualified and acting [Chief Financial Officer][Principal Accounting Officer][Treasurer][Controller] of the Borrower.
2. I have reviewed and am familiar with the contents of this Certificate. I am providing this Compliance Certificate solely in my capacity as an officer of the Borrower.
3. I have reviewed the terms of the Credit Agreement and the other Loan Documents. The financial statements for the fiscal [quarter][year] of the Borrower ended [ ] attached hereto as ANNEX 1 or otherwise delivered to the Administrative Agent pursuant to the requirements of Section 5.01 of the Credit Agreement (the “**Financial Statements**”) present fairly in all material respects as of the date of each such statement the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied[, subject to normal year-end audit adjustments and the absence of footnotes]<sup>1</sup>. No Default has occurred and is continuing as of the date hereof[ , except for ]<sup>2</sup>. There has been no material change in GAAP or in the application thereof applicable to the Borrower and its consolidated Subsidiaries since the date of the audited financial statements referred to in Section 3.04 of the Credit Agreement that has had an impact on the Financial Statements [ , except for ]<sup>3</sup>, the effect of which on the Financial Statements has been [ ]<sup>3</sup>.
4. [Attached hereto as Schedule 1 is a calculation of the Total Net Leverage Ratio as of the end of the most recent Fiscal Quarter, which calculation is true and correct.]<sup>4</sup>

<sup>1</sup> To be included only if the Compliance Certificate is certifying the quarterly financials.

<sup>2</sup> Specify the details of any Default, if any, and any action taken or proposed to be taken with respect thereto.

<sup>3</sup> If and to the extent that any change in GAAP that has occurred since the date of the audited financial statements referred to in Section 3.04 of the Credit Agreement had an impact on such financial statements, specify the effect of such change on the financial statements accompanying this Compliance Certificate.

<sup>4</sup> To be included in quarterly and annual compliance certificates beginning with the quarter ending June 30, 2014.

---

IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

ETSY, INC.

By: \_\_\_\_\_  
Name:  
Title:

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[Applicable Financial Statements to be attached]

F-I-1

The descriptions of the calculations set forth in this certificate are sometimes abbreviated for simplicity, but are qualified in their entirety by reference to the full text of the calculations provided in the Credit Agreement. In the event of any conflict between the terms of this Compliance Certificate and the Credit Agreement, the Credit Agreement shall control, and any Schedule attached to an executed Compliance Certificate shall be revised as necessary to conform in all respects to the requirements of the Credit Agreement in effect as of the delivery of such executed Compliance Certificate.

**(A) Total Leverage Ratio: Consolidated Net Debt to Consolidated Adjusted EBITDA**

- (1) Consolidated Net Debt as of [ ]:
- (a) all Indebtedness of the Borrower and its Restricted Subsidiaries on such date, as would be required to appear as a liability on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries, prepared as of such date in accordance with GAAP: \$
  - (b) *minus* cash of the Borrower and its Restricted Subsidiaries that: (a) does not appear (or would not be required to appear) as “restricted” on the consolidated balance sheet of the Borrower, (b) are not subject to any Lien in favor of any person other than the Collateral Agent for the benefit of the Secured Parties and (c) are otherwise generally available for use by the Borrower or any other Obligor: \$

**Consolidated Net Debt (the sum of items 1(a) and 1(b)):** \$

- (2) Consolidated Adjusted EBITDA as of [ ]:
- (a) Consolidated Net Income:
    - i. net income or loss of the Borrower and its Restricted Subsidiaries determined on a consolidated basis in conformity with GAAP: \$
    - ii. *minus* (a) the income of any Person that is not a Restricted Subsidiary except to the extent of the amount of cash dividends or similar cash distributions actually paid by such Person to the Borrower or, subject to clauses (b) and (c) below, any Restricted Subsidiary during such period, (b) the income of, and any amounts referred to in clause (a) above paid to, any Restricted Subsidiary of the Borrower to the extent that, on the date of determination, the declaration or payment of cash dividends or similar cash distributions by such

Restricted Subsidiary is not permitted without any prior approval of any Governmental Authority that has not been obtained or is not permitted by the operation of the terms of the organizational documents of such Restricted Subsidiary, any agreement or other instrument binding upon such Subsidiary or any law applicable to such Subsidiary, unless such restrictions with respect to the payment of cash dividends and other similar cash distributions have been legally and effectively waived, and (c) the income or loss of, and any amounts referred to in clause (a) above paid to, any Restricted Subsidiary that is not wholly owned by the Borrower to the extent such income or loss or such amounts are attributable to the noncontrolling interest in such Restricted Subsidiary:

\$

(b) *plus* (without duplication and to the extent reflected as a charge in the statement of Consolidated Net Income for such period):

- i. income tax expense: \$
- ii. interest expense, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including the Loans): \$
- iii. depreciation and amortization expense: \$
- iv. amortization of intangibles (including, but not limited to, goodwill) and organization costs: \$
- v. non-cash stock option and other equity-based compensation expenses: \$
- vi. any other non-cash charges, non-cash expenses or non-cash losses of the Borrower or any Restricted Subsidiaries for such period (excluding any such charge, expense or loss incurred in the ordinary course of business that constitutes an accrual of, or a reserve for, cash charges for any future period); *provided*, however that cash payments made in such period or in any future period in respect of such non-cash charges, expenses or losses (excluding any such charge, expense or loss incurred in the ordinary course of business that constitutes an

accrual of, or a reserve for, cash charges for any future period) shall be subtracted from Consolidated Net Income in calculating Consolidated Adjusted EBITDA in the period when such payments are made: \$

- (c) *minus* (to the extent included in the statement of such Consolidated Net Income for such period) the sum of:
- i. income tax benefit: \$
  - ii. interest income: \$
  - iii. any extraordinary income or gains determined in accordance with GAAP: \$
  - iv. any other non-cash income (excluding any items that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period that are described in the parenthetical to item 2(b)(vi) above), all as determined on a consolidated basis: \$

**Consolidated Adjusted EBITDA (item 2(a)(1) *minus* item 2(a)(ii) *plus* the sum of items 2(b)(i) through 2(b)(vi) *minus* the sum of items 2(c)(i) through 2(c)(iv)):** \$

**Consolidated Net Debt to Consolidated Adjusted EBITDA : 1.00**

---

**EXHIBIT G**

**FORM OF  
FUNDING NOTICE**

Reference is made to the Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as it may be amended, supplemented or otherwise modified, the “**Credit AgreementBorrower**

Pursuant to Section [2.01][2.02] of the Credit Agreement, Borrower desires that Lenders make the following Loans to Borrower in accordance with the applicable terms and conditions of the Credit Agreement on [mm/dd/yy] (the “**Credit Date**

**Revolving Loans**

<input type="checkbox"/> Base Rate Loans:	\$[ , , ]
<input type="checkbox"/> Eurodollar Rate Loans, with an initial Interest Period of month(s):	\$ [ , , ]
Swing Line Loans:	\$ [ , , ]

Borrower hereby certifies that:

- (i) after making the Loans requested on the Credit Date, the Aggregate Total Exposure shall not exceed the Revolving Commitments then in effect;
- (ii) as of the Credit Date, the representations and warranties contained in each of the Loan Documents are true and correct in all material respects on and as of such Credit Date to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties are true and correct in all material respects on and as of such earlier date; *provided* that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and
- (iii) as of the Credit Date, no event has occurred and is continuing or would result from the consummation of the borrowing contemplated hereby that would constitute an Event of Default or a Default.

---

The account of Borrower to which the proceeds of the Loans requested on the Credit Date are to be made available by Administrative Agent to the Borrower are as follows:

Bank Name: \_\_\_\_\_  
Bank Address: \_\_\_\_\_  
ABA Number: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Reference: \_\_\_\_\_

Date: [mm/dd/yy]

ETSY, INC.

By:

---

Name:  
Title:

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---

**EXHIBIT H**

**FORM OF  
ISSUANCE NOTICE**

Reference is made to the Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as it may be amended, supplemented or otherwise modified, the “**Credit Agreement**”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Etsy, Inc. (the “**Borrower**”), the Guarantors from time to time party thereto, the Lenders party thereto from time to time and Morgan Stanley Senior Funding, Inc., as Administrative Agent.

Pursuant to Section 2.03 of the Credit Agreement, the Borrower desires a Letter of Credit to be issued in accordance with the terms and conditions of the Credit Agreement on [mm/dd/yy] (the “**Credit Date**”) in an aggregate face amount of \$ [ , , ].

Attached hereto for each such Letter of Credit are the following:

(a) the name and address of the beneficiary;

(b) the expiration date; and

(c) either (i) the verbatim text of such proposed Letter of Credit, or (ii) a description of the proposed terms and conditions of such Letter of Credit, including a precise description of any documents to be presented by the beneficiary which, if presented by the beneficiary prior to the expiration date of such Letter of Credit, would require the Issuing Bank to make payment under such Letter of Credit.

The Borrower hereby certifies that:

(i) after issuing such Letter of Credit requested on the Credit Date, the Aggregate Total Exposure shall not exceed the Revolving Commitments then in effect;

(ii) as of the Credit Date, the representations and warranties contained in each of the Loan Documents are true and correct in all material respects on and as of such Credit Date to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties are true and correct in all material respects on and as of such earlier date; *provided* that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(iii) as of such Credit Date, no event has occurred and is continuing or would result from the consummation of the issuance contemplated hereby that would constitute an Event of Default or a Default.

---

Date: [mm/dd/yy]

ETSY, INC.

By: \_\_\_\_\_  
Name:  
Title:

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---

**EXHIBIT I**

**FORM OF  
INTERCOMPANY NOTE**

May [ ], 2014

Each of the parties identified on Schedule 1 hereto (each, an “**Issuer**”) hereby promises to pay, on demand, to the order of each applicable party identified on Schedule 2 hereto (each, a “**Holder**” and, together with the Issuers, a “**Note Party**”), in the currency owed in immediately available funds, at such locations as each such Holder shall from time to time designate, all amounts as may be owing from time to time on and after the date hereof by each such Issuer to such Holder in consideration of Indebtedness (as defined in the Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as it may be amended, supplemented or otherwise modified, the “**Credit Agreement**”; the terms defined therein and not otherwise defined herein being used herein are therein defined), by and among Etsy, Inc. a corporation organized and existing under the laws of Delaware (the “**Borrower**”), the Holders party thereto as Guarantors, the Lenders from time to time a party thereto and Morgan Stanley Senior Funding, Inc., as Administrative Agent).

Each Issuer shall pay all amounts owing under this Note to each applicable Holder on demand of such Holder or Holders. Any Holder may make demand for all or any subset of the amounts owing to such Holder under this Note, by any Issuer, without the consent or permission of any Issuer.

Upon the commencement of any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, receivership or liquidation or similar proceedings of any jurisdiction relating to any Issuer, all amounts owed by such Issuer to any Holder shall become immediately due and payable without presentment, demand, protest or notice of any kind in connection with this Note. FURTHER, UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF ANY EVENT OF DEFAULT DESCRIBED IN SECTIONS 9.01 (A), (H) OR (I) OF THE CREDIT AGREEMENT, ANY AND ALL INDEBTEDNESS REPRESENTED BY THIS NOTE SHALL BE FULLY SUBORDINATED TO THE INDEFENSIBLE PAYMENT IN CASH IN FULL OF ALL OBLIGATIONS (AS DEFINED IN THE CREDIT AGREEMENT).

Each Issuer hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. No delay on the part of any Holder in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Note shall in any event be effective against any party hereto unless the same shall be in writing and signed and delivered by such party. This Note shall be construed as a separate agreement with respect to each loan, advance or other extension of credit owed by an Issuer to a Holder and may be amended modified, supplemented, waived or released with respect to any such Issuer or Holder with respect to such loan, advance or other extension of credit without the approval of any other party hereto and without affecting the obligations of any other Issuer hereunder.

---

Upon execution and delivery after the date hereof by any Obligor of a counterpart signature page hereto, such Obligor shall become a Note Party hereunder with the same force and effect as if originally named as a Note Party hereunder. The rights and obligations of each Note Party hereunder shall remain in full force and effect notwithstanding the addition of any new Note Party as a party to this Note.

Pursuant to the Credit Agreement and the Collateral Documents, this Note shall be pledged by the Holders that are parties to the Credit Agreement in accordance with the terms of the Credit Agreement and such Collateral Documents.

**THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

[The Remainder of this Page Intentionally Left Blank]

---

ETSY, INC.

By \_\_\_\_\_  
Name:  
Title:

JARVIS LABS, INC.

By \_\_\_\_\_  
Name:  
Title:

---

**SCHEDULE 1**

**ISSUERS**

Etsy Germany GmbH

Etsy UK Limited

Etsy Ireland Limited

Etsy Canada Limited

Etsy Australia Pty Limited

Jarvis Labs, Inc.

**SCHEDULE 2**

**HOLDERS**

Etsy, Inc.

Jarvis Labs, Inc.

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## FORM OF NOTE POWER

For value received, each signatory hereto hereby sells, transfers and assigns unto \_\_\_\_\_ all of its right, title and interest in that certain Intercompany Note dated May 16, 2014 (the "Note"), and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the Note with full power of substitution in the premises.

Date \_\_\_\_\_

ETSY, INC.

By \_\_\_\_\_  
Name:  
Title:

JARVIS LABS, INC.

By \_\_\_\_\_  
Name:  
Title:

---

**EXHIBIT J**

**FORM OF  
JOINDER AGREEMENT**

Reference is made to the Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as amended, amended and restated, supplemented, waived or otherwise modified from time to time, the "Credit Agreement") among ETSY, INC., as the Borrower (the "Borrower"), the Guarantors party thereto, the Lenders from time to time party thereto, Morgan Stanley Senior Funding, Inc., as administrative agent (in such capacity, "Administrative Agent") and as Collateral Agent (in such capacity, "Collateral Agent"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to such terms in the Credit Agreement.

**W I T N E S S E T H:**

WHEREAS, the Borrower and Guarantors have entered into the Credit Agreement and the Pledge and Security Agreement in order to induce the Lenders to make the Loans for the benefit of Borrower; and

WHEREAS, pursuant to Section 5.13 of the Credit Agreement subject to certain limitations and exceptions set forth therein, the undersigned Subsidiary (the "New Loan Party") is required to become a Guarantor under the Credit Agreement by executing a Joinder Agreement.

NOW, THEREFORE, the Administrative Agent, Collateral Agent and the New Loan Party hereby agree as follows:

1. Joinder as Guarantor. In accordance with Section 5.13 of the Credit Agreement, the New Loan Party by its signature below becomes a Guarantor under the Credit Agreement with the same force and effect as if originally named therein as a Guarantor, but in any event subject to the same terms, provisions and limitations set forth in Article 8 of the Credit Agreement. The New Loan Party hereby agrees to all the terms and provisions of the Credit Agreement applicable to it as a Guarantor. Each reference to a Guarantor in the Credit Agreement shall be deemed to include the New Loan Party.

2. Representations and Warranties. The New Loan Party represents and warrants that each of the representations and warranties set forth in the Credit Agreement and each other Loan Document and applicable to the undersigned is true and correct in all material respects both before and after giving effect to this Joinder Agreement, except to the extent that any such representation and warranty relates solely to any earlier date, in which case such representation and warranty is true and correct as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

3. Severability. Any provision of this Joinder Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

---

4. Counterparts. This Joinder Agreement may be executed in counterparts, each of which shall constitute an original. Delivery of an executed signature page to this Joinder Agreement by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart of this Joinder Agreement.

5. No Waiver. Except as expressly supplemented hereby, the Credit Agreement shall remain in full force and effect.

6. Notices. All notices, requests and demands to or upon the New Loan Party, any Agent or any Lender shall be governed by the terms of Section 11.01 of the Credit Agreement.

7. Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

[Signature Pages Follow]

J-2

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IN WITNESS WHEREOF, the undersigned have caused this Joinder Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

[Name of New Loan Party]

By: \_\_\_\_\_  
Name:  
Title:

Address for Notices:

MORGAN STANLEY SENIOR FUNDING, INC., as  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

---

**EXHIBIT K**

**Execution Version  
Conformed Copy  
As amended by Amendment No. 1  
Dated March 4, 2015**

**PLEDGE AND SECURITY AGREEMENT**

**dated May 16, 2014**

**by and among**

**ETSY, INC.**

**The GRANTORS Referred to Herein**

**and**

**MORGAN STANLEY SENIOR FUNDING, INC.,  
as Collateral Agent**

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## EXHIBITS

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EXHIBIT F-2	FORM OF TRADEMARK SECURITY AGREEMENT
EXHIBIT F-3	FORM OF COPYRIGHT SECURITY AGREEMENT
EXHIBIT G	FORM OF PERFECTION CERTIFICATE

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This PLEDGE AND SECURITY AGREEMENT, dated May 16, 2014 (as amended and/or restated, supplemented, or otherwise modified from time to time, this “**Agreement**”), among ETSY, INC., a Delaware corporation (the “**Grantor**” and collectively, with any Additional Grantors (as defined herein), the “**Grantors**”) and MORGAN STANLEY SENIOR FUNDING, INC., as collateral agent for the Secured Parties (herein in such capacity, the “**Collateral Agent**”).

## RECITALS

1. ETSY, INC. (the “**Borrower**”), the GUARANTORS, the LENDERS from time to time party thereto, MORGAN STANLEY SENIOR FUNDING, INC., as administrative agent (in such capacity, the “**Administrative Agent**”) and COLLATERAL AGENT have entered into a Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as amended and/or restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”).
2. The Credit Agreement requires the Grantors to deliver a duly executed copy of this Agreement as a condition precedent to the initial extensions of credit thereunder.

In consideration of the premises and for other valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge, the Grantors and the Collateral Agent, on behalf of itself and each other Secured Party (and each of their respective permitted successors, assigns and novatees), hereby agree as follows:

## SECTION 1

### DEFINITIONS; RULES OF INTERPRETATION

#### Section 1.1     Definition of Terms Used Herein

Unless the context otherwise requires, all capitalized terms used but not defined herein have the meanings set forth in the Credit Agreement.

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## Section 1.2 UCC

Terms used herein that are defined in the UCC but not defined herein have the meanings given to them in the UCC (and if defined in more than one Article of the UCC, shall have the meaning given in Article 8 or 9 thereof), including the following which are capitalized herein:

Account Debtor  
Account  
Certificate of Title  
Certificated Security  
Chattel Paper  
Commercial Tort Claim  
Commodity Account  
Commodity Contract  
Commodity Intermediary  
Deposit Account  
Document  
Electronic Chattel Paper  
Equipment  
Fixtures  
General Intangible  
Goods  
Instrument  
Inventory  
Investment Property  
Jurisdiction of Organization  
Letter-of-Credit Right  
Money  
Payment Intangible  
Proceeds  
Record  
Securities Account  
Securities Intermediary  
Security  
Security Entitlement  
Supporting Obligation  
Tangible Chattel Paper  
Uncertificated Security

## Section 1.3 General Definitions In this Agreement:

“ **Accounts Receivable** ” means (a) all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Property, together with all right, title and interest, if any, in any goods or other property giving rise to such right to payment, including any rights to stoppage in transit, replevin, reclamation and resales, and all related security interests, Liens and pledges, whether voluntary or involuntary, in each case whether now existing or owned or hereafter arising or acquired, and all Collateral Support and Supporting Obligations related to the foregoing and (b) rights to receive amounts payable under the following:

- (i) any and all rights to license products retained by any Grantor;

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- (ii) all sales, leases or licenses of any other goods or products or the rendering of any other services and all collateral security and guaranties of any kind given by any person with respect to any of the foregoing;
  - (iii) any and all tax refunds and tax refund claims; and
  - (iv) all money, reserves and property relating to any of the foregoing whether now or at any time hereafter in the possession or under the control of any Grantor or any agent or custodian for any Grantor.

“**Additional Grantor**” has the meaning assigned to such term in Section 5.2.

“**Agreement**” has the meaning assigned to such term in the Preamble.

“**Cash Collateral Account**” means any Deposit Account or Securities Account established by the Collateral Agent in which cash and cash equivalents may from time to time be on deposit or held therein as provided herein.

“**Collateral**” has the meaning assigned to such term in Section 2.1, subject to the limitations set forth in Section 2.2.

“**Collateral Agent**” has the meaning assigned to such term in the Preamble.

“**Collateral Support**” means all property (real or personal) collaterally assigned, hypothecated or otherwise securing any Collateral described in Section 2.1(a) through (r) and includes any security agreement or other agreement granting a Lien in such real or personal property.

“**Contracts**” means all contracts, leases and other agreements entered into by any Grantor.

“**Control Account**” means a Securities Account or a Commodity Account maintained by any Grantor with a Securities Intermediary or Commodity Intermediary which account is the subject of an effective Control Account Agreement, and includes all financial assets held therein and all certificates and Instruments, if any, representing or evidencing such Control Account.

“**Control Account Agreement**” means a control account agreement substantially in the form of Exhibit A to this Agreement (with such changes as may be agreed to by the Collateral Agent in

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its sole discretion) or in another form approved by the Collateral Agent in its sole discretion (such approval not to be unreasonably withheld or delayed), executed by any Grantor and the Collateral Agent and acknowledged and agreed to by the relevant Securities Intermediary or Commodity Intermediary.

**“Copyright Licenses”** means any and all agreements and licenses (whether or not in writing) granting any right in or to any Copyright, including without limitation the agreements referred to in Section 10 of the Perfection Certificate under the heading “Exclusive Copyright Licenses” (as may be amended or supplemented from time to time).

**“Copyrights”** means all United States and foreign copyrights (whether or not the underlying works of authorship have been published), including but not limited to copyrights in software and in and to databases, all protected designs within the meaning of 17 U.S.C. § 1301 et seq. and community designs, and all mask works fixed in semiconductor chip products (as defined in 17 U.S.C. § 901(a)(1)), whether statutory or common law, whether registered or unregistered and whether published or unpublished, as well as all moral rights, reversionary interests, and termination rights, now or hereafter in force throughout the world, and, with respect to any and all of the foregoing: (i) all registrations and pending applications therefor in the applicable Intellectual Property Registry including, without limitation, the registrations referred to in Section 10 of the Perfection Certificate (if any) under the heading “Copyrights” (as may be amended or supplemented from time to time), (ii) the right to obtain all extensions and renewals thereof, (iii) the right to sue or otherwise recover for past, present and future infringements, misappropriations, or other violations of any of the foregoing, and (iv) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages and proceeds of suit.

**“Credit Agreement”** has the meaning assigned to such term in the Recitals.

**“Deposit Account Control Agreement”** means a deposit account control agreement substantially in the form of Exhibit B to this Agreement (with such changes as may be agreed to by the Collateral Agent in its sole discretion) or in another form approved by the Collateral Agent (such approval not to be unreasonably withheld or delayed), executed by any Grantor and the Collateral Agent and acknowledged and agreed to by the relevant depositary institution.

**“Dividends”** means, in relation to any Stock, all present and future: (a) dividends and distributions of any kind and any other sum received or receivable in respect of such Stock, (b) rights, shares, money or other assets accruing or offered by way of redemption, substitution, exchange, bonus, option, preference or otherwise in respect of such Stock, (c) allotments, offers and rights accruing or offered in respect of such Stock and (d) other rights and assets attaching to, deriving from or exercisable by virtue of the ownership of, such Stock.

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**“ Excluded Assets ”** means, collectively, (a) motor vehicles and other equipment for which Certificates of Title have been issued, (b) all leasehold interests in real property (other than fixtures) and all fee interests in real property (other than fixtures) with a fair market value of less than \$2,000,000, (c) (i) any asset, licensed right or property right of Grantor of any nature if the grant of such security interest shall constitute or result in (A) the abandonment, invalidation or unenforceability of such asset or property right or such Grantor’s loss of use of such asset or property right or (B) a breach, termination or default under any lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity) to which such Grantor is party and (ii) any asset or property right of Grantor of any nature to the extent that any applicable law or regulation prohibits the creation of a security interest thereon (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity); *provided that* in any event, immediately upon the ineffectiveness, lapse or termination of any such provision, the term “Excluded Assets” shall not include all such rights and interests, (d) Equity Interests in any person other than a wholly owned Subsidiary to the extent the pledge of such Equity Interests is not permitted by the terms of such person’s Organizational Documents or any joint venture documents, (e) any Stock, Partnership interest or membership interest which is specifically excluded from the definition of Pledged Stock, Pledged Partnership Interests, or Pledged LLC Interests by virtue of the proviso to the respective definition thereof, (f) any United States trademark or service mark application filed on the basis of a Grantor’s intent-to-use such mark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law, (g) any tangible or intangible assets of a Grantor as to which the cost of obtaining a security interest therein is excessive in relation to the benefit to the Secured Parties of the security to be afforded thereby, as agreed by the Collateral Agent and the Borrower, which agreement shall not be unreasonably withheld, (h) any Excluded Deposit Account and (i) the cash collateral held in that certain collateral account collateralizing that certain Irrevocable Standby Letter of Credit dated as of May 7, 2014 between Borrower and Silicon Valley Bank.

**“ Exclusive Copyright Licenses ”** means any and all Copyright Licenses pursuant to which a Grantor receives an exclusive license in respect of any Copyright registered with the United States Copyright Office.

**“ Excluded Deposit Account ”** means any Deposit Account (a) used exclusively for payroll, payroll taxes or other employee wage and benefit payments or (b) having an average monthly credit balance equal to or less than \$125,000 individually and an aggregate balance in all such accounts equal to or less than \$250,000.

**“ Grantor ”** has the meaning assigned to such term in the Preamble.

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**“ Insurance ”** means all contracts and policies of insurance of any kind now or in the future taken out by or on behalf of any Grantor or (to the extent of such Grantor’s interest) in which it now or in the future has an interest.

**“ Intellectual Property ”** means, collectively, all intellectual property, whether arising under the United States, multinational or foreign laws or otherwise, including without limitation, Copyrights, Patents, Trademarks, Trade Secrets, intangible rights in internet domain names, software and databases not otherwise included in the foregoing, and the right to sue at law or in equity or otherwise recover for any past, present and future infringement, dilution, misappropriation, or other violation or impairment thereof, including the right to receive all Proceeds therefrom, including without limitation license fees, royalties, income, payments, claims, damages and proceeds of suit, now or hereafter due and/or payable with respect thereto.

**“ Intellectual Property Registry ”** means the United States Patent and Trademark Office, the United States Copyright Office, any state intellectual property registry and any foreign counterpart of any of the foregoing.

**“ Intellectual Property Security Agreement ”** has the meaning assigned to such term in Section 4.8(a).

**“ Joinder Agreement ”** means a joinder agreement, substantially in the form of Exhibit D to this Agreement, executed by an Additional Grantor and delivered to the Collateral Agent.

**“ LLC ”** means (a) as of the date of this Agreement, any limited liability company set forth in Section 1 of the Perfection Certificate and (b) any limited liability company in which any Grantor acquires an interest after the date of this Agreement (as may be amended, supplemented or otherwise modified from time to time in accordance with this Agreement).

**“ LLC Agreement ”** means the limited liability company agreement or such analogous agreement governing the operation of any LLC.

**“ Partnership ”** means (a) as of the date of this Agreement, any partnership set forth in Section 1 of the Perfection Certificate and (b) any partnership in which any Grantor acquires an interest after the date of this Agreement (as may be amended, supplemented or otherwise modified from time to time in accordance with this Agreement).

**“ Partnership Agreement ”** means the partnership agreement of any Partnership or such analogous agreement governing the operation of any Partnership.

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**“ Patent Licenses ”** means all agreements and licenses (whether or not in writing) granting any right in or to any Patent.

**“ Patents ”** means all United States and foreign patents, certificates of invention, and pending applications for any of the foregoing throughout the world, including, without limitation: (i) each patent and patent application referred to in Section 10 of the Perfection Certificate (if any) under the heading “Patents” (as may be amended from time to time), and (ii) all divisions, continuations, and continuations-in-part thereof and all rights to obtain any reissues or extensions of the foregoing, (iii) the right to sue or otherwise recover for past, present and future infringements, misappropriations or other violations of any of the foregoing, and (iv) all Proceeds of the foregoing, including license fees, royalties, income, payments, claims, damages and proceeds of suit.

**“ Perfection Certificate ”** means, with respect to any Grantor, a certificate dated as of the date hereof, substantially in the form of Exhibit G (with any changes that the Grantor and the Collateral Agent and, if required by the Loan Documents, the Required Lenders shall have approved), completed and supplemented with the schedules contemplated thereby to the reasonable satisfaction of the Collateral Agent, and signed by an officer of such Grantor.

**“ Pledged Collateral ”** means, collectively, the Pledged Notes, the Pledged Stock, the Pledged Partnership Interests, the Pledged LLC Interests, any other Investment Property of any Grantor to the extent that the same constitutes Collateral (subject to Section 2.2 hereof), all certificates or other instruments representing any of the foregoing, all Security Entitlements of any Grantor in respect of any of the foregoing and all Dividends, interest distributions, cash, warrants, rights, instruments and other property or Proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing. Pledged Collateral may be General Intangibles, Investment Property, Instruments or any other category of Collateral.

**“ Pledged LLC Interests ”** means all of any Grantor’s right, title and interest as a member of any LLC and all of such Grantor’s right, title and interest in, to and under any LLC Agreement to which it is a party, to the extent that the same constitutes Collateral (subject to Section 2.2 hereof); *provided* that “Pledged LLC Interest” shall not include more than 65% of the total outstanding voting membership interest of any CFC or FSHCO.

**“ Pledged Notes ”** means all of any Grantor’s right, title and interest in each Instrument evidencing Indebtedness with an outstanding principal balance of \$125,000 or more owed to such Grantor, and all cash, Instruments and other property or Proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

**“ Pledged Partnership Interests ”** means all of any Grantor’s right, title and interest as a limited and/or general partner in any Partnership and all of such Grantor’s right, title and interest in, to

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and under any Partnership Agreement to which it is a party to the extent that the same constitutes Collateral (subject to Section 2.2 hereof); *provided* that “Pledged Partnership Interest” shall not include more than 65% of the total outstanding voting Partnership interest of any CFC or FSHCO.

“**Pledged Stock**” means (a) as of the date of this Agreement, the shares of Stock listed in Section 11 of the Perfection Certificate (as may be amended, supplemented or otherwise modified from time to time in accordance with this Agreement) and (b) any shares of Stock in which any Grantor acquires an interest after the date of this Agreement, in each case to the extent that the same constitutes Collateral (subject to Section 2.2 hereof); *provided* that “Pledged Stock” shall not include more than 65% of the total outstanding voting Stock of any CFC or FSHCO.

“**Secured Obligations**” has the meaning assigned to such term in Section 2.1.

“**Security Interest**” means, collectively, the continuing security interests in the Collateral granted to the Collateral Agent for the benefit of the Secured Parties pursuant to Section 2.1.

“**Security Supplement**” means any supplement to this Agreement in substantially the form of Exhibit C, executed by an Authorized Officer of the applicable Grantor.

“**Stock**” means shares of capital stock (whether denominated as common stock or preferred stock) of or in a corporation, whether voting or non-voting and all rights to subscribe for, purchase or otherwise acquire any of the foregoing.

“**Trade Secret Licenses**” means any and all agreements and licenses (whether or not in writing) granting any right in or to any Trade Secret.

“**Trade Secrets**” means all trade secrets and all other confidential and proprietary information, know-how, processes, designs, inventions, technology, compilations, data, databases, and computer programs (whether in source code, object code, or other form) and all rights in documentation (including without limitation user manuals and training materials) related thereto, and proprietary methodologies and algorithms, to the extent not covered by the definitions of Patents, Trademarks and Copyrights, now or hereafter owned or used in, or held for use in, the business of any Grantor, whether or not reduced to a writing or other tangible form, and with respect to any and all of the foregoing, (i) the right to sue or otherwise recover for past, present and future infringements, misappropriations, and other violations thereof, and (ii) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages and proceeds of suit.

“**Trademark Licenses**” means any and all agreements and licenses (whether or not in writing) granting any right in or to any Trademark.

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**“Trademarks”** means all United States, state and foreign trademarks, trade names, trade dress, service marks, certification marks, collective marks, logos and other source or business identifiers, all registrations and pending applications for any of the foregoing, whether registered or unregistered, and whether established or registered in an Intellectual Property Registry in any country or any political subdivision thereof, and with respect to any and all of the foregoing: (i) all common law rights related thereto, (ii) the trademark registrations and pending applications referred to in Section 10 of the Perfection Certificate (if any) under the heading “Trademarks” (as may be amended or supplemented from time to time), (iii) the right to obtain renewals of any of the foregoing, (iv) all of the goodwill of the business connected with the use of and symbolized by the foregoing, (v) the right to sue or otherwise recover for past, present and future infringements, misappropriations, dilutions or other violations of any of the foregoing or for any injury to goodwill, and (vi) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages and proceeds of suit.

**“UCC”** means the Uniform Commercial Code enacted in the State of New York, as amended from time to time; *provided* that if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or priority of, or remedies with respect to a security interest is governed by the Uniform Commercial Code or other personal property security laws of any jurisdiction other than New York, “UCC” shall mean the Uniform Commercial Code or other personal property security laws as in effect in such other jurisdiction solely for the purposes of the provisions hereof relating to such perfection, priority or remedies and for the definitions related to such provisions.

#### **Section 1.4      Rules of Interpretation**

The rules of interpretation specified in Section 1.03 of the Credit Agreement shall be applicable to this Agreement; *provided* that, unless the context requires otherwise, all references herein to Sections and Exhibits shall be construed to refer to Sections of, and Exhibits to, this Agreement. Unless otherwise specified, the Exhibits to this Agreement, in each case as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, are incorporated herein by reference. Other than this Section 1.4, if any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. If any conflict or inconsistency exists between this Agreement and any Loan Document other than the Credit Agreement, this Agreement shall govern. All references herein to provisions of the UCC include all successor provisions under any subsequent version or amendment to any Article of the UCC.

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## SECTION 2

### GRANT OF SECURITY

#### Section 2.1      Grant of Security

As security for the prompt and complete payment and performance in full when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) of all Obligations at any time owed or owing to the Secured Parties (or any of them) (collectively, the “**Secured Obligations**”), each Grantor hereby pledges and grants to the Collateral Agent, for its benefit and for the benefit of the Secured Parties, a continuing security interest in and Lien on all of its right, title and interest in, to and under the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (collectively, the “**Collateral**”):

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Contracts, including without limitation all Trademark Licenses, Copyright Licenses, Patent Licenses and Trade Secret Licenses;
- (d) all Documents;
- (e) all General Intangibles, including without limitation all Intellectual Property owned by such Grantor and that portion of the Pledged Collateral constituting General Intangibles;
- (f) all Goods whether tangible or intangible, wherever located, including without limitation all Inventory, Equipment, Fixtures and Money;
- (g) all Instruments, including without limitation that portion of the Pledged Collateral constituting Instruments;
- (h) all cash and Deposit Accounts, including without limitation all Cash Collateral Accounts constituting Deposit Accounts;

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- (i) all Insurance;
  - (j) all Investment Property, including without limitation all Control Accounts, all Cash Collateral Accounts constituting Investment Property and that portion of the Pledged Collateral constituting Investment Property;
  - (k) all Accounts Receivable;
  - (l) all Pledged Stock, Pledged Partnership Interests and Pledged LLC Interests;
  - (m) all books and Records;
  - (n) all Money or other property of any kind which is received by such Grantor in connection with refunds with respect to taxes, assessments and governmental charges imposed on such Grantor or any of its property or income;
  - (o) all causes of action, including all Commercial Tort Claims described in Section 13 of the Perfection Certificate and all Money and other property of any kind received therefrom, and all Money and other property of any kind recovered by any Grantor;
  - (p) all Letter of Credit Rights;
  - (q) all Collateral Support and Supporting Obligations relating to any of the foregoing; and
  - (r) all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for and rents, profits and products of or in respect of any of the foregoing, and any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to any Grantor from time to time with respect to the foregoing.

## **Section 2.2      Certain Exclusions**

Notwithstanding anything herein to the contrary, in no event shall the term “Collateral” include, and no Grantor shall be deemed to have granted a Security Interest in, any of its right, title or interest in any Excluded Assets (but only for so long as such property shall constitute Excluded Assets); *provided* that, in any event, the Pledged Stock, Pledged Partnership Interests, and Pledged LLC Interests identified in Section 11 of the Perfection Certificate hereof shall constitute “Collateral”.

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### **Section 2.3      Grantors Remain Liable**

- (a) Anything contained herein to the contrary notwithstanding, subject to the terms of the Credit Agreement:
  - (i) each Grantor shall remain liable under any contracts and agreements included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed;
  - (ii) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under any contracts and agreements included in the Collateral; and
  - (iii) neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any contracts and agreements included in the Collateral by reason of this Agreement, nor shall the Collateral Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.
- (b) Neither the Collateral Agent nor any other Secured Party nor any purchaser at a foreclosure sale under this Agreement shall be obligated to assume any obligation or liability under any contracts and agreements included in the Collateral unless the Collateral Agent, such other Secured Party or such purchaser, as the case may be, otherwise expressly agrees in writing to assume any or all of said obligations.

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## SECTION 3

### REPRESENTATIONS AND WARRANTIES

Each Grantor represents and warrants to the Collateral Agent and the other Secured Parties, on and as of the Effective Date, that:

#### **Section 3.1 Title**

Such Grantor owns the Collateral purported to be owned by it free and clear of any and all Liens, other than Permitted Encumbrances. Such Grantor has not filed or consented to the filing of (a) any financing statement or analogous document under the UCC or any other applicable laws covering any Collateral, (b) any assignment in which such Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with any Intellectual Property Registry in any jurisdiction or (c) any assignment in which such Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for filings with respect to Permitted Encumbrances.

#### **Section 3.2 Names, Locations**

- (a) The Perfection Certificate sets forth with respect to such Grantor, (i) under Section 1, its exact legal name, as such name appears in the public record of its Jurisdiction of Organization which shows such Grantor to have been organized, (ii) under Section 4, each other legal name that such Grantor has had in the past five years, together with the date of the relevant change (if applicable), (iii) under Section 2, the United States federal employer identification number of such Grantor (if any) and (iv) under Section 2, the jurisdiction of organization of such Grantor and its organizational identification number or statement that such Grantor has no such number.
- (b) Section 3 of the Perfection Certificate sets forth with respect to such Grantor under the heading "Locations", the chief executive office and "location" (within the meaning of Section 9-307 of the UCC) of such Grantor. Except as set forth in Section 4 of the Perfection Certificate under the heading "Changes in Jurisdiction of Organization, Chief Executive Office, "Location" Under Section 9-307 of the UCC, Identity or Organizational Structure", such Grantor has not changed its jurisdiction of organization, chief executive office or other such "location" in the past five years.
- (c) Section 9 of the Perfection Certificate sets forth with respect to such Grantor under the heading "Third Parties Holding Collateral", the names and addresses of all persons other than such Grantor or the Collateral Agent that have actual possession of any of the Collateral of such Grantor having a book value greater than \$125,000 individually or \$250,000 in the aggregate at any time.
- (d) Except as set forth in Section 4 of the Perfection Certificate under the heading "Changes in Name, Jurisdiction of Organization, Chief Executive Office, "Location" Under Section 9-307 of the UCC, Identity or Organizational Structure", such Grantor has not changed its identity or organizational structure in

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any way in the past five years. Changes in identity or organizational structure would include mergers, consolidations and acquisitions, as well as any change in the form or jurisdiction of organization of such Grantor. If any such change has occurred, Section 4 of the Perfection Certificate sets forth the date of such change and the exact legal name of each acquiree or constituent party to a merger or consolidation.

### **Section 3.3 Filings, Consents**

Attached hereto as Exhibit E are copies of all UCC financing statements required to be made in each relevant jurisdiction. Such financing statements are all of the filings that are necessary to perfect a Security Interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Collateral in which the Security Interest may be perfected by the filing of a UCC-1.

### **Section 3.4 Security Interests**

The Security Interest constitutes legal and valid security interest in all Collateral that is subject to Article 8 or Article 9 of the UCC securing the payment and performance of the Secured Obligations. Subject to the completion of the filings described in Section 3.3 and to value being given, the Security Interest is, and shall be, a validly created and perfected security interest in all Collateral in which a security interest may be perfected by filing of a financing statement in the United States pursuant to the UCC, prior to any other Lien on any of the Collateral, other than Permitted Encumbrances that have priority as a matter of law.

### **Section 3.5 Accounts Receivable**

No Account Receivable constituting Collateral of an amount greater than \$125,000 individually and \$250,000 in the aggregate is evidenced by, or constitutes an Instrument or Chattel Paper that has not been delivered to, or otherwise subjected to the control (within the meaning of Section 9-105 of the UCC) of, the Collateral Agent to the extent required by, and in accordance with, Section 4.6.

### **Section 3.6 Pledged Collateral, Deposit Accounts**

- (a) Section 15 of the Perfection Certificate sets forth under the headings "Securities Accounts" and "Commodity Accounts," respectively, all of the Securities Accounts and Commodity Accounts in which such Grantor has an interest. Such Grantor is the sole entitlement holder of each such Securities Account and Commodity Account and such Grantor has not consented to, and is not otherwise aware of, any person (other than the Collateral Agent pursuant to this Agreement)

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having “control” (as defined in Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or any Securities or other property credited thereto, in each case subject to Permitted Encumbrances.

- (b) Section 15 of the Perfection Certificate sets forth under the heading “Deposit Accounts” all of the Deposit Accounts in which such Grantor has an interest and such Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any person (other than the Collateral Agent pursuant to this Agreement) having “control” (as defined in Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein, in each case subject to Permitted Encumbrances. Each Deposit Account listed in Section 15 of the Perfection Certificate and designated with an asterisk is an Excluded Deposit Account on and as of the Effective Date.
- (c) Section 12 of the Perfection Certificate sets forth under the heading “Instruments” all of the Pledged Notes.
- (d) Section 11 of the Perfection Certificate sets forth under the heading “Securities” all Pledged Stock, Pledged Partnership Interests and Pledged LLC Interests of such Grantor. The Pledged Stock, Pledged Partnership Interests and Pledged LLC Interests pledged hereunder by each Grantor constitute, as of the date hereof, that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth in Section 11 of the Perfection Certificate. Section 11 of the Perfection Certificate identifies any such Pledged Stock, Pledged Partnership Interests or Pledged LLC Interests that are represented by Certificated Securities.
- (e) All of the Pledged Stock, Pledged Partnership Interests and Pledged LLC Interests have been duly and validly issued and are fully paid and nonassessable.
- (f) As of the date hereof, no person other than such Grantor (or its agent or designee) or the Collateral Agent has “control” (as defined in Sections 8-106 and 9-106 of the UCC) over any Pledged Collateral of such Grantor and, other than the Pledged Partnership Interests and the Pledged LLC Interests that constitute General Intangibles, there is no Pledged Collateral other than (i) Pledged Collateral that is represented by Certificated Securities, Instruments or Tangible Chattel Paper that are (or will be) in the possession of the Collateral Agent (or its agent or designee) and (ii) Pledged Collateral held in a Control Account, in each case except as permitted by this Agreement.
- (g) [Reserved]

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- (h) There are no restrictions on transfer in the LLC Agreement governing any Pledged LLC Interests or in the Partnership Agreement governing any Pledged Partnership Interests or in any stockholders' agreement or other similar agreement governing the Pledged Collateral which would limit or restrict (i) the grant of a security interest in the Pledged LLC Interests, the Pledged Partnership Interests or the Pledged Stock, (ii) the perfection of such security interest, (iii) the exercise of remedies in respect of such perfected security interest in the Pledged LLC Interests, the Pledged Partnership Interests or the Pledged Stock or (iv) the transfer of the Pledged LLC Interests, the Pledged Partnership Interests or the Pledged Stock, in each case as contemplated by this Agreement. Further, the terms of any Pledged LLC Interests and Pledged Partnership Interests either (i) expressly provide, and any certificates representing such Pledged LLC Interests or Pledged Partnership Interests expressly provide, that they are securities governed by Article 8 of the Uniform Commercial Code in effect from time to time in any jurisdiction, including, without limitation, the "issuer's jurisdiction" (as such term is defined in the UCC in effect in such jurisdiction) of each issuer thereof, or (ii) (A) are not traded on securities exchanges or in securities markets, (B) are not "investment company securities" (as defined in Section 8-103(b) of the UCC) and (C) do not provide, in the related LLC Agreement or Partnership Agreement, as applicable, certificates, if any, representing such Pledged LLC Interests or Pledged Partnership Interests, as applicable, or otherwise that they are securities governed by the Uniform Commercial Code of any jurisdiction.
  - (i) To the knowledge of the relevant Grantor, each of the Pledged Notes constitutes the legal and valid obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

### **Section 3.7      Intellectual Property**

- (a) Section 10 of the Perfection Certificate (as may be amended or supplemented from time to time) sets forth a true and complete list of (i) all United States, state and foreign registrations of and applications for Trademarks, Patents and Copyrights issued or registered by, or applied-for with, an Intellectual Property Registry and, in each case, owned by such Grantor and (ii) all Exclusive Copyright Licenses (including all Copyrights licensed therein).
- (b) Such Grantor is the sole and exclusive owner of the entire right, title, and interest in and to all Intellectual Property listed as owned by Grantor in Section 10 of the Perfection Certificate (as may be amended or supplemented by Grantor from time to time), free and clear of all Liens, other than licenses of Intellectual Property granted in the ordinary course of business that do not interfere in any material

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respect with the business of the Borrower or any of its Subsidiaries, and such Grantor owns or has the valid right to use all other Intellectual Property necessary for, used in or held for use in the business of Borrower and its Restricted Subsidiaries, in each case, free and clear of all Liens, other than licenses of Intellectual Property granted in the ordinary course of business that do not interfere in any material respect with the business of the Borrower or any of its Subsidiaries.

- (c) On the date hereof, all Intellectual Property owned by or exclusively licensed by such Grantor is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, nor are any of the Patents included in the Collateral the subject of a reexamination proceeding, except in each case as could not reasonably be expected to have a Material Adverse Effect, and such Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain in full force and effect any and all registrations and applications of Intellectual Property owned by and material to the business of such Grantor.
- (d) All Intellectual Property owned by such Grantor material to the business of Borrower and its Restricted Subsidiaries, taken as a whole, is valid and enforceable.
- (e) No holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity, enforceability or scope of, or such Grantor's right to register, own or use, any Intellectual Property (except for non-final, ordinary course office actions related to any United States or foreign Intellectual Property registration efforts), and no such action or proceeding is pending or, to the best of such Grantor's knowledge, threatened in writing, except, in each case, as could not reasonably be expected to have a Material Adverse Effect.
- (f) Except as set forth in Section 10 of the Perfection Certificate (as may be amended or supplemented from time to time), all registrations and applications for any Copyrights, Patents and Trademarks with an Intellectual Property Registry owned by such Grantor and material to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, are listed in the records of such Intellectual Property Registry as being owned by such Grantor.
- (g) Such Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with the use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights, except in each case to the extent that any failure to so comply would not reasonably be expected to have a Material Adverse Effect.

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- (h) Such Grantor controls the nature and quality in accordance with industry standards of all products sold and all services rendered under or in connection with all Trademarks material to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, in each case consistent with industry standards, and has taken commercially reasonable action necessary to insure that all licensees of such Trademarks comply with the standards of quality of the Borrower and its Restricted Subsidiaries, taken as a whole.
  - (i) Such Grantor has taken commercially reasonable steps to protect the confidentiality of its Trade Secrets constituting Intellectual Property material to the business of the Borrower and its Subsidiaries, taken as a whole, to the extent that it intends to maintain them as a Trade Secret.
  - (j) Such Grantor has not conducted any special searches, and to such Grantor's knowledge, the conduct of such Grantor's business does not infringe, misappropriate, dilute or otherwise violate any Trademark, Patent, Copyright, or Trade Secret owned or controlled by any other Person, except as could not reasonably be expected to result in a Material Adverse Effect. To such Grantor's knowledge, except as set forth in Section 10 of the Perfection Certificate, no claim has been made against such Grantor that the use of any Intellectual Property owned or used by such Grantor (or any of its respective licensees) infringes, misappropriates, dilutes or otherwise violates the asserted rights of any Person, except as could not reasonably be expected to result in a Material Adverse Effect.
  - (k) To such Grantor's knowledge, no Person is infringing, misappropriating, diluting or otherwise violating any rights in any Intellectual Property included in the Collateral, except as could not reasonably be expected to have a Material Adverse Effect.
  - (l) No settlement or consents, covenants not to sue, co-existence agreements, non-assertion assurances, or releases in relation to rights to Intellectual Property included in the Collateral, have been entered into by such Grantor or bind such Grantor in a manner that could reasonably be expected to have a Material Adverse Effect (it being understood that such Grantor shall have the right to enter into or become bound by settlements, consents, covenants not to sue, co-existence agreements, non-assertion assurances or releases that such Grantor determines in good faith and in its reasonable business judgment are desirable and in the reasonable best interests of the business of Borrower and its Subsidiaries).

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## **SECTION 4**

### **COVENANTS**

#### **Section 4.1 Change of Name; Place of Business**

Unless a Grantor has given the Collateral Agent at least 15 days prior written notice, such Grantor will not change (i) its legal name, (ii) its jurisdiction of organization, (iii) in the case of a Grantor that is not a registered organization formed under the law of a state of the United States, the location of its chief executive office or “location” (within the meaning of Section 9-307 of the UCC), (iv) its type of organization or (v) its organizational identification number (if any) or federal employer identification number (if any). Each Grantor agrees to cooperate with the Collateral Agent, at the expense of the Grantors, in making all filings that are required in order for the Collateral Agent to continue at all times following any such change to have a legal, valid and perfected Security Interest in all the Collateral.

#### **Section 4.2 Periodic Certification**

In accordance with Section 5.01(f) of the Credit Agreement and from time to time as requested by the Collateral Agent following the occurrence and during the continuance of an Event of Default, each Grantor shall deliver to the Collateral Agent the information required by Section 5.01(f) of the Credit Agreement and a Security Supplement, together with all amendments or supplements to the schedules to the Perfection Certificate.

#### **Section 4.3 Protection of Security**

Each Grantor shall, at its own cost and expense, take (a) any and all actions necessary or reasonably requested by the Collateral Agent to maintain the Security Interest of the Collateral Agent in the Collateral and the priority thereof against any Lien (except Permitted Encumbrances) and (b) commercially reasonable actions to defend the Collateral and such Security Interest against the claims and demands of all persons, subject in each case to such claims or demands permitted by the Credit Agreement and the rights (if any) of such Grantor under the Loan Documents to dispose of Collateral. Except as permitted by the Credit Agreement and the express rights (if any) of such Grantor under the Loan Documents to dispose of Collateral, or otherwise consented to by the Collateral Agent, no Grantor shall take or cause to be taken any action that could be reasonably expected to impair the Collateral Agent’s rights in the Collateral.

#### **Section 4.4 Insurance**

Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as such Grantor’s true and lawful agent

(and attorney-in-fact) for the purpose of making, settling and adjusting claims in respect of the Collateral under Insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the Proceeds of such Insurance and for making all determinations and decisions with respect thereto; provided, however, that the Collateral Agent shall not take any of such actions until after the occurrence and during the continuance of an Event of Default. In the event that any Grantor at any time or times shall fail to obtain or maintain any of the Insurance required by the Credit Agreement or to pay any premium in whole or part relating thereto, the Collateral Agent may, without waiving or releasing any obligation or liability of such Grantor hereunder or without waiving any Event of Default, in its sole discretion and at such Grantor's expense, obtain and maintain such Insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent deems advisable.

#### **Section 4.5      Equipment and Inventory**

- (a) Each Grantor hereby covenants and agrees that except as permitted by the Credit Agreement, it shall not deliver any Document evidencing any of its Equipment or Inventory to any person other than (i) the issuer of such Document to claim the Goods evidenced thereby, (ii) the Collateral Agent (or its agent or designee) or (iii) any other Grantor.
- (b) Each Grantor hereby covenants and agrees that, upon the occurrence and during the continuance of an Event of Default, such Grantor shall not permit any Equipment, Inventory or other Goods located in the United States of such Grantor having a value greater than \$125,000, individually, or \$250,000, in the aggregate, to be in the possession or control of any third party (including warehousemen, bailees, agents or processors) at any time, unless such third party shall have been notified of the Collateral Agent's Security Interest and such Grantor shall have used commercially reasonable efforts to obtain from such third party a written acknowledgement and agreement to hold such Equipment, Inventory or other Goods for the Collateral Agent's benefit and subject to the Security Interest and the instructions of the Collateral Agent and to waive and release any Lien held by it with respect to such Equipment, Inventory or other Goods, whether arising by operation of law or otherwise. The requirements of this Section 4.5(b) shall not apply to Equipment, Inventory or other Goods in transit, out for repair or at other locations for purposes of onsite maintenance, repair or demonstration, movable computer equipment and related hardware and software that is temporarily removed by employees or Equipment consisting of tools leased by Grantor to its customers, in each case in the ordinary course of the applicable Grantor's business.

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## **Section 4.6      Accounts Receivable**

- (a) Each Grantor hereby covenants and agrees that it shall keep and maintain at its own cost and expense records of its Accounts Receivable, and its material dealings therewith, in each case consistent with such Grantor's ordinary course of business and complete and accurate in all material respects. At any time following the occurrence and during the continuance of an Event of Default, upon the Collateral Agent's request and at the expense of the relevant Grantor, such Grantor shall promptly (i) cause independent public accountants or others reasonably satisfactory to the Collateral Agent to furnish to the Collateral Agent reports showing reconciliations, aging and test verifications of, and trial balances for, the Accounts Receivable, (ii) deliver to the Collateral Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Accounts Receivable, including all original orders, invoices and shipping receipts and (iii) furnish to the Collateral Agent the contact information and other information regarding any Account Debtor under any Accounts Receivable.
- (b) The Collateral Agent shall have the right at any time following the occurrence and during the continuance of an Event of Default to notify (with a copy to the relevant Grantor), or require any Grantor to notify, any Account Debtor of the Collateral Agent's Security Interest in the Accounts Receivable and any Supporting Obligation and the Collateral Agent may in such circumstances: (i) direct the Account Debtors under any Accounts Receivable to make payment of all amounts due or to become due to any Grantor thereunder directly to the Collateral Agent, (ii) notify, or require a Grantor to notify, each person maintaining a lockbox or similar arrangement to which Account Debtors under any Accounts Receivable have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Collateral Agent, (iii) communicate with obligors under the Accounts Receivable to verify with them to the Collateral Agent's satisfaction the existence, amount and terms of any Accounts Receivable and (iv) enforce, at the expense of any Grantor, collection of any such Accounts Receivable and to adjust, settle or compromise the amount or payment thereof. If the Collateral Agent notifies a Grantor that it has elected to collect the Accounts Receivable in accordance with the preceding sentence, any payments of Accounts Receivable received by such Grantor shall be deposited promptly (and in any event within two Business Days after the Collateral Agent notifies the Grantor of the account details of the Cash Collateral Account and accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit) by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent or in blank, if required, in a Cash Collateral Account maintained under the sole dominion and control of the Collateral Agent and until so turned over, all amounts and Proceeds (including cash, checks, non-cash items and other instruments)

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received by such Grantor in respect of the Accounts Receivable, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Agent hereunder and shall be segregated from other funds of such Grantor and the Grantor shall not adjust, settle or compromise the amount or payment of any Accounts Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon without the prior written consent of the Collateral Agent. All amounts and Proceeds while held by the Collateral Agent (or by a Grantor in trust for the Collateral Agent and the Secured Parties) shall continue to be held as collateral security for all of the Secured Obligations and shall not constitute payment thereof until applied as provided in Section 7.3 hereof.

- (c) If at any time any Grantor shall take a security interest in any property of an Account Debtor or any other person to secure payment and performance of an Account in excess of \$250,000, to the extent permissible under the document granting a security interest without the requirement of any notice to, or consent or other action by, such Account Debtor or such other person, such Grantor shall promptly assign such security interest to the Collateral Agent. Such assignment need not be filed of public record unless necessary to continue the perfected status of the security interest against creditors of and transferees from the Account Debtor or other person granting the security interest.
- (d) With respect to any Accounts Receivable in excess of \$125,000 individually or \$250,000 in the aggregate that is evidenced by, or constitutes, Chattel Paper, each Grantor shall cause each originally executed copy thereof to be delivered to the Collateral Agent (or its agent or designee) appropriately indorsed to the Collateral Agent or indorsed in blank: (i) with respect to any such Accounts Receivable in existence on the date hereof, on or prior to the date hereof and (ii) with respect to any such Accounts Receivable hereafter arising, as soon as practicable, and in any event within ten days of such Grantor acquiring rights therein. With respect to any Accounts Receivable in excess of \$125,000 individually or \$250,000 in the aggregate that constitutes Electronic Chattel Paper, each Grantor shall take all steps necessary to give the Collateral Agent "control" (as defined in Section 9-105 of the UCC) over such Accounts Receivable (x) with respect to any such Accounts Receivable in existence on the date hereof, on or prior to the date hereof and (y) with respect to any such Accounts Receivable hereafter arising, within ten days of such Grantor acquiring rights therein. Any Accounts Receivable not otherwise required to be delivered or subjected to the control of the Collateral Agent in accordance with this Section 4.6 shall be delivered or subjected to such control upon the request of the Collateral Agent following the occurrence and continuance of an Event of Default.

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#### **Section 4.7 Pledged Collateral, Deposit Accounts**

- (a) Except as permitted by the Credit Agreement, each Grantor hereby covenants and agrees that, without the prior written consent of the Collateral Agent, it shall not vote or take any other action to amend or terminate any Partnership Agreement, LLC Agreement, certificate of incorporation, by-laws or other Organizational Documents in any way that adversely affects the validity, perfection or priority of the Collateral Agent's Security Interest. Each Grantor hereby covenants and agrees that, on or after the date hereof, without the prior written consent of the Collateral Agent, it will not designate or specify in any applicable document or contract that any of the Pledged LLC Interests or the Pledged Partnership Interests are governed by Article 8 of the UCC unless it shall cause certificates to be issued in respect of such Equity Interest and deliver such certificates to the Collateral Agent in accordance with the terms of Section 4.7(e)(iii) hereof.
- (b) [Reserved]
- (c) Each Grantor hereby covenants and agrees that, in the event it establishes or acquires rights in any Pledged Stock, Pledged Partnership Interests, Pledged LLC Interests (or any certificates or other instruments representing any of the foregoing), Securities Accounts, Commodity Accounts or Deposit Accounts (other than any Excluded Deposit Accounts) or any Excluded Deposit Account ceases to be an Excluded Deposit Account, in each case during any fiscal quarter of the Grantors ending after the date of this Agreement, such Grantor shall promptly deliver to the Collateral Agent, but in any event not later than the delivery of the Compliance Certificate of such fiscal quarter (or such later date as is acceptable to the Collateral Agent in its sole discretion), a completed Security Supplement together with all supplements to the relevant Perfection Certificate, reflecting such new Pledged Stock, Pledged Partnership Interests, Pledged LLC Interests (or any certificates or other instruments representing any of the foregoing), Securities Accounts, Commodity Accounts or Deposit Accounts (with each Excluded Deposit Account listed in such supplements to the Perfection Certificate being indicated by an asterisk). Notwithstanding the foregoing, it is understood and agreed that the Security Interest of the Collateral Agent shall attach to all Pledged Collateral, Securities Accounts, Commodities Accounts and Deposit Accounts (other than Excluded Deposit Accounts) immediately upon such Grantor's acquisition of rights therein and shall not be affected by the failure of such Grantor to deliver a supplement to Section 15 of the Perfection Certificate as required hereby.
- (d) Each Grantor hereby covenants and agrees that it shall enforce its rights with respect to any Pledged Collateral, Deposit Accounts, Commodity Accounts and Securities Accounts as is consistent with its ordinary course of business.

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- (e) Each Grantor agrees that with respect to (x) any Securities Accounts, Commodity Accounts or Deposit Accounts (other than Excluded Deposit Accounts) listed in Section 15 of the Perfection Certificate on the date of this Agreement, it will comply with the provisions of this Section 4.7(e) promptly, but in any event, within 10 Business Days of the Amendment No. 1 Effective Date (or such later date as is acceptable to the Collateral Agent in its sole discretion) (and as further set forth below) and (y) any Pledged Collateral and any Securities, Instruments, Tangible Chattel Paper, Securities Account, Commodities Account or Deposit Account (other than Excluded Deposit Accounts) not listed in Section 15 of the Perfection Certificate on the date of this Agreement, it shall comply with the provisions of this Section 4.7(e) promptly, and in any event within 15 days (or, in the case of Securities Accounts, Commodity Accounts or Deposit Accounts (other than Excluded Deposit Accounts), 45 days) (or such later date as is acceptable to the Collateral Agent in its sole discretion) of such Grantor acquiring rights therein (or of any Deposit Account ceasing to be an Excluded Deposit Account), in each case in form and substance reasonably satisfactory to the Collateral Agent.
- (i) With respect to any Pledged Collateral consisting of Securities Accounts, Securities Entitlements, Commodity Accounts or Commodity Contracts it shall cause the Securities Intermediary or Commodity Intermediary, as applicable, maintaining such Securities Account, Securities Entitlement or Commodity Account to enter into a Control Account Agreement.
  - (ii) With respect to any Deposit Account (other than any Excluded Deposit Account), it cause the depositary institution maintaining such account to enter into a Deposit Account Control Agreement.
  - (iii) With respect to any Pledged Collateral constituting Certificated Securities and any Instruments or Tangible Chattel Paper acquired or pledged on or after the date hereof, other than as agreed to by the Collateral Agent in its reasonable discretion, it shall deliver or cause to be delivered to the Collateral Agent (or its agent or designee) all such Certificated Securities, Instruments and Tangible Chattel Paper, stock powers duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and all other instruments and documents as the Collateral Agent may reasonably request or that are necessary to give effect to the pledge granted hereby; provided, however that such certificates or instruments with respect to the Foreign Subsidiaries of the Borrowing existing on the Effective Date shall be delivered to the Collateral Agent within 30 days of the Effective Date (or such later date as the Collateral Agent may agree). Certificated Securities with respect to any Domestic Subsidiaries shall be delivered to the Collateral Agent on the Effective Date.
  - (iv) With respect to any Pledged Collateral constituting Uncertificated Securities, upon the reasonable request of the Collateral Agent, it shall

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cause the issuer thereof either (i) to register the Collateral Agent as the registered owner of such Uncertificated Security, upon original issue or registration of transfer or (ii) to promptly (but in any event within 30 days of such request) agree in writing with such Grantor and the Collateral Agent that such issuer will comply with instructions originated by the Collateral Agent with respect to such Uncertificated Security without further consent of such Grantor, such agreement to be in form and substance reasonably satisfactory to the Collateral Agent.

- (v) Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the right, without notice to the Grantors, to (A) transfer all or any portion of the Pledged Collateral to its name or the name of its nominee or agent and (B) exchange any certificates or Instruments representing any Investment Property for certificates or Instruments of smaller or larger denominations.
- (vi) Notwithstanding anything to the contrary set forth in any Deposit Account Control Agreement, Control Account Agreement or elsewhere, the Collateral Agent agrees not to deliver any notice of exclusive control (or equivalent) or similar instructions to any relevant depository institution, Securities Intermediary or Commodity Intermediary (as applicable) unless an Event of Default has occurred and is continuing.

(f) **Voting and Distributions**

- (i) So long as no Event of Default shall have occurred and be continuing:
  - (A) except as otherwise provided in this Section 4.7 or elsewhere herein or in the Credit Agreement, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Pledged Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement, the Credit Agreement or the other Loan Documents; unless the result thereof could reasonably be expected to materially and adversely affect the rights and remedies of any of the Secured Parties under this Agreement, the Credit Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same;
  - (B) the Collateral Agent shall promptly execute and deliver (or cause to be executed and delivered) to each Grantor all proxies and other instruments as such Grantor may from time to time reasonably

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request for the purpose of enabling such Grantor to exercise the voting and other consensual rights when and to the extent that it is entitled to exercise the same pursuant to clause (f)(i)(A) above and to receive the cash Dividends that it is entitled to receive pursuant to clause (f)(i)(C) below; and

- (C) each Grantor shall be entitled to receive and retain any and all cash Dividends, interest, principal, distributions, Securities or other property paid on the Pledged Collateral to the extent and only to the extent that such cash Dividends, interest, principal, distributions, Securities or other property are permitted by, and otherwise paid in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable laws. All noncash Dividends, interest, principal, distributions, Securities or other property, and all Dividends, interest, principal, distributions, Securities or other property paid or payable in cash or otherwise in connection with a partial or total liquidation or dissolution, return of capital, capital surplus or paid-in surplus, and all other distributions (other than distributions referred to in the preceding sentence) made on or in respect of the Pledged Collateral, whether paid or payable in cash or otherwise, whether resulting from a subdivision, combination or reclassification of the outstanding Stock of the issuer of any Pledged Collateral or received in exchange for Pledged Collateral or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Collateral without any further action. Such Grantor shall take all steps, if any, necessary or reasonably requested by the Collateral Agent pursuant to the terms of this Agreement to ensure that the Collateral Agent obtains a valid and perfected security interest in and, if applicable, "control" (as defined in Article 8 or Article 9 of the UCC, as applicable) over such noncash Dividends, interest, principal, distributions, Securities or other property (including delivery thereof to the Collateral Agent (or its agent or designee)) and pending any such action such Grantor shall be deemed to hold such noncash Dividends, interest, principal, distributions, Securities or other property in trust for the benefit of the Collateral Agent and, to the extent necessary to create and/or maintain the validity, perfection or priority of the Security Interest in such property shall be segregated from all other property of such Grantor.

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- (ii) Upon the occurrence and during the continuance of an Event of Default:
    - (A) upon written notice by the Collateral Agent to the Grantors, all rights of the Grantors to exercise or refrain from exercising the voting and other consensual rights that they would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise such voting and other consensual rights; *provided* that, subject to the terms of the Credit Agreement, the Collateral Agent shall have the right from time to time following the occurrence and during the continuance of an Event of Default to permit the Grantors to exercise such rights;
    - (B) in order to permit the Collateral Agent to exercise the voting and other consensual rights that it may be entitled to exercise pursuant hereto and to receive all Dividends, interest and other distributions that it may be entitled to receive hereunder: (1) the Grantors shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent (or its agent or designee) all proxies, Dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (2) each Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth in Section 6.1; and
    - (C) upon written notice by the Collateral Agent to the Grantors, all rights of the Grantors to Dividends, interest or principal that any Grantor is authorized to receive pursuant to clause (f)(i)(C) above shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to receive and retain such Dividends, interest or principal.

After all Event of Defaults have been cured or waived or the underlying notice (if applicable) has been rescinded, each Grantor will have the right to exercise the voting and consensual rights and powers that it would otherwise be entitled to exercise pursuant to the terms of clause (f)(i) above.

#### **Section 4.8      Intellectual Property**

- (a) In the case of any Collateral (whether now owned or hereafter acquired) consisting of (i) registrations of or applications for U.S. Patents, Trademarks and Copyrights, or (ii) Exclusive Copyright Licenses, each Grantor shall execute and deliver to the Collateral Agent short-form security agreements substantially in the form of Exhibit F-1, Exhibit F-2 or Exhibit F-3 (each, an "**Intellectual Property Security Agreement**") covering all such Patents, Trademarks, Copyrights and Exclusive Copyright Licenses, respectively, in appropriate form for recordation

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with the United States Patent and Trademark Office or United States Copyright Office with respect to the security interest of the Collateral Agent to the extent requested by the Collateral Agent on the Effective Date and, in respect of Collateral hereafter acquired, pursuant to paragraph (b) below.

- (b) In the event that any Grantor, either itself or through any agent, employee, licensee or designee, files or acquires a registration or application for any U.S. Patent, Trademark or Copyright with the United States Patent and Trademark Office, United States Copyright Office or any successor thereto, or becomes a party to any Exclusive Copyright License, during any fiscal quarter, such Grantor shall deliver to the Collateral Agent a completed Security Supplement together with all supplements to Section 10 of the Perfection Certificate not later than the delivery of the Compliance Certificate for such fiscal quarter, and shall execute and deliver Intellectual Property Security Agreements covering all such Patents, Trademarks, Copyrights and Exclusive Copyright Licenses, respectively, in appropriate form for recordation with the United States Patent and Trademark Office or United States Copyright Office and any and all other agreements, instruments, documents and papers as the Collateral Agent may reasonably request to evidence the Collateral Agent's Security Interest in such Patent, Trademark, Copyright or Exclusive Copyright License.
- (c) Upon the occurrence and during the continuance of an Event of Default, each Grantor shall use commercially reasonable efforts to obtain all requisite consents or approvals by the licensor of each Copyright License, Patent License, Trademark License or Trade Secret License to effect the assignment of all of such Grantor's right, title and interest thereunder to the Collateral Agent or its designee.

#### **Section 4.9 Covenants in Credit Agreement**

Each Grantor shall take, or refrain from taking, as the case may be, each action that is necessary to be taken or not taken, so that no breach of the covenants in the Credit Agreement pertaining to actions to be taken, or not taken, by such Grantor will result.

### **SECTION 5**

#### **FURTHER ASSURANCES; ADDITIONAL GRANTORS**

##### **Section 5.1 Further Assurances**

- (a) Each Grantor agrees that from time to time, at its expense, it shall promptly execute and deliver to the Collateral Agent (or its agent or designee) all further

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instruments and documents and take all further action that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any Security Interest granted or purported to be granted hereby or to enable the Collateral Agent, upon the occurrence and during the continuance of an Event of Default, to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, such Grantor shall:

- (i) execute, acknowledge, deliver or cause to be duly filed (as applicable) all such further instruments, documents, endorsements, powers of attorney or notices, and take all such actions as the Collateral Agent may deem necessary (by notice to such Grantor) or from time to time reasonably request, to preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interests and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith;
- (ii) take all actions the Collateral Agent may deem necessary (by notice to such Grantor) or from time to time reasonably request, to ensure the recordation of appropriate evidence of the Security Interest granted hereunder in the Intellectual Property owned by the Grantor with any Intellectual Property Registry in which said Intellectual Property is registered or in which an application for registration is pending; and
- (iii) at the Collateral Agent's request, appear in and defend any action or proceeding that could reasonably be expected to adversely affect such Grantor's title to or the Collateral Agent's Security Interests in all or any part of the Collateral.

Notwithstanding anything contained in this Agreement to the contrary, no Grantor shall be required to take any action hereunder (including, without limitation, with respect to the perfection or priority of the Security Interest granted herein) to the extent that the cost or burden of such action is excessive in relation to the benefit to the Secured Parties of the taking of such action as reasonably agreed by the Collateral Agent and Borrower.

- (b) All instruments, agreements or other documents executed, authorized or delivered pursuant to Section 5.1(a) shall contain terms and conditions no more onerous or burdensome with respect to any Grantor than the terms and provisions of this Agreement. Without limiting the generality of the foregoing, each Grantor hereby authorizes the Collateral Agent, following the occurrence and during the

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continuance of an Event of Default, with notice thereof to such Grantor, to supplement this Agreement by supplementing the Perfection Certificate or adding additional schedules hereto to identify specifically any asset or item of Collateral that constitutes registered or applied-for Copyrights, Patents or Trademarks or any Exclusive Copyright Licenses; *provided, however,* that such Grantor shall have the right, exercisable within twenty (20) Business Days after notice by the Collateral Agent with respect to such Collateral, to advise the Collateral Agent in writing of any inaccuracy of the representations and warranties made by such Grantor hereunder with respect to such Collateral.

- (c) Each Grantor hereby authorizes the Collateral Agent, at the expense of the Grantor, to file a Record or Records, including financing statements, continuation statements and, in each case, amendments thereto, in all United States jurisdictions and with all filing offices as the Collateral Agent may determine, in its reasonable discretion, are necessary or advisable to perfect (or release) the Security Interest granted to the Collateral Agent herein, without the signature of such Grantor, which Records, in any event, shall include the financing statements attached hereto as Exhibit E. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of the Collateral that describes such property in any other manner as the Collateral Agent may determine, in its reasonable discretion, is necessary, advisable or prudent to ensure the perfection of the Security Interest in the Collateral granted to the Collateral Agent herein, including describing such property as "all assets, whether now owned or hereafter acquired" or "all personal property, whether now owned or hereafter acquired" or words of similar import. The Collateral Agent agrees to make available copies of all such Records to the applicable Grantor upon the recordation thereof by each applicable filing office. Each Grantor agrees that a photographic or other reproduction of a financing statement shall be sufficient as a financing statement and may be filed as a financing statement in the jurisdictions listed in Section 1 of the Perfection Certificate.

## Section 5.2 Additional Grantors

From time to time subsequent to the date hereof, additional persons may become parties hereto as additional Grantors (each, an "**Additional Grantor**") by executing a Joinder Agreement. Upon delivery of any such Joinder Agreement to the Collateral Agent, notice of which is hereby waived by the Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if such Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of the Collateral Agent not to cause any Subsidiary to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other person becomes or fails to become or ceases to be a Grantor hereunder.

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## SECTION 6

### COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT

#### **Section 6.1 Power of Attorney**

For the purpose of enabling the Collateral Agent to exercise the rights and remedies under this Agreement and the other Loan Documents at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby irrevocably makes, constitutes and appoints the Collateral Agent (and all duly authorized officers or agents designated by the Collateral Agent) as such Grantor's true and lawful agent, proxy and attorney-in-fact, with full power and authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, from time to time in the Collateral Agent's reasonable discretion, to take any and all actions and to execute any and all instruments and documents that the Collateral Agent may deem reasonably necessary to accomplish the purposes of this Agreement, including but not limited to the following:

- (a) solely upon the occurrence of an Event of Default which is continuing,
  - (i) to receive, endorse, assign, collect and deliver any and all notes, acceptances, checks, drafts, money orders or other instruments, documents and Chattel Paper or other evidences of payment relating to the Collateral;
  - (ii) to ask for, demand, collect, sue for, recover, compound, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;
  - (iii) to sign the name of such Grantor on any invoice, Document, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices or other document relating to any of the Collateral;
  - (iv) to send verifications of Accounts Receivable or Contracts to any Account Debtor or parties to the Contracts, as applicable;
  - (v) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;

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- (vi) to settle, compromise, compound, adjust or defend any claims, actions, suits or proceedings relating to all or any of the Collateral;
  - (vii) to notify and direct, or to require such Grantor to notify and direct, Account Debtors or parties to the Contracts to make payment directly to the Collateral Agent or as the Collateral Agent shall direct;
  - (viii) to exercise the right to vote the Pledged Stock, Pledged LLC Interests and Pledged Partnership Interests, and all other rights, powers, privileges and remedies to which a holder of such Pledged Collateral would be entitled (including without limitation giving or withholding written consents of stockholders, calling special meetings of stockholders and voting at such meetings), with full power of substitution to do so; and such proxy shall be effective automatically and without the necessity of any action (including any transfer of any Pledged Stock, Pledged LLC Interests or Pledged Partnership Interests on the record books of the issuer thereof) by any Person (including the issuer of the Pledged Stock, Pledged LLC Interests or Pledged Partnership Interests, or any officer or agent thereof);
  - (ix) to collect and receive all cash dividends, interest, principal and other distributions made on the Pledged Stock, Pledged LLC Interests or Pledged Partnership Interests;
  - (x) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral;
  - (xi) to prepare, sign and file for recordation in any Intellectual Property Registry, appropriate evidence of the Security Interest granted herein in Intellectual Property included in the Collateral in the name of such Grantor as assignor;
  - (xii) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including to pay or discharge Taxes or Liens (other than Permitted Encumbrances) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its discretion, any such payments made by the Collateral Agent to become obligations of such Grantor to the Collateral Agent, due and payable immediately without demand; and

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- (xiii) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and to do, at the Collateral Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that the Collateral Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's Security Interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do, and
  - (b) to prepare, execute and file Records (including UCC financing statements) as further described in Section 5.1(c).

## **Section 6.2      No Duty on the Part of Collateral Agent or Secured Parties**

Notwithstanding any other provision of this Agreement, and without limiting any provision of the Credit Agreement, nothing herein contained shall be construed as requiring or obligating the Collateral Agent, any other Secured Party or any of their respective officers, directors, employees or agents to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent or any other Secured Party, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby, and no action taken or omitted to be taken by the Collateral Agent, any other Secured Party or any of their respective officers, directors, employees or agents with respect to the Collateral or any part thereof shall give rise to any defense, counterclaim or offset in favor of any Grantor or to any claim or action against the Collateral Agent, any other Secured Party or any of their respective officers, directors, employees or agents. It is understood and agreed that the appointment of the Collateral Agent as the agent and attorney-in-fact of each Grantor for the purposes set forth above is coupled with an interest and is irrevocable as to each Grantor until this Agreement is terminated and all Security Interests created hereby with respect to the Collateral of such Grantor are released. The provisions of this Section 6.2 shall in no event relieve any Grantor of any of its obligations hereunder or under any other Loan Document with respect to the Collateral or any part thereof or impose any obligation on the Collateral Agent, any other Secured Party or any of their respective officers, directors, employees or agents to proceed in any particular manner with respect to the Collateral or any part thereof, or in any way limit the exercise by the Collateral Agent, any other Secured Party or any of their respective officers, directors, employees or agents of any other or further right that it may have on the date of this Agreement or hereafter, whether hereunder, under any other Loan Document, by law or otherwise. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to the Grantors for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

### **Section 6.3      Authority, Immunities and Indemnities of Collateral Agent**

Each Grantor acknowledges, and, by acceptance of the benefits hereof, each Secured Party agrees, that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as among the Secured Parties, be governed by the Credit Agreement and that the Collateral Agent shall have, in respect thereof, all rights, remedies, immunities and indemnities granted to it in the Credit Agreement. By acceptance of the benefits hereof, each Secured Party that is not a Lender agrees to be bound by the provisions of the Credit Agreement applicable to the Collateral Agent, including Article 10 thereof, as fully as if such Secured Party were a Lender. The Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

## **SECTION 7**

### **REMEDIES**

#### **Section 7.1      Remedies Upon Event of Default**

- (a) Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) or any other applicable law, and without limiting the foregoing, also may pursue any of the following separately, successively or simultaneously:
  - (i) with respect to any Collateral consisting of Intellectual Property, on demand, cause the Security Interest to become an assignment, transfer and conveyance of any or all of such Collateral by the applicable Grantors to the Collateral Agent, or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any such Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers cannot be obtained);
  - (ii) require a Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of the Collateral Agent forthwith,

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assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties;

- (iii) with or without legal process and with or without prior notice or demand for performance, to take possession of the Collateral and to enter without breach of the peace any premises owned or leased by the Grantors where the Collateral may be located for the purpose of taking possession of or removing the Collateral;
- (iv) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate;
- (v) exercise dominion and control over, issue a notice of exclusive control with respect to and refuse to permit further withdrawals (whether of money, securities, instruments or other property) from any Cash Collateral Account maintained with the Collateral Agent constituting part of the Collateral;
- (vi) without prior notice except as specified below, sell, assign, lease, license (on an exclusive or non-exclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale or at any broker's board or on any securities exchange, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Agent may deem reasonable; *provided* that (A) the Collateral Agent shall be authorized at any such sale (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, (B) upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold, (C) each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and (D) each Grantor hereby waives (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted; and
- (vii) with respect to any Collateral consisting of contracts or agreements, the Collateral Agent may notify or require a Grantor to notify any counterparty to such contract or agreement to make all payments thereunder directly to the Collateral Agent.

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- (b) The Collateral Agent or any other Secured Party may be the purchaser of any or all of the Collateral at any sale thereof and the Collateral Agent, as collateral agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale.
  - (c) Each Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under the UCC or other applicable law, any notice made shall be deemed reasonable if sent to such Grantor or the Borrower, addressed as set forth in the notice provisions of the Credit Agreement, at least ten days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times during ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and the Grantors shall not be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding

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the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose upon the Collateral and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price that might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree.

- (d) If the Proceeds of any sale or other disposition of the Collateral are insufficient to pay the entire outstanding amount of the Secured Obligations, the Grantors shall be jointly and severally liable for deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against the Grantors, and the Grantors hereby waive and agree not to assert any defenses in an action for specific performance of such covenants except for a defense that no Event of Default has occurred or is continuing under the Credit Agreement. Nothing in this Section shall in any way alter the rights of the Collateral Agent hereunder.
- (e) The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.
- (f) The Collateral Agent shall have no obligation to marshal any of the Collateral.

## **Section 7.2      Intellectual Property**

For the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies and for no other purpose, each Grantor hereby grants to the Collateral Agent, for the benefit of the Collateral Agent and the Secured Parties only, an irrevocable during the term of this Agreement, non-exclusive license (exercisable without payment of royalty or other compensation to the Grantors) to use, license or sub-license any of the Collateral consisting of Intellectual Property subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of such Trademarks, now owned or hereafter acquired by such Grantor, and wherever the same may be located, or Patent

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Licenses, Trademark Licenses or Copyright Licenses, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof; *provided* that only upon the occurrence and during the continuance of an Event of Default following any applicable cure period, may such license to the Collateral Agent be exercised, at the option of the Collateral Agent.

### **Section 7.3 Application of Proceeds**

At such intervals as may be agreed upon by the Borrower and the Collateral Agent, or, if and whenever any Event of Default has occurred and is continuing, the Collateral Agent shall apply all or any part of the Proceeds consisting of Collateral or the Collateral as set forth in Section 9.02 of the Credit Agreement.

### **Section 7.4 Securities Act, Etc.**

- (a) Each Grantor understands that compliance with United States federal securities laws, including but not limited to the Securities Act, might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable “blue sky” laws or other state securities laws or similar laws analogous in purpose or effect. Each Grantor recognizes that in light of such restrictions and limitations the Collateral Agent may, with respect to any sale of the Pledged Collateral, limit the purchasers to those who will agree, among other things, to acquire such Pledged Collateral for their own account, for investment, and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion exercised in good faith, (a) may proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under United States federal securities laws and (b) may approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent shall incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 7.4 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices might exceed substantially the price at which the Collateral Agent sells.

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- (b) If the Collateral Agent shall determine to exercise its right to sell any or all of the Pledged Stock pursuant to Section 7.1, and if in the reasonable opinion of the Collateral Agent it is necessary or advisable to have the sale of the Pledged Stock, or that portion thereof to be sold, registered under the provisions of the Securities Act, the relevant Grantor will use commercially reasonable efforts (i) to cause the issuer thereof to execute and deliver, and cause the directors and officers of such issuer to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts as may be, in the reasonable opinion of the Collateral Agent, necessary or advisable to register the sale of Pledged Stock, or that portion thereof to be sold, under the provisions of the Securities Act, (ii) to cause the registration statement relating thereto to become effective and to remain effective for a period of six months from the date of the first public offering of the Pledged Stock, or that portion thereof to be sold and (iii) to make all amendments thereto and/or to the related prospectus which, in the reasonable opinion of the Collateral Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto. Each Grantor agrees to use commercially reasonable efforts to cause such issuer to comply with the provisions of the applicable “blue sky” laws or other state securities laws or similar laws analogous in purpose or effect of any and all jurisdictions which the Collateral Agent shall reasonably designate and to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of Section 11(a) of the Securities Act.
  - (c) Each Grantor agrees to use commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Stock pursuant hereto valid and binding and in compliance with any and all other applicable laws. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against the Grantors, and the Grantors hereby waive and agree not to assert any defenses in an action for specific performance of such covenants except for a defense that no Event of Default has occurred or is continuing under the Credit Agreement. Nothing in this Section shall in any way alter the rights of the Collateral Agent hereunder.

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## **SECTION 8**

### **STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM**

The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Grantors or otherwise.

## **SECTION 9**

### **MISCELLANEOUS**

#### **Section 9.1 Notices**

All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 11.01 of the Credit Agreement.

#### **Section 9.2 Security Interest Absolute**

All rights of the Collateral Agent hereunder, the Security Interest and all obligations of the Grantors hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on collateral other than the Collateral, or any release or amendment or waiver of or consent under or departure from any Collateral Document or guarantee securing or guaranteeing all or any of the Secured Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Grantors in respect of the Secured Obligations or this Agreement (other than the indefeasible payment in full in cash of the Secured Obligations).

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### **Section 9.3      Survival of Agreement**

All covenants, agreements, representations and warranties made by the Grantors herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement shall survive the execution and delivery hereof and be considered to have been relied upon by the Secured Parties and shall survive the making by the Secured Parties of any Credit Extension, regardless of any investigation made by the Secured Parties or on their behalf, and shall continue in full force and effect until this Agreement shall terminate.

### **Section 9.4      Binding Effect**

This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that no Grantor may assign or otherwise transfer any of its rights or obligations hereunder or any interest in the Collateral (and any such assignment or transfer shall be null and void) except as expressly contemplated by this Agreement or the Credit Agreement.

### **Section 9.5      Successors and Permitted Assigns**

This Agreement will be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of each of the parties hereto and each of the Secured Parties and their respective successors and permitted assigns, and nothing herein, express or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and permitted assigns and, to the extent expressly contemplated hereby or the Credit Agreement, Affiliates of each of the Agents and Lenders and other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement or any Collateral. All references to any Grantor will include any Grantor as debtor-in-possession and any receiver or trustee for such Grantor in any insolvency, bankruptcy or similar proceeding.

### **Section 9.6      Collateral Agent's Fees and Expenses; Indemnification**

This Agreement incorporates herein the indemnity and reimbursement provisions set forth in the Credit Agreement as if such provisions were set forth herein, *mutatis mutandis*.

### **Section 9.7      Applicable Law**

**THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER**

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**HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK .**

**Section 9.8      Waivers; Amendment**

- (a) No failure or delay on the part of the Collateral Agent to exercise any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege, or any abandonment or discontinuance of steps to enforce such a power, right or privilege, preclude any other or further exercise thereof or the exercise of any other power, right or privilege. The powers, rights, privileges and remedies of the Collateral Agent and the other Secured Parties hereunder and under the other Loan Documents are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Loan Documents or any of the Secured Hedge Agreements or Secured Treasury Services Agreements. No waiver of any provisions of this Agreement or any other Loan Document or consent to any departure by the Grantors therefrom shall in any event be effective unless the same shall be permitted by paragraphs (b) or (c) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Grantor in any case shall entitle such Grantor or any other Grantor to any other or further notice or demand in similar or other circumstances.
- (b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Grantors, subject to any consent required in accordance with the Credit Agreement.
- (c) Notwithstanding the foregoing, the Collateral Agent may, with the consent of the Grantors and without the consent of any Lender, Secured Party or other person, amend, modify or supplement this Agreement in writing to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender or Issuing Bank.

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## **Section 9.9 Waiver of Jury Trial**

**EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

## **Section 9.10 Severability**

In case any provision in or obligation under this Agreement is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, will not in any way be affected or impaired thereby.

## **Section 9.11 Counterparts; Effectiveness**

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. This Agreement will become effective upon the execution and delivery of a counterpart hereof by each of the parties hereto. Delivery of an executed signature page of this Agreement by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart hereof. The Collateral Agent may also require that any such facsimile or electronic transmission signatures be confirmed by a manually signed original thereof; *provided* that the failure to request or deliver the same shall not limit the effectiveness of any facsimile or electronic transmission signature delivered.

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## **Section 9.12      Section Headings**

Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

## **Section 9.13      Consent to Jurisdiction and Service of Process**

- (a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.**
- (b) THE BORROWER AND EACH OTHER OBLIGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST THE BORROWER OR ANY OTHER OBLIGOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. THE BORROWER AND EACH OTHER OBLIGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.**
- (c) EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.01 OF THE CREDIT AGREEMENT. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW .**

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## **Section 9.14     Termination, Release**

- (a) This Agreement, the Security Interest and all other security interests granted hereby shall terminate in accordance with Article 10 of the Credit Agreement.
- (b) A Grantor shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Grantor shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor ceases to be a Subsidiary or a Restricted Subsidiary of the Borrower.
- (c) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement, or upon the effectiveness of any written consent to the release of the Security Interest granted hereby in any Collateral pursuant to the Credit Agreement or this Agreement, the Security Interest in such Collateral shall be automatically released.
- (d) In connection with any termination or release pursuant to paragraph (a), (b) or (c) of this Section 9.14, the Collateral Agent shall execute and deliver to any Grantor at such Grantor's expense, all UCC termination statements, releases and similar documents that such Grantor shall reasonably request to evidence such termination or release; *provided*, however, that no such documents shall be required unless such Grantor shall have delivered to the Collateral Agent, at least ten Business Days prior to the date such documents are required by such Grantor, or such lesser period of time as agreed by the Collateral Agent, written request for release describing the item of Collateral and the consideration to be received in the sale, transfer, or other disposition and any expenses in connection therewith, together with a form of release for execution by the Collateral Agent and a certificate by such Grantor to the effect that the transaction is in compliance with the Loan Documents. Any execution and delivery of termination statements, releases, or other documents pursuant to this Section 9.14 shall be without recourse to or warranty by the Collateral Agent.

[ *Remainder of page intentionally left blank* ]

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**IN WITNESS WHEREOF**, the Grantors and the Collateral Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

ETSY, INC., as Grantor

By: /s/ Chad Dickerson

Name: Chad Dickerson

Title: President and Chief Executive Officer

JARVIS LABS, INC., as Grantor

By: /s/ Chad Dickerson

Name: Chad Dickerson

Title: President and Chief Executive Officer

Signature Page – Pledge and Security Agreement

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MORGAN STANLEY SENIOR FUNDING, INC., as  
Collateral Agent

By: /s/ Jonathan Rauen  
Name: Jonathan Rauen  
Title: Vice President

Signature Page – Pledge and Security Agreement

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**EXHIBIT A**  
**TO**  
**PLEDGE AND SECURITY AGREEMENT**

**FORM OF**

**CONTROL ACCOUNT AGREEMENT**

,

[Date]

[Name and Address

of Approved Securities

Intermediary]

Ladies and Gentlemen:

Reference is made to account no. [ ] in the name [ ] maintained with you (the “**Approved Securities Intermediary**”) by [ ] (the “**Grantor**”) into which Assets (as defined below) are received from time to time (such account, the “**Account**”). The Grantor has entered into a Pledge and Security Agreement, dated May 16, 2014 (such agreement as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Pledge and Security Agreement**”), the Additional Grantors (as defined therein) and Morgan Stanley Senior Funding, Inc., as collateral agent for the Secured Parties (as defined therein) (herein in such capacity, the “**Collateral Agent**”). All references herein to the “**UCC**” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York.

In connection therewith, the Grantor hereby instructs you (the “**Approved Securities Intermediary**”) to:

1. maintain the Account as a “securities account” (as defined in the UCC);
2. hold in the Account the assets, including all financial assets, securities, security entitlements and all other property and rights now or hereafter received in such Account (collectively the “**Assets**”), including without limitation those assets listed in Exhibit A attached hereto and made a part hereof;

- 
3. provide to the Collateral Agent, with a duplicate copy to the Grantor, a monthly statement of Assets and a confirmation statement of each transaction effected in the Account after such transaction is effected; and
  4. honor only the instructions or entitlement orders in regard to or in connection with the Account or other Assets given by the Collateral Agent (as defined below), without the consent of the Grantor or any other person or entity, except that until such time as the Collateral Agent gives a written notice to the Approved Securities Intermediary in the form of Exhibit B hereto (a “**Notice of Exclusive Control**”) and after written revocation of such Notice of Exclusive Control by the Collateral Agent (on which notice the Approved Securities Intermediary may rely exclusively), the Grantor acting through an Authorized Officer may (a) exercise any voting rights that it may have with respect to any of the Assets, (b) give instructions or entitlement orders to enter into purchase or sale transactions in the Account and (c) withdraw and receive for its own use all regularly scheduled ordinary dividends paid with respect to the Accounts or any other Assets (“**Permitted Withdrawals**”).

By its signature below, the Approved Securities Intermediary agrees to comply with the entitlement orders and instructions of the Collateral Agent (including without limitation any instructions with respect to sales, trades, transfers and withdrawals of cash or other of the Assets) without the consent of the Grantor or any other person (it being understood and agreed by the Grantor that the Approved Securities Intermediary shall have no duty or obligation whatsoever of any kind or character to have knowledge of the terms of the Pledge and Security Agreement or to determine whether or not an Event of Default (as defined therein) has occurred). The Grantor hereby agrees to indemnify and hold harmless the Approved Securities Intermediary, its affiliates, officers and employees from and against any and all claims, causes of action, liabilities, lawsuits, demands and/or damages, including any and all court costs and attorney’s fees, that may result by reason of the Approved Securities Intermediary complying with such instructions of the Collateral Agent. In the event that the Approved Securities Intermediary is sued or becomes involved in litigation as a result of complying with the above stated written instructions, the Grantor and the Collateral Agent agree that the Approved Securities Intermediary shall be entitled to charge all out-of-pocket costs and fees it incurs in connection with such litigation to the Assets in the Account and withdraw such sums as the costs and charges accrue.

The Authorized Officer of the Collateral Agent who shall give oral instructions hereunder shall confirm the same in writing to the Approved Securities Intermediary within five days after such oral instructions are given. The Approved Securities Intermediary shall have no liability for its failure to comply with any entitlement orders or instructions received from a person other than an Authorized Officer of the Grantor or an Authorized Officer of the Collateral Agent, as applicable.

For the purpose of this Agreement, the term "**Authorized Officer of the Grantor**" shall refer in the singular to or  
(each of whom is, on the date hereof, an officer or director of the Grantor) and "**Authorized Officer of the Collateral Agent**" shall refer in the singular to any person who is a vice president or managing director of the Collateral Agent. In the event that the Grantor or the Collateral Agent, as applicable, shall find it advisable to designate a replacement of any of its Authorized Officers, written notice of any such replacement shall be given to each other party hereto, and the term "Authorized Officer of the Grantor" or "Authorized Officer of the Collateral Agent", as applicable, shall be deemed to be amended as set forth in such notice automatically upon receipt of such notice by each other party hereto.

Except with respect to the obligations and duties as set forth herein, this Agreement shall not impose or create any obligations or duties upon the Approved Securities Intermediary greater than or in addition to the customary and usual obligations and duties of the Approved Securities Intermediary to the Grantor.

As long as the Assets are pledged to the Collateral Agent: (i) the Approved Securities Intermediary will not apply the Assets to cover margin debits or calls in any other accounts of the Grantor and (ii) the Approved Securities Intermediary agrees that, except for liens resulting from customary commissions, fees, or charges based upon settling transactions in the Account, it subordinates in favor of the Collateral Agent any security interest, lien or right of setoff the Approved Securities Intermediary may have. The Approved Securities Intermediary acknowledges that it has not received notice of any other security interest in the Account or the Assets. In the event any such notice is received, the Approved Securities Intermediary will promptly notify the Collateral Agent. The Grantor herein represents that the Assets are free and clear of any lien or encumbrances and agrees that, with the exception of the security interest granted to the Collateral Agent, no lien or encumbrance will be placed by it on the Assets without the express written consent of both the Collateral Agent and the Approved Securities Intermediary.

All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy or other electronic transmission), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three business days after being deposited in the mail, postage prepaid, or, in the case of telecopy or electronic notice, when received, addressed as follows in the case of the Grantor and the Collateral Agent or to such other address as may be hereafter notified by the respective parties hereto:

## The Grantor:

[Address]

## Attention:

## Telecopy:

Telephone:

with a copy to:

[  
[Address]  
Attention:  
Telecopy:  
Telephone:

The Collateral Agent:

Morgan Stanley Senior Funding, Inc.  
1585 Broadway  
New York, New York 10036  
Attention: Agency Team

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and it and the rights and obligations of the parties hereto shall be governed by, and construed and enforced in accordance with the laws of the State of New York without regard to conflict of law principles thereof that would result in the application of any law other than the law of the State of New York, and the Approved Securities Intermediary's jurisdiction for the purposes of Section 8-110 of the UCC shall be the State of New York.

The Approved Securities Intermediary will treat all property at any time credited by the Approved Securities Intermediary to the Account as financial assets within the meaning of the UCC. The Approved Securities Intermediary acknowledges that this Agreement constitutes written notification to the Approved Securities Intermediary, pursuant to the UCC and any applicable federal regulations for the Federal Reserve Book Entry System, of the Collateral Agent's security interest in the Assets. The Grantor, the Collateral Agent and Approved Securities Intermediary are entering into this Agreement to provide for the Collateral Agent's control of the Assets and to confirm the first and exclusive priority of the Collateral Agent's security interest in the Assets. The Approved Securities Intermediary agrees to promptly make and thereafter maintain all necessary entries or notations in its books and records to reflect the Collateral Agent's security interest in the Assets.

If any term or provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall be construed in all respects as if the invalid or unenforceable term or provision were omitted. This Agreement may not be altered or amended in any manner without the express written consent of the Grantor, the Collateral Agent and the Approved Securities Intermediary. This Agreement may be executed in any number of counterparts, all of which shall constitute one original agreement.

This Agreement may be terminated by the Approved Securities Intermediary upon 30 days' prior written notice to the Grantor and the Collateral Agent. The Collateral Agent may terminate this Agreement upon 3 days' prior written notice to the Approved Security Intermediary and the Grantor.

The Grantor acknowledges that this Agreement supplements any existing agreements of the Grantor with the Approved Securities Intermediary and, except as expressly provided herein, is in no way intended to abridge any rights that the Approved Securities Intermediary might otherwise have.

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This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy or other electronic transmission), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed counterpart by telecopy (or other electronic transmission) shall be effective as delivery of a manually executed counterpart.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

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**IN WITNESS WHEREOF**, the Grantor and the Collateral Agent have caused this Agreement to be executed by their respective duly authorized officers all as of the date first above written.

[ GRANTOR ]

By \_\_\_\_\_  
Name:  
Title:

**MORGAN STANLEY SENIOR FUNDING, INC.,**  
**as Collateral Agent**

By \_\_\_\_\_  
Name:  
Title:

ACCEPTED AND AGREED:

[ APPROVED SECURITIES INTERMEDIARY ]

By \_\_\_\_\_  
Name:  
Title:

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**Exhibit A to Control Account Agreement**  
**Assets**

A-7

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**Exhibit B**  
**To Control Account Agreement**

**Form of Notice of Exclusive Control**

[Approved Securities Intermediary]

[Address]

Re: Account No. (the “**Account**”)

Ladies and Gentlemen:

Reference is made to the Account and that certain Control Account Agreement, dated \_\_\_\_\_, 20[ ] (the “**Control Account Agreement**”) among you, Morgan Stanley Senior Funding, Inc., as collateral agent (the “**Collateral Agent**”), and [name of Grantor]. Capitalized terms used herein shall have the meanings given to them in the Control Account Agreement.

The Collateral Agent hereby notifies you that an Event of Default has occurred and is continuing under the Pledge and Security Agreement, and that, from and after the date of this notice and until you receive a written revocation of this notice from the Collateral Agent, you are hereby directed to not allow the Grantor to give instructions or entitlement orders in respect of the Account and to accept instructions and entitlement orders only from the Collateral Agent in respect of the Account.

Very truly yours,

MORGAN STANLEY SENIOR FUNDING, INC.  
as Collateral Agent

By \_\_\_\_\_  
Name:  
Title:

---

**EXHIBIT B**  
**TO PLEDGE AND SECURITY AGREEMENT**

**FORM OF**  
**DEPOSIT ACCOUNT CONTROL AGREEMENT**

[Date]

[Deposit Account Bank]

[Address]

Ladies and Gentlemen:

Reference is made to account no. [ ] in the name [ ] maintained with you (the “**Bank**”) (such account, the “**Account**”) by [ ] (the “**Company**”) into which funds are deposited from time to time. The Company has entered into a Pledge and Security Agreement, dated May 16, 2014 (such agreement as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Pledge and Security Agreement**”), together with the Additional Grantors (as defined therein) and Morgan Stanley Senior Funding, Inc., as collateral agent for the Secured Parties (as defined therein) (herein in such capacity, the “**Collateral Agent**”).

Pursuant to the Pledge and Security Agreement and related documents, the Company has granted to the Collateral Agent, for the benefit of the Secured Parties, a security interest in certain property of the Company, including, among other things, accounts, inventory, equipment, deposit accounts, instruments, general intangibles and all proceeds thereof.

The Company hereby transfers to the Collateral Agent control of the Account and all funds and other property on deposit therein. By your execution of this letter agreement, you (a) agree that you shall comply with instructions originated by the Collateral Agent directing disposition of the funds and other property on deposit in the Account without further consent of the Company or any other person or entity and (b) acknowledge that the Collateral Agent now has control of the Account, that the Account is being maintained by you for the benefit of the Collateral Agent and that all amounts and other property therein are held by you as custodian for the Collateral Agent.

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Except as provided in clause (d) below, the Bank will not exercise, and the Account and all funds and other property on deposit therein shall not be subject to, any security interest, deduction, right of set-off, banker's lien, counterclaim, defense, recoupment or any other right, and the Bank hereby subordinates to the Collateral Agent any such security interest, lien or right which it may have against the Account or any funds and other property on deposit therein. By your execution of this letter agreement you also acknowledge that, as of the date hereof, you have received no notice of any other pledge or assignment of the Account and have not executed any agreements with third parties covering the disposition of funds in the Account.

You agree with the Collateral Agent as follows:

The Account is in the name of “[ **IDENTIFY EXACT TITLE OF ACCOUNT** ]” and you will not change the name or the account number on the Account without the prior written consent of the Collateral Agent and the Company. You are a “bank” as defined in Section 9-102(a)(8) of the Uniform Commercial Code as in effect from time to time in the State of New York (the “ **UCC** ”).

- (a) Notwithstanding anything to the contrary or any other agreement relating to the Account, the Account is and shall be maintained for the benefit of the Collateral Agent. At the request of the Collateral Agent, you will promptly send copies of all statements, confirmations and other correspondence concerning the Account to the Collateral Agent at the following address:

Morgan Stanley Senior Funding, Inc.  
1585 Broadway  
New York, New York 10036  
Attention: Agency Team

- (b) Prior to the delivery to you of a written notice from the Collateral Agent in the form of Exhibit A hereto (a “ **Notice of Exclusive Control** ”), you are authorized to accept instructions, withdrawals and transfers from the Company.
- (c) From and after the delivery to you of a Notice of Exclusive Control and until delivery to you of a written revocation thereof from the Collateral Agent, you will not allow the Company to withdraw funds from the Account and will not comply with any direction, instructions or entitlement orders or instructions from the Company with respect to the Account, and you are authorized to accept directions, instructions, entitlement orders, withdrawals and transfers only from the Collateral Agent.
- (d) All customary service charges and fees with respect to the Account shall be debited to the Account. In the event insufficient funds remain in the Account to cover such customary service charges and fees, the Company shall pay and indemnify you for the amounts of such customary service charges and fees.

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This letter agreement shall be binding upon and shall inure to the benefit of you, the Company, the Collateral Agent, the Secured Parties and the respective successors, transferees and assigns of any of the foregoing. This letter agreement may not be modified except upon the mutual written consent of the Collateral Agent, the Company and you. You may terminate the letter agreement only upon 30 days' prior written notice to the Company and the Collateral Agent. The Collateral Agent may terminate this letter agreement upon 3 days' prior written notice to you and the Company.

This letter agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this letter agreement by telecopier (or other electronic transmission) shall be effective as delivery of a manually executed counterpart of this letter agreement.

This letter agreement supersedes all prior agreements, oral or written, with respect to the subject matter hereof and may not be amended, modified or supplemented except by a writing signed by the Collateral Agent, the Company and you.

This letter agreement shall be governed by, and construed and enforced in accordance with, the law of the State of New York without regard to conflict of law principles thereof that would result in the application of any law other than the law of the State of New York. Regardless of any provision in any other agreement, for purposes of the UCC, New York shall be deemed to be your jurisdiction within the meaning of Section 9-304 of the UCC and the Account shall be governed by the laws of the State of New York.

Upon acceptance of this letter agreement it shall be the valid and binding obligation of the Company, the Collateral Agent and you, in accordance with its terms.

Very truly yours,

[ NAME OF GRANTOR ]

By \_\_\_\_\_  
Name:  
Title:

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**MORGAN STANLEY SENIOR FUNDING, INC.**  
as Collateral Agent

By \_\_\_\_\_  
Name:  
Title:

Acknowledged and Agreed:

[ **DEPOSIT ACCOUNT BANK** ]

By \_\_\_\_\_  
Name:  
Title:

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**Exhibit A**  
**To Deposit Account Control Agreement**

**Form of Notice of Exclusive Control**

[Deposit Account Bank]

[Address]

Re: Account No. (the “**Account**”)

Ladies and Gentlemen:

Reference is made to the Account and that certain Deposit Account Control Agreement, dated \_\_\_\_\_, 20[ ] (the “**Deposit Account Control Agreement**”) among you, MORGAN STANLEY SENIOR FUNDING, INC., as collateral agent (the “**Collateral Agent**”) and [ ]. Capitalized terms used herein shall have the meanings given to them in the Deposit Account Control Agreement.

The Collateral Agent hereby notifies you that an Event of Default has occurred under the Pledge and Security Agreement, and that, from and after the date of this notice and until you receive a written revocation of this notice from the Collateral Agent, you are hereby directed not to allow the Company to withdraw funds from the Account and to not comply with any direction, instructions or entitlement orders or instructions from the Company with respect to the Account, and to accept directions, instructions, entitlement orders, withdrawals and transfers only from the Collateral Agent to such other account as the Collateral Agent may from time to time designate in writing.

Very truly yours,

MORGAN STANLEY SENIOR FUNDING, INC.,  
as Collateral Agent

By \_\_\_\_\_  
Name:  
Title:

---

**EXHIBIT C**  
**TO THE PLEDGE AND SECURITY AGREEMENT**

**FORM OF SECURITY SUPPLEMENT**

This **SECURITY SUPPLEMENT**, dated as of [      ], 20[  ], is delivered pursuant to the Pledge and Security Agreement, dated as of May 16, 2014 (as it may from time to time be amended and/or restated, modified or supplemented, the “**Security Agreement**”), among ETSY, INC. and the Additional Grantors, as defined therein (each of the foregoing, individually, a “**Grantor**” and collectively, the “**Grantors**”) and MORGAN STANLEY SENIOR FUNDING, INC., as collateral agent for the Secured Parties as defined therein (in such capacity, the “**Collateral Agent**”). Capitalized terms used herein but not defined herein are used with the meanings given them in the Security Agreement.

Each Grantor confirms that it pledges and grants to the Collateral Agent, for its benefit and for the benefit of the Secured Parties, as set forth in and subject to the terms and conditions of the Security Agreement, a continuing security interest in and Lien on all of its right, title and interest in, to and under the Collateral, in each case whether now owned or existing or hereafter acquired or arising and wherever located, as security for the prompt and complete payment and performance in full when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) of all Secured Obligations.

Each Grantor represents and warrants as of the date hereof that the attached supplements to the Perfection Certificate accurately and completely set forth all additional information required pursuant to the Security Agreement and hereby agrees that such supplements to the Perfection Certificate shall constitute part of the Perfection Certificate to the Security Agreement.

IN WITNESS WHEREOF, each Grantor has caused this Security Supplement to be duly executed and delivered by its duly authorized officer as of [      ], 20[  ]].

[**GRANTOR**],

By: \_\_\_\_\_

Name:

Title:

[**ADDITIONAL GRANTORS**]

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**EXHIBIT D**  
**TO PLEDGE AND SECURITY AGREEMENT**

**FORM OF JOINDER AGREEMENT**

This **JOINDER AGREEMENT**, dated as of [      ], 20[  ], is delivered pursuant to Section 5.2 of the Pledge and Security Agreement, dated as of May 16, 2014 (as it may from time to time be amended and/or restated, modified or supplemented, the “**Pledge and Security Agreement**”) among ETSY, INC., the Additional Grantors as defined therein and MORGAN STANLEY SENIOR FUNDING, INC., as collateral agent for the Secured Parties as defined therein (herein in such capacity, the “**Collateral Agent**”). Capitalized terms used herein but not defined herein are used with the meanings given them in the Pledge and Security Agreement.

By executing and delivering this Joinder Agreement, the undersigned, as provided in Section 5.2 of the Pledge and Security Agreement, hereby becomes a party to the Pledge and Security Agreement as a Grantor thereunder with the same force and effect as if originally named as a Grantor therein and, without limiting the generality of the foregoing, hereby:

(a) pledges and grants to the Collateral Agent, for its benefit and for the benefit of the Secured Parties, a continuing security interest in and Lien on all of its right, title and interest in, to and under the Collateral, in each case whether now owned or existing or hereafter acquired or arising and wherever located, as security for the prompt and complete payment and performance in full when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) of all Secured Obligations;

(b) expressly assumes all obligations and liabilities of a Grantor under the Pledge and Security Agreement; and

(c) hereby authorizes the Collateral Agent, at the expense of the Grantor, to file a Record or Records, including financing statements, continuation statements and, in each case, amendments thereto, in all United States jurisdictions and with all filing offices as the Collateral Agent may determine, in its reasonable discretion, are necessary or advisable to perfect (or release) the Security Interest granted to the Collateral Agent herein, without the signature of such Grantor, which Records, in any event, shall include the financing statement attached hereto as Exhibit A. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of the Collateral that describes such property in any other manner as the Collateral Agent may determine, in its reasonable discretion, is necessary,

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advisable or prudent to ensure the perfection of the Security Interest in the Collateral granted to the Collateral Agent herein, including describing such property as “all assets, whether now owned or hereafter acquired” or “all personal property, whether now owned or hereafter acquired” or words of similar import; *provided* that at the request of any applicable Grantor, the Collateral Agent shall promptly file an amendment statement with respect to any such Record to exclude any property that is released from, or otherwise ceases to be included in, the Collateral pursuant to the provisions of this Agreement or any other Loan Document.

The information set forth in Exhibit B hereto is hereby added to the information set forth in the Perfection Certificate to the Pledge and Security Agreement.

The undersigned hereby represents and warrants that each of the representations and warranties contained in Section 3 (Representations and Warranties) of the Pledge and Security Agreement applicable to it is true and correct (subject to all materiality qualifiers contained therein) as if made on and as of the date hereof (unless stated to relate solely to an earlier date, in which case such representations and warranties are true and correct (subject to all materiality qualifiers contained therein) as of such earlier date).

This Joinder Agreement and the rights and obligations of the parties hereto (including, without limitation, any claims sounding in contract law or tort law arising out of the subject matter hereof and any determinations with respect to post-judgment interest) shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without regard to conflict of laws principles thereof that would result in the application of any law other than the law of the state of New York. The terms and provisions of Section 9.13 of the Pledge and Security Agreement are incorporated by reference herein with respect hereto as if fully set forth herein.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

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**IN WITNESS WHEREOF**, the undersigned has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

**[ADDITIONAL GRANTOR]**

By \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGED AND AGREED**

as of the date first above written:

**MORGAN STANLEY SENIOR FUNDING, INC.,  
as Collateral Agent**

By \_\_\_\_\_  
Name:  
Title:

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**Exhibit A To Joinder Agreement**  
**Financing Statements**

D-4

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**Exhibit B to Joinder Agreement**  
**Security Supplement**

D-5

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**EXHIBIT E**  
**TO THE PLEDGE AND SECURITY AGREEMENT**

**FINANCING STATEMENTS**

E-1

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**EXHIBIT F-1**  
**TO PLEDGE AND SECURITY AGREEMENT**

**FORM OF PATENT SECURITY AGREEMENT**

This **PATENT SECURITY AGREEMENT**, dated as of       , 20       (as amended and/or restated, supplemented or otherwise modified from time to time, this “**Agreement**”), among [                ], [                ], each Additional Grantor listed on the signature pages hereto, (all of the foregoing, each a “**Grantor**” and collectively, the “**Grantors**”), and MORGAN STANLEY SENIOR FUNDING, INC., as collateral agent for the Secured Parties (as defined in the Pledge and Security Agreement referred to below) (herein in such capacity, the “**Collateral Agent**”).

**RECITALS**

- (A) ETSY, INC. (the “**Borrower**”), the GUARANTORS party thereto, the LENDERS from time to time party thereto, MORGAN STANLEY SENIOR FUNDING, INC., as administrative agent (in such capacity, the “**Administrative Agent**”) and collateral agent, have entered into a Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as amended and/or restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”).
- (B) The Grantors are party to a Pledge and Security Agreement, dated as of May 16, 2014, in favor of the Collateral Agent (as amended and/or restated, supplemented or otherwise modified from time to time, the “**Pledge and Security Agreement**”), pursuant to which certain Grantors are required to execute and deliver this Agreement.
- (C) Under and subject to the terms of the Pledge and Security Agreement, the Grantors have pledged and granted to the Collateral Agent, for its benefit and for the benefit of the Secured Parties (as defined in the Credit Agreement) a continuing security interest in and Lien on certain Collateral (as set forth and defined in the Pledge and Security Agreement), including without limitation certain Intellectual Property (as defined in the Pledge and Security Agreement) of the Grantors, and have agreed to execute this Agreement for recording with the United States Patent and Trademark Office.
- (D) In consideration of the mutual conditions and agreements set forth in the Credit Agreement, the Pledge and Security Agreement and this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

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## **SECTION 1    Defined Terms**

Unless otherwise defined herein, terms defined in the Pledge and Security Agreement and used herein have the meaning given to them in the Pledge and Security Agreement or provided by reference in the Credit Agreement.

## **SECTION 2    Grant of Security Interest in Patent Collateral**

As security for the prompt and complete payment and performance in full when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) of all Secured Obligations, each Grantor hereby pledges and grants to the Collateral Agent, for its benefit and for the benefit of the Secured Parties, a continuing security interest in and Lien on all of its right, title and interest in, to and under all Patent Collateral, whether now owned or existing or hereafter acquired or arising and wherever located.

**“ Patent Collateral ”** means each Grantor’s right, title and interest in, to and under:

(a) all Patents owned by such Grantor, including those referred to on Schedule I hereto;

(b) all continuations and all rights to obtain any reissues or extensions of the foregoing; and

(c) to the extent not already included in the foregoing, all Proceeds of the foregoing, including any claim by Grantor against third parties for past, present, future infringement, misappropriation, or other violation of any Patent owned by such Grantor or Patent licensed to such Grantor under any Patent License.

## **SECTION 3    Certain Exclusions**

Notwithstanding anything herein to the contrary, in no event shall the Patent Collateral include and no Grantor shall be deemed to have granted a Security Interest in, any of its right, title or interest in any Patent if the grant of such Security Interest shall constitute or result in the abandonment of, invalidation of or rendering unenforceable any of its right, title or interest therein.

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## **SECTION 4 Pledge and Security Agreement**

This Agreement has been executed and delivered by the Borrower for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The security interest granted pursuant to this Agreement is granted concurrently in conjunction with the security interest granted to the Collateral Agent pursuant to the Pledge and Security Agreement and is expressly subject to the terms and conditions thereof, and each Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby is more fully set forth in the Pledge and Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the terms of the Pledge and Security Agreement, the terms of the Pledge and Security Agreement shall govern.

## **SECTION 5 Termination, Release**

- (a) This Agreement, the Security Interest and all other security interests granted hereby shall terminate in accordance with Section 9.14 of the Pledge and Security Agreement.
- (b) A Grantor shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Grantor shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor ceases to be a Subsidiary of the Borrower; *provided* that the Required Lenders shall have consented to such transaction (to the extent required by the Credit Agreement) and the terms of such consent did not provide otherwise.
- (c) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement, or upon the effectiveness of any written consent to the release of the Security Interest granted hereby in any Collateral pursuant to the Credit Agreement or the Pledge and Security Agreement, the Security Interest in such Collateral shall be automatically released.
- (d) In connection with any termination or release pursuant to paragraph (a), (b) or (c) of this Section 5, the Collateral Agent shall execute and deliver to any Grantor at such Grantor's expense, all UCC termination statements, releases and similar documents that such Grantor shall reasonably request to evidence such termination or release; *provided*, however, that no such documents shall be required unless such Grantor shall have delivered to the Collateral Agent, at least ten Business Days prior to the date such documents are required by such Grantor, or such lesser period of time as agreed by the Collateral Agent, written request for release describing the item of Collateral and the consideration to be received in the sale, transfer, or other disposition and any expenses in

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connection therewith, together with a form of release for execution by the Collateral Agent and a certificate by such Grantor to the effect that the transaction is in compliance with the Loan Documents. Any execution and delivery of termination statements, releases, or other documents pursuant to this Section 5 shall be without recourse to or warranty by the Collateral Agent.

#### **SECTION 6 Governing Law and Consent to Jurisdiction**

**THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. THE TERMS AND PROVISIONS OF SECTION 9.13 OF THE PLEDGE AND SECURITY AGREEMENT ARE INCORPORATED BY REFERENCE HEREIN WITH RESPECT HERETO AS IF FULLY SET FORTH HEREIN.**

[Signature Page Follows]

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**IN WITNESS WHEREOF**, each Grantor has caused this Patent Security Agreement to be duly executed and delivered by its duly authorized officer as of the date first set forth above.

[ ]

By \_\_\_\_\_  
Name:  
Title:

**[ADDITIONAL GRANTORS]**

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

**ACCEPTED AND AGREED:**

**MORGAN STANLEY SENIOR FUNDING, INC.**, as  
Collateral Agent

By \_\_\_\_\_  
Name:  
Title:

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**SCHEDULE I**

**PATENT REGISTRATIONS**

(A) PATENTS

**Patent No.**

(B) PATENT APPLICATIONS

**Patent No.**

F-1-6

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**EXHIBIT F-2**  
**TO PLEDGE AND SECURITY AGREEMENT**

**FORM OF TRADEMARK SECURITY AGREEMENT**

This **TRADEMARK SECURITY AGREEMENT**, dated as of \_\_\_\_\_, 20\_\_\_\_ (as amended and/or restated, supplemented or otherwise modified from time to time, this “**Agreement**”), among [\_\_\_\_\_], [\_\_\_\_\_], each Additional Grantor listed on the signature pages hereto, (all of the foregoing, each a “**Grantor**” and collectively, the “**Grantors**”), and MORGAN STANLEY SENIOR FUNDING, INC., as collateral agent for the Secured Parties (as defined in the Pledge and Security Agreement referred to below) (herein in such capacity, the “**Collateral Agent**”).

**RECITALS**

- (A) ETSY, INC. (the “**Borrower**”), the GUARANTORS party thereto, the LENDERS from time to time party thereto, MORGAN STANLEY SENIOR FUNDING, INC., as administrative agent (in such capacity, the “**Administrative Agent**”) and collateral agent, have entered into a Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as amended and/or restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”).
- (B) The Grantors are party to a Pledge and Security Agreement, dated as of May 16, 2014, in favor of the Collateral Agent (as amended and/or restated, supplemented or otherwise modified from time to time, the “**Pledge and Security Agreement**”), pursuant to which certain Grantors are required to execute and deliver this Agreement.
- (C) Under and subject to the terms of the Pledge and Security Agreement, the Grantors have pledged and granted to the Collateral Agent, for its benefit and for the benefit of the Secured Parties (as defined in the Credit Agreement) a continuing security interest in and Lien on certain Collateral (as set forth in and defined in the Pledge and Security Agreement), including without limitation certain Intellectual Property (as defined in the Pledge and Security Agreement) of the Grantors, and have agreed to execute this Agreement for recording with the United States Patent and Trademark Office.
- (D) In consideration of the mutual conditions and agreements set forth in the Credit Agreement, the Pledge and Security Agreement and this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

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## **SECTION 1    Defined Terms**

Unless otherwise defined herein, terms defined in the Pledge and Security Agreement and used herein have the meaning given to them in the Pledge and Security Agreement or provided by reference in the Credit Agreement.

## **SECTION 2    Grant of Security Interest in Trademark Collateral**

As security for the prompt and complete payment and performance in full when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) of all Secured Obligations, each Grantor hereby pledges and grants to the Collateral Agent, for its benefit and for the benefit of the Secured Parties, a continuing security interest in and Lien on all of its right, title and interest in, to and under all Trademark Collateral, whether now owned or existing or hereafter acquired or arising and wherever located.

**“Trademark Collateral”** means each Grantor’s right, title and interest in, to and under:

- (a) all Trademarks owned by such Grantor, including those referred to on Schedule I hereto;
- (b) all goodwill of the business connected with the use of, and symbolized by, each such Trademark;
- (c) the right to obtain renewals of any of the foregoing; and
- (d) to the extent not already included in the foregoing, all Proceeds of the foregoing, including any claim by Grantor against third parties for past, present, future (i) infringement, misappropriation, dilution or other violation of any Trademark owned by such Grantor or Trademark licensed to such Grantor under any Trademark License or (ii) injury to the goodwill associated with any Trademark.

## **SECTION 3    Certain Exclusions**

Notwithstanding anything herein to the contrary, in no event shall (i) the Trademark Collateral include and no Grantor shall be deemed to have granted a Security Interest in, any of its right, title or interest in any Trademark if the grant of such Security Interest shall constitute or result in the abandonment of, invalidation of or rendering unenforceable any of its right, title or interest

therein, or (ii) the security interest granted under Section 2 hereof attach to any “intent-to-use” application for registration of a Trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law.

#### **SECTION 4 Pledge and Security Agreement**

This Agreement has been executed and delivered by the Borrower for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The security interest granted pursuant to this Agreement is granted concurrently in conjunction with the security interest granted to the Collateral Agent pursuant to the Pledge and Security Agreement and is expressly subject to the terms and conditions thereof, and each Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby is more fully set forth in the Pledge and Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the terms of the Pledge and Security Agreement, the terms of the Pledge and Security Agreement shall govern.

#### **SECTION 5 Termination, Release**

- (a) This Agreement, the Security Interest and all other security interests granted hereby shall terminate in accordance with Section 9.14 of the Pledge and Security Agreement.
- (b) A Grantor shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Grantor shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor ceases to be a Subsidiary of any Borrower; *provided* that the Required Lenders shall have consented to such transaction (to the extent required by the Credit Agreement) and the terms of such consent did not provide otherwise.
- (c) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement, or upon the effectiveness of any written consent to the release of the Security Interest granted hereby in any Collateral pursuant to the Credit Agreement or the Pledge and Security Agreement, the Security Interest in such Collateral shall be automatically released.

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(d) In connection with any termination or release pursuant to paragraph (a), (b) or (c) of this Section 5, the Collateral Agent shall execute and deliver to any Grantor at such Grantor's expense, all UCC termination statements, releases and similar documents that such Grantor shall reasonably request to evidence such termination or release; *provided*, however, that no such documents shall be required unless such Grantor shall have delivered to the Collateral Agent, at least ten Business Days prior to the date such documents are required by such Grantor, or such lesser period of time as agreed by the Collateral Agent, written request for release describing the item of Collateral and the consideration to be received in the sale, transfer, or other disposition and any expenses in connection therewith, together with a form of release for execution by the Collateral Agent and a certificate by such Grantor to the effect that the transaction is in compliance with the Loan Documents. Any execution and delivery of termination statements, releases, or other documents pursuant to this Section 5 shall be without recourse to or warranty by the Collateral Agent.

## **SECTION 6     Governing Law and Consent to Jurisdiction**

**THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. THE TERMS AND PROVISIONS OF SECTION 9.13 OF THE PLEDGE AND SECURITY AGREEMENT ARE INCORPORATED BY REFERENCE HEREIN WITH RESPECT HERETO AS IF FULLY SET FORTH HEREIN.**

[Signature Page Follows]

F-2-4

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**IN WITNESS WHEREOF**, each Grantor has caused this Trademark Security Agreement to be duly executed and delivered by its duly authorized officer as of the date first set forth above.

[ ]

By \_\_\_\_\_  
Name:  
Title:

**[ADDITIONAL GRANTORS]**

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

**ACCEPTED AND AGREED:**

**MORGAN STANLEY SENIOR FUNDING, INC.**, as  
Collateral Agent

By \_\_\_\_\_  
Name:  
Title:

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**SCHEDULE I**  
**TRADEMARK REGISTRATIONS**

(A) REGISTERED TRADEMARKS

<u>Trademark</u>	<u>Reg. No.</u>	<u>Date</u>
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(B) TRADEMARK APPLICATIONS

<u>Trademark</u>	<u>App. No.</u>	<u>Date</u>
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**EXHIBIT F-3**  
**TO PLEDGE AND SECURITY AGREEMENT**

**FORM OF COPYRIGHT SECURITY AGREEMENT**

This **COPYRIGHT SECURITY AGREEMENT**, dated as of [REDACTED], 20[REDACTED] (as amended and/or restated, supplemented or otherwise modified from time to time, this “**Agreement**”), among [REDACTED], [REDACTED], each Additional Grantor listed on the signature pages hereto, (all of the foregoing, each a “**Grantor**” and collectively, the “**Grantors**”), and MORGAN STANLEY SENIOR FUNDING, INC., as collateral agent for the Secured Parties (as defined in the Pledge and Security Agreement referred to below) (herein in such capacity, the “**Collateral Agent**”).

**RECITALS**

- (A) ETSY, INC. (the “**Borrower**”), the GUARANTORS party thereto, the LENDERS from time to time party thereto, and MORGAN STANLEY SENIOR FUNDING, INC., as administrative agent (in such capacity, the “**Administrative Agent**”) and collateral agent, have entered into a Revolving Credit and Guaranty Agreement, dated as of May 16, 2014 (as amended and/or restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”).
- (B) The Grantors are party to a Pledge and Security Agreement, dated as of May 16, 2014, in favor of the Collateral Agent (as amended and/or restated, supplemented or otherwise modified from time to time, the “**Pledge and Security Agreement**”), pursuant to which certain Grantors are required to execute and deliver this Agreement.
- (C) Under and subject to the terms of the Pledge and Security Agreement, the Grantors have pledged and granted to the Collateral Agent, for its benefit and for the benefit of the Secured Parties (as defined in the Credit Agreement) a continuing interest in and Lien on certain Collateral (as defined in the Pledge and Security Agreement), including without limitation certain Intellectual Property (as set forth in and defined in the Pledge and Security Agreement) of the Grantors, and have agreed to execute this Agreement for recording with the United States Patent and Trademark Office.
- (D) In consideration of the mutual conditions and agreements set forth in the Credit Agreement, the Pledge and Security Agreement and this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

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## **SECTION 1    Defined Terms**

Unless otherwise defined herein, terms defined in the Pledge and Security Agreement and used herein have the meaning given to them in the Pledge and Security Agreement or provided by reference in the Credit Agreement.

## **SECTION 2    Grant of Security Interest in Copyright Collateral**

As security for the prompt and complete payment and performance in full when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) of all Secured Obligations, each Grantor hereby pledges and grants to the Collateral Agent, for its benefit and for the benefit of the Secured Parties, a continuing security interest in and Lien on all of its relevant right, title and interest in, to and under all Copyright Collateral, whether now owned or existing or hereafter acquired or arising and wherever located.

**“Copyright Collateral”** means each Grantor’s right, title and interest in, to and under:

(a) all Copyrights owned by such Grantor, including those referred to on Schedule I hereto;

(b) the right to obtain all extensions and renewals of the foregoing; and

(c) to the extent not already included in the foregoing, all Proceeds of the foregoing, including any claim by Grantor against third parties for past, present, future infringement, misappropriation, or other violation of any Copyright owned by such Grantor or Copyright licensed to such Grantor under any Copyright License.

## **SECTION 3    Certain Exclusions**

Notwithstanding anything herein to the contrary, in no event shall the Copyright Collateral include and no Grantor shall be deemed to have granted a Security Interest in, any of its right, title or interest in any Copyright if the grant of such Security Interest shall constitute or result in the abandonment of, invalidation of or rendering unenforceable any of its right, title or interest therein.

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## **SECTION 4 Pledge and Security Agreement**

This Agreement has been executed and delivered by the Borrower for the purpose of recording the grant of security interest herein with the United States Copyright Office. The security interest granted pursuant to this Agreement is granted concurrently in conjunction with the security interest granted to the Collateral Agent pursuant to the Pledge and Security Agreement and is expressly subject to the terms and conditions thereof, and each Grantor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby is more fully set forth in the Pledge and Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the terms of the Pledge and Security Agreement, the terms of the Pledge and Security Agreement shall govern.

## **SECTION 5 Termination, Release**

- (a) This Agreement, the Security Interest and all other security interests granted hereby shall terminate in accordance with Section 9.14 of the Pledge and Security Agreement.
- (b) A Grantor shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Grantor shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor ceases to be a Subsidiary of any Borrower; *provided* that the Required Lenders shall have consented to such transaction (to the extent required by the Credit Agreement) and the terms of such consent did not provide otherwise.
- (c) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement, or upon the effectiveness of any written consent to the release of the Security Interest granted hereby in any Collateral pursuant to the Credit Agreement or the Pledge and Security Agreement, the Security Interest in such Collateral shall be automatically released.
- (d) In connection with any termination or release pursuant to paragraph (a), (b) or (c) of this Section 5, the Collateral Agent shall execute and deliver to any Grantor at such Grantor's expense, all UCC termination statements, releases and similar documents that such Grantor shall reasonably request to evidence such termination or release; *provided*, however, that no such documents shall be required unless such Grantor shall have delivered to the Collateral Agent, at least ten Business Days prior to the date such documents are required by such Grantor, or such lesser period of time as agreed by the Collateral Agent, written request for release describing the item of Collateral and the consideration to be received in the sale, transfer, or other disposition and any expenses in

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connection therewith, together with a form of release for execution by the Collateral Agent and a certificate by such Grantor to the effect that the transaction is in compliance with the Loan Documents. Any execution and delivery of termination statements, releases, or other documents pursuant to this Section 5 shall be without recourse to or warranty by the Collateral Agent.

#### **SECTION 6 Governing Law and Consent to Jurisdiction**

**THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. THE TERMS AND PROVISIONS OF SECTION 9.13 OF THE PLEDGE AND SECURITY AGREEMENT ARE INCORPORATED BY REFERENCE HEREIN WITH RESPECT HERETO AS IF FULLY SET FORTH HEREIN.**

[Signature Page Follows]

F-3-4

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**IN WITNESS WHEREOF**, each Grantor has caused this Copyright Security Agreement to be duly executed and delivered by its duly authorized offer as of the date first set forth above.

[ ]

By \_\_\_\_\_  
Name:  
Title:

**[ADDITIONAL GRANTORS]**

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

**ACCEPTED AND AGREED:**

**MORGAN STANLEY SENIOR FUNDING, INC.**, as  
Collateral Agent

By \_\_\_\_\_  
Name:  
Title:

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**SCHEDULE I**  
**COPYRIGHT REGISTRATIONS**

(A) REGISTERED COPYRIGHTS

<u>Title</u>	<u>Copyright Reg. No.</u>	<u>Date</u>
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(B) COPYRIGHT APPLICATIONS

<u>Title</u>	<u>Date</u>
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(C) EXCLUSIVE INBOUND U.S. COPYRIGHT LICENSES

<u>Title</u>	<u>Date</u>
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**EXHIBIT G**  
**TO PLEDGE AND SECURITY AGREEMENT**

**FORM OF PERFECTION CERTIFICATE**

**May [ ], 2014**

In connection with the execution of that certain Pledge and Security Agreement, dated as of May 16, 2014 (the “**Security Agreement**”) by and among ETSY, INC. and certain of its subsidiaries (collectively, the “**Grantors**” and each individually a “**Grantor**”), and MORGAN STANLEY SENIOR FUNDING, INC., as collateral agent (in such capacity, the “**Collateral Agent**”), the Grantors hereby certifies as follows:

Section 1. Legal Names, Organizations and Jurisdictions of Organization. The exact legal name, the type of organization and the jurisdiction of organization or formation, as applicable, of each Grantor are as follows:

<u>Grantor</u>	<u>Type of Organization</u>	<u>Jurisdiction of Organization/Formation</u>
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Section 2. Organizational and Federal Taxpayer Identification Numbers. The state issued organizational identification number and federal taxpayer identification number of each Grantor are as follows:

<u>Grantor</u>	<u>Organizational Identification Number</u>	<u>Federal Taxpayer Identification Number</u>
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Section 3. Chief Executive Offices and Mailing Addresses. The chief executive office address and mailing address, including, in each case, street address, city, county and state, of each Grantor are as follows:

<u>Grantor</u>	<u>Chief Executive Office</u>	<u>Mailing Address</u>
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Section 4. **Changes in Name, Jurisdiction of Organization, Chief Executive Office, "Location" Under Section 9-307 of the UCC, Identity or Organizational Structure**. Except as set forth below, no Grantor has changed its legal name, jurisdiction of organization or its corporate structure in any way ( e.g., merger, consolidation, change in corporate form, change in jurisdiction of organization or otherwise) within the past five years:

<u>Grantor</u>	<u>Date of Change</u>	<u>Description of Change</u>
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Section 5. **Prior Addresses**. Except as set forth below, no Grantor has changed its chief executive office within the past five years:

<u>Grantor</u>	<u>Prior Address of Chief Executive Office</u>
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Section 6. **Trade Names**. Set forth below is each trade name or assumed name used by any Grantor during the past five years or by which any Grantor has been known or has transacted any business during the past five years:

<u>Grantor</u>	<u>Prior Trade Name</u>
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Section 7. **Acquisitions of Equity Interests or Assets**. Except as set forth below, no Grantor has acquired any equity interests of another entity or substantially all the assets of another entity within the past five years:

<u>Grantor</u>	<u>Date of Acquisition</u>	<u>Description of Acquisition</u>
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Section 8. **Tangible Personal Property**. Set forth below are all the locations where any Grantor currently maintains or has maintained within the past five years any of its tangible personal property (including goods, inventory and equipment), other than property in the possession of a third party ( e.g. , warehouseman or other bailee):

<u>Grantor</u>	<u>Address (including County)</u>
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Section 9. Third Parties Holding Collateral. Except as set forth below, no persons other than the Grantors have possession of any assets of any Grantor:

<u>Grantor</u>	<u>Name of Third Party</u>	<u>Address (including County)</u>	<u>Description of Assets and Value</u>

Section 10. Intellectual Property. Set forth below is a list of all registrations and applications for Copyrights, Trademarks, Patents (each as defined in the Security Agreement) issued or registered by, or applied-for with, an Intellectual Property Registry (as defined in the Security Agreement) and in each case, owned by any Grantor, and all Exclusive Copyright Licenses:

- (a) Copyrights:
- (b) Trademarks:
- (c) Patents:
- (d) Exclusive Copyright Licenses:

Section 11. Securities. Set forth below is a list of all equity interests owned by each Grantor, together with the type of organization that issued such equity interests ( e.g., corporation, limited liability company, partnership or trust):

<u>Grantor</u>	<u>Issuer and Type of Organization</u>	<u># of Shares/Equity Interests Owned</u>	<u>Total Shares/Equity Interests Outstanding</u>	<u>% of Interest Held by Borrower</u>	<u>% of Interest Pledged</u>	<u>Certificate No. (if any)</u>

Section 12. Instruments. Set forth below is a list of all instruments that evidence amounts owed to any Grantor:

<u>Grantor</u>	<u>Amount</u>	<u>Type of Account</u>	<u>Date of Instrument</u>	<u>Date of Maturity</u>

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Section 13. **Commercial Tort Claims**. The following is a list of each commercial tort claim held by each Grantor:

Section 14. **Real Estate Related Collateral / Fixtures**. Set forth below are all the locations where any Grantor owns or leases any real property (including fixtures):

Section 15. **Deposit Accounts, Securities Accounts and Commodity Accounts**. Set forth below is a true and complete list of all Deposit Accounts, Securities Accounts and Commodity Accounts (each as defined in the Security Agreement) maintained by each Grantor, including the name of each institution where each such account is held, the name of each such account and the name of each entity that holds each account.

Section 16. **Authorization to File Financing Statements**. Each Grantor, to the extent permitted by applicable law, hereby authorizes Collateral Agent to file financing or continuation statements, and amendments thereto, in all jurisdictions and with all filing offices as Collateral Agent may determine, in its reasonable discretion, are necessary or advisable to perfect the security interest granted or to be granted to Collateral Agent for the benefit of the Lenders. Such financing statements may describe the collateral in the same manner as described in Section 2.1 of the Security Agreement.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, each Grantor has caused this Perfection Certificate to be executed as of the date first written above by its officer thereunto duly authorized.

ETSY, INC.

By: \_\_\_\_\_  
Name:  
Title:

JARVIS LABS, INC.

By: \_\_\_\_\_  
Name:  
Title:

G-5

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**EXHIBIT L**



Fax: 212-507-5010  
Phone: 443-627-4555

### Application and Agreement for Irrevocable Standby Letter of Credit

**NOTE:** Please type applications to ensure legibility and accuracy. Handwritten applications will not be accepted.  
We reserve the right to return applications for clarification.

Date: mm/dd/yyyy

The undersigned applicant ("Applicant") hereby requests Morgan Stanly Bank, N.A., Morgan Stanley Senior Funding, Inc., and/or their affiliates or subsidiaries ("Bank") to issue an irrevocable standby letter of credit (together with any replacements, extensions or modifications, the "Credit") pursuant to this Application and Agreement for Irrevocable Standby Letter of Credit (this "Application and Agreement"). Applicant agrees that the Credit shall be subject to the terms and provisions of this Application and Agreement.

**Applicant/Borrower (Full Name & Address):**

Contact Name:

Telephone:

Fax:

Email Address:

**As an Accommodation for (if another Party other than Applicant/Borrower) (Full Name & Address):**

Contact Name:

Telephone:

Fax:

Email Address:

Is this party related to Applicant? Y  or N

If yes, what is the relationship:

If no, why is Applicant applying for a Credit for a non-related party:

**Beneficiary (Full Name & Address):**

Contact Name:

Telephone:

Fax:

Email Address:

**Amount of Credit (in Numbers):**

**If not in U.S. Dollars, indicate Currency:**

**Expiration Date (Cannot Exceed 1 Year):**

mm/dd/yyyy

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**Brief Explanation of Underlying Transaction (including Name and Date of Agreement governing Underlying Transaction):**

- Y  or N  Expiry date to be automatically extendable ("evergreen") every 1 year, with days notification for non-extension (i.e., 60 days), with a final expiration date of mm/dd/yyyy. After issuance of the Credit, if Applicant desires that Bank give a notice of non-extension under the Credit to Applicant, Applicant should so notify the Bank in writing more than 5 business days in advance of the last day on which a timely notice of non-extension may be given to beneficiary. Whether or not requested to do so by Applicant, Bank shall have the right to give such notice or take such action, to fail or refuse to do so, or to fail to retain proof of doing so. If Bank gives such notice or takes such action at Applicant's request, then Applicant shall obtain beneficiary's acknowledgement thereof and, in the case of Credit termination, return of the original Credit.
- Y  or N  Allow for partial draws on this Credit.
- Y  or N  Allow this Credit to be transferrable.

**Credit to be available for payment against beneficiary's draft(s) drawn at sight on Bank, accompanied by a signed statement of the beneficiary worded as follows (state wording that is to appear in the statement accompanying the beneficiary's draft or state "None" if beneficiary's draft drawn at sight is the only item required for payment):**

THE APPLICANT AGREES WITH AND FOR THE BENEFIT OF BANK AS FOLLOWS:

1. **Application and Agreement.** Applicant affirms that it has fully read and agrees to this Application and Agreement. In consideration of Bank's issuance of the Credit, Applicant agrees to be bound by the agreements set forth in this Application and Agreement and the terms and conditions of any credit agreement, reimbursement agreement or other agreement between Bank and Applicant with respect to the issuance of letters of credit and the reimbursement of amounts drawn thereunder.
2. **Issuance of Credit.** Subject to the terms and conditions of this Application and Agreement, Bank may, in its sole and complete discretion, issue the Credit for the account of the Applicant; provided that, the terms and provisions of the Credit and this Application and Agreement therefor shall be satisfactory to Bank in its discretion. Applicant understands and agrees that the Credit will be subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, Publication 600 or any subsequent version currently in effect and in use by Bank ("UCP") or to the International Standby Practices of the International Chamber of Commerce, Publication 590 or any subsequent version currently in effect and in use by Bank ("ISP98"), at Bank's discretion and in any event, unless otherwise specified in the Credit, such Credit shall be subject to the laws of the State of New York without reference to the chosen jurisdiction's provisions regarding conflicts of laws. In issuing the Credit, Bank is expressly authorized to make such changes from the terms set forth in this Application and Agreement as Bank, in its sole and complete discretion, may deem advisable. Applicant is responsible for approving the text of the Credit as submitted to and as issued by Bank and as received by the beneficiary. Bank's recommendation or drafting of text or Bank's use or non-use or refusal to use text submitted by Applicant shall not affect Applicant's ultimate responsibility for the final text of the Credit. Applicant agrees that the Credit shall be conclusively presumed to be in proper form unless Applicant notifies Bank in writing of any inconsistency in the Credit within 3 business days of its submission and issuance.
3. **Applicant.** The word "Applicant" in this Application and Agreement refers to each signer (other than the Bank) of this Application and Agreement. If this Application and Agreement is signed by more than one Applicant, their obligations under this Application and Agreement shall be joint and several and each Applicant hereby waives all suretyship defenses such Applicant may now or hereafter have with respect to any obligations under this Application and Agreement.
4. **Representations and Warranties.** Applicant warrants that no transaction involved in connection with this Application and Agreement, if any, is in violation of U.S. Treasury Foreign Assets Control Regulations or any applicable law.
5. **Indemnification.** Applicant will indemnify and hold Bank (including its officers, directors, employees and agents) harmless from and against (a) all loss or damage arising out of the issuance by Bank, or any other action taken by any such indemnified party in connection with the Credit including any loss or damage arising in whole or in part from the negligence of the party seeking indemnification, but excluding any loss or damage resulting from the gross negligence or willful misconduct of the party seeking indemnification, (b) all costs and expenses (including reasonable attorneys' fees and allocated costs of in-house counsel and legal expenses) of all claims or legal proceedings arising out of the issuance and all actions arising from or relating

to issuance by Bank of the Credit or incident to the collection of amounts owed by Applicant hereunder or the enforcement of the rights of Bank hereunder, including, without limitation, legal proceedings related to any court order, injunction, or other process or decree restraining or seeking to restrain Bank from paying any amount under the Credit, and (c) all claims, losses, damages, suits, costs or expenses (including reasonable attorneys' fees and allocated costs of in-house counsel, and legal expenses) arising out of Applicant's failure to timely procure licenses or comply with applicable laws, regulations or rules, or any other conduct or failure of Applicant relating to or affecting the Credit.

6. **Electronic Transmissions**. Bank is authorized to accept and process this Application and Agreement, the Credit and any amendments, transfers, assignments of proceeds, consents, waivers and all documents relating to the Credit or the Application and Agreement which are sent to Bank by electronic transmission, including SWIFT, electronic mail, telex, telecopy, telefax, courier, mail or other computer generated telecommunications and such electronic communication shall have the same legal effect as if written and shall be binding upon and enforceable against the Applicant. Bank may, but shall not be obligated to, require authentication of such electronic transmission or that Bank receives original documents prior to acting on such electronic transmission. Separate and independent from any other indemnity set forth in this Application and Agreement, Applicant will indemnify and hold Bank (including its officers, directors, employees and agents) harmless from and against any and all loss, liability, damage or expenses of whatever kind and nature arising from Bank's acceptance and/or delivery of information by electronic transmission.
7. **Governing Law**. This Application and Agreement will be governed by and interpreted in accordance with the laws of the State of New York. Applicant and the Bank agree, to the extent permitted under applicable law, to waive any right to a trial by jury in any action or proceeding with respect to any dispute or controversy under this Application and Agreement and any credit agreement, reimbursement agreement or other agreement between Bank and Applicant with respect to the issuance of letters of credit and the reimbursement of amounts drawn thereunder and hereby agree that such action or proceeding will be tried before a judge without a jury.
8. **Miscellaneous**. This Application and Agreement shall be binding on Applicant's heirs, executors, administrators, successors and permitted assigns, and shall inure to the benefit of Bank's successors and assigns. Any provisions of this Application and Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Application and Agreement may be signed and delivered by facsimile transmission. This Application and Agreement contains the final, complete and exclusive understanding of, and supersedes all prior or contemporaneous, oral or written, agreements, understandings, representations and negotiations between the parties relating to the subject matter and this Application and Agreement.

**Applicant Name:**

**Signature of Authorized Signatory of Applicant:**

X

**Name of Authorized Signatory (Please Print):**

**Telephone Number:**

( ) -

**Title of Authorized Signatory:**

**Email Address:**

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**EXHIBIT M-1**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**  
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Revolving Credit and Guaranty Agreement dated as of May 16, 2014 (the “**Credit Agreement**”), among Etsy, Inc. (the “**Borrower**”), the Guarantors from time to time party thereto, Morgan Stanley Senior Funding, Inc. as administrative agent (in such capacity, the “**Administrative Agent**”) and the Lenders from time to time party thereto. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

Pursuant to the provisions of Section 2.18(g) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Date: , 20[ ]

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**EXHIBIT M-2**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Revolving Credit and Guaranty Agreement dated as of May 16, 2014 (the “**Credit Agreement**”), among Etsy, Inc. (the “**Borrower**”), the Guarantors from time to time party thereto, Morgan Stanley Senior Funding, Inc. as administrative agent (in such capacity, the “**Administrative Agent**”) and the Lenders from time to time party thereto. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

Pursuant to the provisions of Section 2.18(g) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:  
Title:

Date: , 20[ ]

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**EXHIBIT M-3**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**  
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Revolving Credit and Guaranty Agreement dated as of May 16, 2014 (the “**Credit Agreement**”), among Etsy, Inc. (the “**Borrower**”), the Guarantors from time to time party thereto, Morgan Stanley Senior Funding, Inc. as administrative agent (in such capacity, the “**Administrative Agent**”) and the Lenders from time to time party thereto. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

Pursuant to the provisions of Section 2.18(g) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
Name:  
Title:

Date: , 20[ ]

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**EXHIBIT M-4**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**  
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Revolving Credit and Guaranty Agreement dated as of May 16, 2014 (the “**Credit Agreement**”), among Etsy, Inc. (the “**Borrower**”), the Guarantors from time to time party thereto, Morgan Stanley Senior Funding, Inc. as administrative agent (in such capacity, the “**Administrative Agent**”) and the Lenders from time to time party thereto. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

Pursuant to the provisions of Section 2.18(g) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date: , 20[ ]

## EXECUTIVE BONUS PLAN

Etsy is pleased to confirm your eligibility and participation in the Executive Bonus Plan ( **Plan** ) effective **2014**, on the terms described in this document.

The Plan is an annual discretionary bonus that is intended to help motivate key executives to achieve our company-wide goals and reward them for achievement of company and individual results.

### **Your Target**

Your bonus **Target** for 2014 is **%** of your **Adjusted Base Salary** for the **Measurement Period**. The Measurement Period is January 1, 2014 - December 31, 2014. The amount of your actual bonus will be determined through a combination of overall Etsy financial performance and your own individual performance against goals determined by you and your manager. Your actual bonus will be determined by your manager and the CEO in the CEO's absolute discretion, and could be below or, in exceptional cases, above your Target.

**Adjusted Base Salary** means your base salary for the Measurement Period, subject to any of the following adjustments:

1. Your base salary will be prorated if you began working for Etsy during the Measurement Period;
2. If you take an **Unpaid Voluntary Leave of Absence**<sup>1</sup>, your base salary will be prorated (to the extent permitted by applicable law) based on the period of time you worked during the Measurement Period. At its sole discretion, Etsy may deem that you were actively at work during any such periods of leave of absence at the salary rate in effect at the commencement of your leave of absence.
3. Your base salary may be adjusted if you transfer to another position within Etsy, as described below.

### **Eligibility**

- You must be employed by Etsy (or one of its subsidiaries, collectively called the "**Etsy Group**" ) at the end of the Measurement Period and at the Payout Date (defined below) and must not have given or received notice of termination to be eligible to receive a bonus. Accordingly, you will not receive a bonus if your employment with the Etsy Group ends (or if you or Etsy have given notice that your employment will end) for any reason prior to the Payout Date.
- If you transfer from your current position to another position within the Etsy Group, your eligibility for the bonus may cease. If so, you will be eligible for a prorated bonus based on the period of time you spent in a position eligible for a bonus under this Plan. You must remain employed by the Etsy Group through the Payout Date in order to be eligible for a prorated bonus.

### **Timing of Payment**

- Etsy anticipates that the **Payout Date** will be within seventy-five (75) days after the end of the Measurement Period.
- If you are on an Unpaid Voluntary Leave of Absence on the Payout Date, your bonus will be paid to you only if you return from the leave of absence, and in that case it will be paid as soon as practicable following the date on which you return. At its sole discretion, Etsy may accelerate payment for an employee on such Unpaid Voluntary Leave of Absence to the Payout Date.
- If you are on a Paid Leave of Absence<sup>2</sup> on the Payout Date, your bonus will be paid on the Payout Date.

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<sup>1</sup> **Unpaid Voluntary Leave of Absence** includes leave for such purposes as an unpaid sabbatical, unpaid personal leave of absence as well other leave that does not meet the requirements of a Paid Leave of Absence (defined below).

<sup>2</sup> **Paid Leave of Absence** includes any leave during which you receive compensation from Etsy and/or supplemental or replacement compensation from a program provided by Etsy or by the government (e.g., disability benefits).

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Etsy may alter your Target or modify the terms of this Plan, or withdraw the Plan altogether, at any time without prior notice. Bonuses are not earned until paid.

## **Taxes, Benefits and Other Employee-Related Policies**

### **FOR U.S. EMPLOYEES**

- Bonuses are considered supplemental wages and will be taxed in accordance with federal and state laws governing supplemental wages. In general, federal taxes are withheld from bonus payments at a flat 25% rate, not at the withholding rate in effect for an employee's semi-monthly pay cycle.
- Bonuses are considered wages for purposes of Section 401(k) of the Internal Revenue Code.
- Therefore, if you are enrolled in the Etsy 401(k) Plan, contributions will be withheld from bonus payments up to the 401(k) Plan and Code mandated limits.
- Notwithstanding anything in the Plan to the contrary, Etsy intends that all bonus payments provided under the Plan will be exempt from the requirements of Code Section 409A.

### **FOR U.K. EMPLOYEES**

- Bonuses are considered supplemental remuneration and will be subject to statutory deductions.
- Bonuses are non-pensionable.

## **Bonus Pool for the Measurement Period**

Etsy's Board of Directors will determine the total bonus pool based on measures of Etsy's profitability (EBITDA Margin) and revenue (Net Revenue) for the Measurement Period as compared to targets. Achievement of Target Performance ( \_\_\_\_\_ and \_\_\_\_\_ ) will result in funding of 100%, so that the bonus pool shall equal the sum of eligible employees' Target bonus amounts. If the actual EBITDA Margin and/or Net Revenue differs from the targeted amounts, the bonus pool will be either higher or lower than the sum of the Target bonus amounts, as determined in accordance with the bonus pool matrix chart below.

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## **2014 Bonus Pool Award Matrix**

The bonus pool will be allocated among eligible employees at the absolute discretion of the CEO.

### **Terms of Plan**

This Executive Bonus Plan is not intended to alter your employment-at-will status or in any way limit your or Etsy's ability to terminate your employment at any time for any or no reason, consistent with local law. Etsy reserves the right to change the Plan or your Target, or to terminate the Plan entirely, at any time, at its sole discretion.

**Employee:** \_\_\_\_\_

**Etsy, Inc.** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**ETSY, INC.  
SEVERANCE PLAN**

(Effective as of the IPO Date)

The Etsy, Inc. (the “Company”) Severance Plan (the “Plan”) is designed to provide separation pay and benefits to Participants who satisfy the requirements of the Plan and whose employment is terminated in a Qualifying Termination.

This Plan is governed by the laws of the State of Delaware.

**I. ELIGIBILITY FOR BENEFITS**

**1. Participation**

A. The Company’s Board of Directors (the “Board”) or its Compensation Committee (the “Committee”) will select the Company executives who are eligible to participate in the Plan. The Plan Administrator (as defined below) will deliver a notice to each such executive, substantially in the form attached hereto as the “Participation Notice”, informing the executive that he or she is eligible to participate in the Plan. Each executive of the Company who receives a Participation Notice is a “Participant” in the Plan.

**2. Conditions**

A. In order to receive Severance Benefits under the Plan, the Participant must (i) experience a Qualifying Termination; (ii) execute, and not revoke, a general release of all claims (the “Release”) in the form provided by the Company in accordance with the terms of this Section I(2)(A); (iii) return all Company Property to the Company; and (iv) comply with all agreements between the Company and the Participant relating to confidentiality, non-competition, non-solicitation and non-interference. The Company shall deliver the Release to the Participant within 30 days after his or her Qualifying Termination occurs. The Release will specify how much time such Participant has to sign it and whether there is a revocation period; provided, however, that the deadline for execution of the Release will in no event be later than 50 days after the Participant’s Qualifying Termination and the Release must become effective by the 60<sup>th</sup> day after the Participant’s Qualifying Termination. If the Release has not been signed by the Participant and become effective by the 60<sup>th</sup> day after the Participant’s Qualifying Termination, then the Participant will cease to be eligible for benefits under this Plan.

B. In addition to the conditions in Section I(2)(A), a Participant shall not be entitled to Severance Benefits under the Plan unless and until such Participant has entered into the Company’s standard form of Employee Proprietary Information and Inventions Agreement or any similar or successor document.

C. If a Participant has not substantially complied with the material terms of all material agreements between the Company and the Participant, the Plan Administrator may deny and/or discontinue the payment of the Participant’s Severance Benefits and may require the Participant to repay any portion of the Severance Benefits already received under the Plan if,

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after the Company provides written notice of such noncompliance and repayment obligation to the Participant and the Participant fails to cure such noncompliance (if capable of being cured) within ten (10) days after receipt of such notice. If the Plan Administrator notifies a Participant that repayment of all or any portion of the Severance Benefits received under the Plan is required, such amounts shall be repaid within thirty (30) calendar days of the date the written notice is sent. Repayment of cash amounts shall be in the form of a cash reimbursement to the Company of amounts previously paid, and repayment of any accelerated vesting shall be made in the form of a cash payment to the Company equal to the amount of any gain realized on the vesting, exercise, settlement, sale, transfer or other disposition of any equity-based awards triggered under the Plan (and, in either case, repayment can be made by offsetting the amount to be recouped from any compensation otherwise owed by the Company to the Participant, to the extent permissible under applicable law). Any remedy under this subsection (C) shall be in addition to, and not in place of, any other remedy, including injunctive relief, that the Company may have.

## **II. HOW THE PLAN WORKS**

### **I. *Severance Benefits***

If a Participant is subject to a Qualifying Termination and the Participant signs and does not revoke (to the extent permitted by law) a Release in accordance with Section I(2)(A), the Company will provide the following Severance Benefits, subject to the terms of the Plan:

A. An amount equal to (x) the Participant's Monthly Base Salary times (y) the number of months in the Severance Period, payable in equal installments on the Company's regular payroll dates from the Qualifying Termination through the number of months in the Severance Period. Such payments shall commence within 60 days after the date of the Qualifying Termination and the first such payment shall include any unpaid amounts accrued from the date of the Participant's Qualifying Termination. However, if the 60-day period described in the preceding sentence spans two calendar years, then the payments will in any event begin in the second calendar year.

B. If the Participant (x) was a participant in the Company's group health insurance plans (major medical, dental and vision) on the date of such Participant's Qualifying Termination and (y) timely elects continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (together with any state law of similar effect, "COBRA"), the Company will pay the full amount of the Participant's COBRA premiums, or will provide coverage under such group health insurance plans, on behalf of the Participant and the Participant's eligible dependents, in any such case as and when such premiums or coverage amounts would be due if paid for by the Participant, until the earliest to occur of (i) the end of the number of months in the COBRA Period, (ii) the expiration of the Participant's eligibility for the continuation coverage under COBRA, and (iii) the date when the Participant becomes eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment (such period from the date of the Qualifying Termination through the earliest to occur of the dates set forth in clause (i) through (iii), the "COBRA Payment Period"). These payments will be subject to applicable tax withholdings, including as necessary to avoid a violation of, or penalties under, the nondiscrimination rules of Section 105(h)(2) of the Code or any statute or regulation of similar effect (including, without limitation, the 2010 Patient Protection and Affordable Care

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Act, as amended by the 2010 Health Care and Education Reconciliation Act). On the 60th day following the Qualifying Termination, the Company will make the first payment under this paragraph equal to the aggregate amount of payments that the Company would have paid through such date had such payments commenced on the date of the Qualifying Termination, with the balance of the payments paid thereafter on the original schedule. In all cases, if the Participant becomes eligible for coverage under another employer's group health plan or otherwise ceases to be eligible for COBRA during the COBRA Payment Period, the Participant must immediately notify the Company of such event, and all payments and obligations under this paragraph will cease. Any insurance premiums that are paid by the Company will not include any amounts payable by the Participant under an Internal Revenue Code Section 125 health care reimbursement plan, which amounts, if any, are the sole responsibility of the Participant.

Payments made under this Plan shall not be treated as "compensation" for purposes of any 401(k) plan of the Company or a parent or subsidiary of the Company. A Participant will also receive his or her unpaid salary through his or her termination date and a lump sum payment for all accrued and unused vacation (through the termination date) in a final paycheck provided on his or her last day of work.

The Severance Benefits under this Section II(1)(B) shall be paid from the general assets of the Company.

## **2. Sections 409A and 457A**

Severance payments and benefits under the Plan are intended to be exempt from the application of Section 409A of the Code and any state law of similar effect, and the Plan will be construed to the greatest extent possible consistent with such intent. In particular, severance payments are intended to be exempt from the application of Section 409A of the Code pursuant to Treasury Regulation 1.409A-1(b)(4) (as a short-term deferral) and alternatively pursuant to Treasury Regulation 1.409A-1(b)(9)(iii) (to the extent of the dollar limitation set forth therein). To the extent not so exempt, the Plan will be construed to comply with the requirements of Section 409A of the Code so that none of the payments or benefits hereunder will be subject to additional tax imposed under Section 409A of the Code. For purposes of Section 409A of the Code, a Participant's right to receive a series of installment payments under the Plan will be treated as a right to receive a series of separate payments. Severance payments and benefits under the Plan are also intended to be exempt from the application of Section 457A of the Code and will be construed to the greatest extent possible consistent with such intent.

Notwithstanding anything in the Plan to the contrary, if the Company determines that a Participant is a "specified employee" under Section 409A (a)(2)(B)(i) of the Code and the regulations thereunder when his or her Qualifying Termination occurs, then to the extent that any payments or benefits to which a Participant becomes entitled under the Plan in connection with a Qualifying Termination constitute "deferred compensation" subject to Section 409A of the Code, such payments shall not be paid, or, in the case of installments, shall not commence until expiration of the six-month period measured from the Participant's Qualifying Termination or the date of the Participant's death, but only to the extent necessary to avoid the additional tax imposed by Section 409A of the Code. The severance payments or benefits that otherwise would have been made during such deferral period shall be paid in a lump sum on the first day following expiration of the deferral period.

### **III. Definitions**

**Cause** shall mean a Participant's (a) unauthorized use or disclosure of the Company's confidential information or trade secrets, (b) breach of any material terms of any material agreement between the Participant and the Company, (c) material failure to comply with the Company's written policies or rules, (d) conviction of, or plea of "guilty" or "no contest" to, a felony under the laws of the United States or any State, (e) gross negligence or willful misconduct in the scope of the Participant's employment, (f) continuing failure to perform assigned duties after receiving written notification of the failure from the Company's Board of Directors or (g) failure to cooperate in good faith with a governmental or internal investigation of the Company or its directors, officers or employees, if the Company has requested the Participant's cooperation.

**COBRA Period** shall mean the COBRA Period set forth in a Participant's Participation Notice.

**Code** shall mean the Internal Revenue Code of 1986, as amended.

**Company** shall mean Etsy, Inc., a Delaware corporation, and any successor thereto.

**Company Property** shall mean all material paper and electronic Company documents (and all copies, reproductions or summaries thereof) created and/or received by the Participant during the Participant's period of employment with the Company and other material Company materials and property (including without limitation, Company laptop computers and mobile devices), that the Participant has in the Participant's possession or control, including, without limitation, materials of any kind that contain or embody any proprietary or confidential information of the Company (and all copies, reproductions or summaries thereof, in whole or in part). For the avoidance of doubt, Company Property does not include the Participant's personal copies of documents evidencing the Participant's hire, termination, compensation, benefits and stock options and any other documentation received as a stockholder of the Company.

**IPO Date** shall mean the effective date of the registration statement filed by the Company with the Securities and Exchange Commission for its initial offering of common stock to the public.

**Monthly Base Salary** shall mean the Participant's monthly base salary at the rate in effect immediately prior to the date of the Participant's Qualifying Termination, and does not include, for example, bonuses, overtime compensation, incentive pay, sales commissions or expense allowances.

**Plan Administrator** shall mean the individual(s) appointed by the Board (or Committee) to administer the terms of the Plan as set forth herein, and if no individual is appointed to serve as the Plan Administrator, the Plan Administrator shall be the senior-most human resources employee of the Company. Notwithstanding the preceding sentence, in the event the Plan Administrator is entitled to Severance Benefits under the Plan, the Board or its delegate shall act as the Plan Administrator for purposes of administering the terms of the Plan with respect to the Plan Administrator. The Plan Administrator may delegate all or any portion of its authority under the Plan to any other person(s).

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**Qualifying Termination** shall mean (i) a Separation initiated by the Company (or parent or subsidiary employing the Participant) for any reason other than Cause and (ii) for a Participant who is the Chief Executive Officer of the Company, the Participant's voluntary resignation following (a) a material diminution in the Participant's authority, duties or responsibilities, (b) a material reduction in the Participant's base compensation, (c) a material change in the geographic location at which the Participant must perform services for the Company or (d) any other action or inaction that constitutes a material breach by the Company (or parent or subsidiary employing the Participant) of a material term of the employment agreement or offer letter under which the Participant provides services (if any). For a Participant to receive the benefits under this Plan as a result of a voluntary resignation under the preceding sentence, all of the following requirements must be satisfied: (1) the Participant must provide notice to the Company of his or her intent to assert a Qualifying Termination under Clause (ii) of the preceding sentence within 90 days of the initial existence of one or more of the conditions set forth in clause (ii) of the preceding sentence; (2) the Company (or parent or subsidiary employing the Participant) will have 30 days from the date of such notice to remedy the condition and, if it does so, the Participant may withdraw his or her resignation or may resign with no Plan benefits; and (3) any termination of employment under clause (ii) of the preceding sentence must occur within one hundred twenty-five (125) days after the initial existence of one or more of the conditions set forth in such clause (ii). Should the Company (or parent or subsidiary employing the Chief Executive Officer) remedy the condition as set forth in clause (ii) above and then one or more of the conditions arises again, the Chief Executive Officer may assert clause (ii) above again, subject to all of the conditions set forth herein.

**Separation** shall mean a "separation from service" as defined in the regulations under Section 409A of the Code.

**Severance Benefits** shall mean the payments and benefits that a Participant is eligible to receive under Section II of the Plan.

**Severance Period** shall mean the severance period set forth in a Participant's Participation Notice.

#### **IV. MISCELLANEOUS**

1. ***Plan Administration***. The Plan Administrator has full discretionary authority to administer and interpret the Plan, including discretionary authority to determine eligibility for benefits under the Plan and the amount of benefits (if any) payable per Participant. Any determination by the Plan Administrator will be final and conclusive upon all persons.
2. ***Benefits***. The Company is not required to establish a trust to fund the Plan. The benefits provided under this Plan are not assignable and may be conditioned upon the Participant's compliance with the Release of claims signed by the Participant and any confidentiality agreement and/or proprietary information and invention assignment agreement between the Company and the Participant.
3. ***Indebtedness of Participants***. If a Participant is indebted to the Company on the effective date of the Participant's Qualifying Termination, the Company reserves the right to offset

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the payment of any benefits under the Plan by the amount of such indebtedness. Such offset will be made in accordance with all applicable laws. The Participant's execution of the Participation Notice constitutes knowing written consent to the foregoing.

4. **Plan Terms.** This Plan supersedes any and all prior separation, severance and salary continuation arrangements, programs and plans that were previously offered by the Company, either orally or in writing, for which a Participant was eligible, but excluding the Company's Change in Control Severance Plan. In no event shall a Participant receive cash severance benefits under this Plan and under any other Plan, program or arrangement.
5. **Plan Amendment or Termination.** If not earlier terminated pursuant to the terms of this Section (IV)(5), the Plan shall terminate on the third anniversary of the date of its adoption (the "Expiration"). The Company, acting through its Board or its Compensation Committee, reserves the right to terminate or amend the Plan at any time and in any manner, subject to this Section (IV)(5). Any termination (including an Expiration) or amendment of the Plan may be made effective immediately with respect to any benefits not yet paid, whether or not prior notice of such amendment or termination has been given to affected employees; however, no termination (including an Expiration) or amendment that negatively impacts the rights or potential benefits of a Participant shall be effective upon a Participant who has been subject to a Qualifying Termination prior to or within two months after the effective date of such termination or amendment.
6. **Taxes.** All payments and benefits under the Plan will be subject to all applicable deductions and withholdings, including, without limitation, obligations to withhold for federal, state, provincial, foreign and local income and employment taxes. By becoming a Participant in the Plan, the Participant agrees to review with Participant's own tax advisors the federal, state, provincial, local, and foreign tax consequences of participation in the Plan. The Participant will rely solely on such advisors and not on any statements or representations of the Company or any of its agents. The Participant understands that the Participant (and not the Company) will be responsible for the Participant's own tax liability that may arise as a result of becoming a Participant in the Plan.
7. **No Right to Employment.** This Plan does not provide you with any right to continue employment with the Company (or any parent or subsidiary) or affect the Company's right (or the right of any parent or subsidiary employing a Participant), which right is hereby expressly reserved, to terminate the employment of any individual at any time for any reason with or without cause.

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**ETSY, INC.**

**SEVERANCE PLAN**

**PARTICIPATION NOTICE**

To: \_\_\_\_\_  
Date: \_\_\_\_\_

You have been designated as eligible to participate in the Etsy, Inc. Severance Plan (the “Plan”). A copy of the Plan document is attached to this Participation Notice. The terms and conditions of your participation in the Plan are as set forth in the Plan document and this Participation Notice.

Severance Period: months  
COBRA Period: months

Please return to the Company a copy of this Participation Notice signed by you and retain a copy of this Participation Notice, along with the Plan document and related materials, for your records.

I acknowledge and agree that the Severance Plan and the Severance Benefits (as defined in the Plan) to which I am entitled pursuant to the Plan and this Participation Notice supersede any and all prior separation, severance and salary continuation arrangements, programs and plans that were previously offered to me by the Company, either orally or in writing, other than the Company’s Change in Control Severance Plan.

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Signature

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Print Name

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Date

**ETSY, INC.**  
**CHANGE IN CONTROL SEVERANCE PLAN**

(Effective as of the IPO Date)

The Etsy, Inc. (the “Company”) Change in Control Severance Plan (the “Plan”) is designed to provide protection to Participants in the event of a Change in Control so that they are encouraged to act in the best interest of stockholders without the distraction and concern for the uncertainty that could result from the effects of a Change in Control on their personal circumstances.

This Plan is governed by the laws of the State of Delaware.

**I. ELIGIBILITY FOR BENEFITS**

**1. Participation**

A. The Company’s Board of Directors (the “Board”) or its Compensation Committee (the “Committee”), will select the Company executives who are eligible to participate in the Plan. The Plan Administrator (as defined below) will deliver a notice to each such executive, substantially in the form attached hereto as the “Participation Notice”, informing the executive that he or she is eligible to participate in the Plan. Each executive of the Company who receives a Participation Notice is a “Participant” in the Plan.

**2. Conditions**

A. In order to receive Severance Benefits under the Plan, the Participant must (i) experience a Qualifying CIC Termination; (ii) execute, and not revoke, a general release of all claims (the “Release”) in the form provided by the Company in accordance with the terms of this Section I(2)(A); (iii) return all Company Property to the Company; and (iv) comply with all agreements between the Company and the Participant relating to confidentiality, non-competition, non-solicitation and non-interference. The Company shall deliver the Release to the Participant within 30 days after his or her Qualifying CIC Termination occurs. The Release will specify how much time such Participant has to sign it and whether there is a revocation period; provided, however, that the deadline for execution of the Release will in no event be later than 50 days after the Participant’s Qualifying CIC Termination and the Release must become effective by the 60<sup>th</sup> day after the Participant’s Qualifying CIC Termination. If the Release has not been signed by the Participant and become effective by the 60<sup>th</sup> day after the Participant’s Qualifying CIC Termination, then the Participant will cease to be eligible for benefits under this Plan.

B. In addition to the conditions in Section I(2)(A), a Participant shall not be entitled to Severance Benefits under the Plan unless and until such Participant has entered into the Company’s standard form of Employee Proprietary Information and Inventions Agreement or any similar or successor document.

C. If a Participant has not substantially complied with the material terms of all material agreements between the Company and the Participant, the Plan Administrator may deny

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and/or discontinue the payment of the Participant's Severance Benefits and may require the Participant to repay any portion of the Severance Benefits already received under the Plan if, after the Company provides written notice of such noncompliance and repayment obligation to the Participant and the Participant fails to cure such noncompliance (if capable of being cured) within ten (10) days after receipt of such notice. If the Plan Administrator notifies a Participant that repayment of all or any portion of the Severance Benefits received under the Plan is required, such amounts shall be repaid within thirty (30) calendar days of the date the written notice is sent. Repayment of cash amounts shall be in the form of a cash reimbursement to the Company of amounts previously paid, and repayment of any accelerated vesting shall be made in the form of a cash payment to the Company equal to the amount of any gain realized on the vesting, exercise, settlement, sale, transfer or other disposition of any equity-based awards triggered under the Plan (and, in either case, repayment can be made by offsetting the amount to be recouped from any compensation otherwise owed by the Company to the Participant, to the extent permissible under applicable law). Any remedy under this subsection (C) shall be in addition to, and not in place of, any other remedy, including injunctive relief, that the Company may have.

## **II. HOW THE PLAN WORKS**

### ***1. Severance Benefits***

If a Participant is subject to a Qualifying CIC Termination and the Participant signs and does not revoke (to the extent permitted by law) a Release in accordance with Section I(2)(A), the Company will provide the following Severance Benefits, subject to the terms of the Plan:

A. An amount equal to (x) the Participant's Monthly Base Salary times (y) the number of months in the Severance Period, payable in equal installments on the Company's regular payroll dates from the Qualifying CIC Termination through the number of months in the Severance Period. Such payments shall commence within 60 days after the date of the Qualifying CIC Termination and the first such payment shall include any unpaid amounts accrued from the date of the Participant's Qualifying CIC Termination. However, if the 60-day period described in the preceding sentence spans two calendar years, then the payments will in any event begin in the second calendar year.

B. If the Participant (x) was a participant in the Company's group health insurance plans (major medical, dental and vision) on the date of such Participant's Qualifying CIC Termination and (y) timely elects continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (together with any state law of similar effect, "COBRA"), the Company will pay the full amount of the Participant's COBRA premiums, or will provide coverage under such group health insurance plans, on behalf of the Participant and the Participant's eligible dependents, in any such case as and when such premiums or coverage amounts would be due if paid for by the Participant, until the earliest to occur of (i) the end of the number of months in the COBRA Period, (ii) the expiration of the Participant's eligibility for the continuation coverage under COBRA, and (iii) the date when the Participant becomes eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment (such period from the date of the Qualifying CIC Termination through the earliest to occur of the dates set forth in clause (i) through (iii), the "COBRA Payment Period"). These payments will be subject to applicable tax withholdings, including as

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necessary to avoid a violation of, or penalties under, the nondiscrimination rules of Section 105(h)(2) of the Code or any statute or regulation of similar effect (including, without limitation, the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act). On the 60th day following the Qualifying CIC Termination, the Company will make the first payment under this paragraph equal to the aggregate amount of payments that the Company would have paid through such date had such payments commenced on the date of the Qualifying CIC Termination, with the balance of the payments paid thereafter on the original schedule. In all cases, if the Participant becomes eligible for coverage under another employer's group health plan or otherwise ceases to be eligible for COBRA during the COBRA Payment Period, the Participant must immediately notify the Company of such event, and all payments and obligations under this paragraph will cease. Any insurance premiums that are paid by the Company will not include any amounts payable by the Participant under an Internal Revenue Code Section 125 health care reimbursement plan, which amounts, if any, are the sole responsibility of the Participant.

C. Each of the Participant's then-outstanding equity awards shall vest (if not already fully vested) as to a percentage of unvested shares (if any) per equity award equal to the Acceleration Factor, effective as of the later of the Participant's Qualifying CIC Termination or the date of the Change in Control.

Payments made under this Plan shall not be treated as "compensation" for purposes of any 401(k) plan of the Company or a parent or subsidiary of the Company. A Participant will also receive his or her unpaid salary through his or her termination date and a lump sum payment for all accrued and unused vacation (through the termination date) in a final paycheck provided on his or her last day of work.

The Severance Benefits under this Section II(1)(B) shall be paid from the general assets of the Company.

## **2. Sections 409A and 457A**

Severance payments and benefits under the Plan are intended to be exempt from the application of Section 409A of the Code and any state law of similar effect, and the Plan will be construed to the greatest extent possible consistent with such intent. In particular, severance payments are intended to be exempt from the application of Section 409A of the Code pursuant to Treasury Regulation 1.409A-1(b)(4) (as a short-term deferral) and alternatively pursuant to Treasury Regulation 1.409A-1(b)(9)(iii) (to the extent of the dollar limitation set forth therein). To the extent not so exempt, the Plan will be construed to comply with the requirements of Section 409A of the Code so that none of the payments or benefits hereunder will be subject to additional tax imposed under Section 409A of the Code. For purposes of Section 409A of the Code, a Participant's right to receive a series of installment payments under the Plan will be treated as a right to receive a series of separate payments. Severance payments and benefits under the Plan are also intended to be exempt from the application of Section 457A of the Code and will be construed to the greatest extent possible consistent with such intent.

Notwithstanding anything in the Plan to the contrary, if the Company determines that a Participant is a "specified employee" under Section 409A (a)(2)(B)(i) of the Code and the regulations thereunder when his or her Qualifying CIC Termination occurs, then to the extent

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that any payments or benefits to which a Participant becomes entitled under the Plan in connection with a Qualifying CIC Termination constitute “deferred compensation” subject to Section 409A of the Code, such payments shall not be paid, or, in the case of installments, shall not commence until expiration of the six-month period measured from the Participant’s Qualifying CIC Termination or the date of the Participant’s death, but only to the extent necessary to avoid the additional tax imposed by Section 409A of the Code. The severance payments or benefits that otherwise would have been made during such deferral period shall be paid in a lump sum on the first day following expiration of the deferral period.

### **3. Golden Parachute Tax Limitation**

The Internal Revenue Code imposes an excise tax on certain payments and other benefits received by certain officers and stockholders of a company in connection with its change of control. Such payments can include severance pay, loan forgiveness and acceleration of vesting.

**A. Basic Rule** . In the event that it is determined that any payment or distribution of any type (cash, equity or otherwise) to or for the benefit of a Participant made by the Company, by any of its affiliates, by any person who acquires ownership or effective control of the Company or ownership of a substantial portion of the Company’s assets (within the meaning of Section 280G of the Code and the regulations thereunder) or by any affiliate of such person, whether paid, payable, distributed or distributable pursuant to the terms of this Plan or under any other agreement including a Participant’s equity award agreements and including loan forgiveness (the “Total Payments”), would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties with respect to such excise tax (such excise tax, together with any such interest or penalties, are collectively referred to as the “Excise Tax”), then the Total Payments shall be made to the Participant either (i) in full or (ii) as to such lesser amount as would result in no portion of the Total Payments being subject to Excise Tax (a “Reduced Payment”), whichever of the foregoing results in the receipt by the Participant on an after-tax basis, of benefits of the greatest value, notwithstanding that all or some portion of the Total Payments may be subject to the Excise Tax.

#### **B. Rules Applicable to Reduced Payments**

**Determination by Accountant** . The determination as to whether any of the Total Payments are “parachute payments” (within the meaning of Section 280G of the Code) and whether to make a Reduced Payment shall be made by an independent accounting firm (the “Accounting Firm”) selected by the Company (the “Accounting Firm”), which shall provide such determination (the “Determination”), together with detailed supporting calculations both to the Company and to the Participant within seven business days of the Participant’s Qualifying CIC Termination, if applicable, or such earlier time as is requested by the Company or by the Participant (if the Participant reasonably believes that any of the Total Payments may be subject to the Excise Tax). In any event, as promptly as practicable following the Accounting Firm’s Determination, the Company shall pay or transfer to or for the benefit of the Participant such amounts as are then due to him or her and shall promptly pay or transfer to or for the benefit of the Participant in the future such amounts as become due to him or her. Any Determination by the Accounting Firm shall be binding upon the Company and the Participant, absent manifest error.

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**Reduction of Payments**. For purposes of determining whether to make a Reduced Payment, if applicable, the Company shall cause to be taken into account all federal, state and local income and employment taxes and excise taxes applicable to the Participant (including the Excise Tax). If a Reduced Payment is made, the Company shall reduce or eliminate the Total Payments in the following order: (1) cancellation of accelerated vesting of options with no intrinsic value, (2) reduction of cash payments, (3) cancellation of accelerated vesting of equity awards other than options, (4) cancellation of accelerated vesting of options with intrinsic value and (5) reduction of other benefits paid to the Participant. In the event that acceleration of vesting is reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of the Participant's equity awards. In the event that cash payments or other benefits are reduced, such reduction shall occur in reverse order beginning with payments or benefits which are to be paid farthest in time from the date of the Determination. For avoidance of doubt, an option will be considered to have no intrinsic value if the exercise price of the shares subject to the option exceeds the fair market value of such shares.

**C. Underpayments and Overpayments**. As a result of uncertainty in the application of Sections 4999 and 280G of the Code at the time of the initial Determination by the Accounting Firm hereunder, it is possible that payments will have been made by the Company which should not have been made (an "Overpayment") or that additional payments which will not have been made by the Company could have been made (an "Underpayment"), consistent in each case with the calculation of whether and to what extent a Reduced Payment shall be made hereunder. In either event, the Accounting Firm shall determine the amount of the Underpayment or Overpayment that has occurred. In the event that the Accounting Firm determines that an Overpayment has occurred, such Overpayment shall be treated for all purposes as a loan to the Participant that he or she shall repay to the Company, together with interest at the applicable federal rate provided in Section 7872(f)(2) of the Code; provided, however, that no amount shall be payable by the Participant to the Company if and to the extent that such payment would not reduce the amount that is subject to taxation under Section 4999 of the Code. In the event that the Accounting Firm determines that an Underpayment has occurred, such Underpayment shall promptly be paid or transferred by the Company to or for the benefit of the Participant, together with interest at the applicable federal rate provided in Section 7872(f)(2) of the Code.

If this Section II(3) is applicable with respect to a Participant's receipt of a Reduced Payment, it shall supersede any contrary provision of any plan, arrangement or agreement governing the Participant's rights to the Total Payments.

### **III. Definitions**

**Acceleration Factor** shall mean the Acceleration Factor set forth in a Participant's Participation Notice.

**Cause** shall mean a Participant's (a) unauthorized use or disclosure of the Company's confidential information or trade secrets, (b) breach of any material terms of any material agreement between the Participant and the Company, (c) material failure to comply with the Company's written policies or rules, (d) conviction of, or plea of "guilty" or "no contest" to, a felony under the laws of the United States or any State, (e) gross negligence or willful misconduct in the scope of the Participant's employment, (f) continuing failure to perform

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assigned duties after receiving written notification of the failure from the Company's Board of Directors or (g) failure to cooperate in good faith with a governmental or internal investigation of the Company or its directors, officers or employees, if the Company has requested the Participant's cooperation.

**COBRA Period** shall mean the COBRA Period set forth in a Participant's Participation Notice.

**Change in Control** shall mean:

- A. Any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then-outstanding voting securities;
- B. The consummation of the sale or disposition by the Company of all or substantially all of the Company's assets;
- C. The consummation of a merger or consolidation of the Company with or into any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation; or
- D. Individuals who are members of the Board (the "**Incumbent Board**") cease for any reason to constitute at least a majority of the members of the Board over a period of 12 months; provided, however, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

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**Code** shall mean the Internal Revenue Code of 1986, as amended.

**Company** shall mean Etsy, Inc., a Delaware corporation, and any successor thereto.

**Company Property** shall mean all material paper and electronic Company documents (and all copies, reproductions or summaries thereof) created and/or received by the Participant during the Participant's period of employment with the Company and other material Company materials and property (including without limitation, Company laptop computers and mobile devices), that the Participant has in the Participant's possession or control, including, without limitation, materials of any kind that contain or embody any proprietary or confidential information of the Company (and all copies, reproductions or summaries thereof, in whole or in part). For the avoidance of doubt, Company Property does not include the Participant's personal copies of documents evidencing the Participant's hire, termination, compensation, benefits and stock options and any other documentation received as a stockholder of the Company.

**Involuntary Termination** shall mean a Separation as a result of the termination of a Participant's employment by reason of:

A. involuntary dismissal or discharge by the Company (or the parent or subsidiary employing the Participant) for reasons other than Cause, or

B. such Participant's voluntary resignation following (i) a material diminution in the Participant's authority, duties or responsibilities, (ii) a material reduction in the Participant's base compensation, (iii) a material change in the geographic location at which the Participant must perform services for the Company or (iv) any other action or inaction that constitutes a material breach by the Company (or parent or subsidiary employing the Participant) of a material term of the employment agreement or offer letter under which the Participant provides services (if any). For a Participant to receive the benefits under this Plan as a result of a voluntary resignation under this clause B, all of the following requirements must be satisfied: (1) the Participant must provide notice to the Company of his or her intent to assert this clause B within 90 days of the initial existence of one or more of the conditions set forth in subclauses (i) through (iv); (2) the Company (or parent or subsidiary employing the Participant) will have 30 days from the date of such notice to remedy the condition and, if it does so, the Participant may withdraw his or her resignation or may resign with no Plan benefits; and (3) any termination of employment under this clause B must occur within one hundred twenty-five (125) days after the initial existence of one or more of the conditions set forth in subclauses (i) through (iv). Should the Company (or parent or subsidiary employing the Participant) remedy the condition as set forth above and then one or more of the conditions arises again within the three (3) months before and twelve (12) months after a Change in Control, the Participant may assert this clause B again subject to all of the conditions set forth herein.

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**IPO Date** shall mean the effective date of the registration statement filed by the Company with the Securities and Exchange Commission for its initial offering of common stock to the public.

**Monthly Base Salary** shall mean the Participant's monthly base salary at the rate in effect immediately prior to the date of the Participant's Qualifying CIC Termination, and does not include, for example, bonuses, overtime compensation, incentive pay, sales commissions or expense allowances.

**Plan Administrator** shall mean the individual(s) appointed by the Board (or Committee) to administer the terms of the Plan as set forth herein, and if no individual is appointed to serve as the Plan Administrator, the Plan Administrator shall be the senior-most human resources employee of the Company. Notwithstanding the preceding sentence, in the event the Plan Administrator is entitled to Severance Benefits under the Plan, the Board or its delegate shall act as the Plan Administrator for purposes of administering the terms of the Plan with respect to the Plan Administrator. The Plan Administrator may delegate all or any portion of its authority under the Plan to any other person(s).

**Qualifying CIC Termination** shall mean a Participant's Involuntary Termination within the three (3) months before and twelve (12) months after a Change in Control.

**Separation** shall mean a "separation from service" as defined in the regulations under Section 409A of the Code.

**Severance Benefits** shall mean the payments and benefits that a Participant is eligible to receive under Section II of the Plan.

**Severance Period** shall mean the severance period set forth in a Participant's Participation Notice.

#### **IV. MISCELLANEOUS**

1. ***Plan Administration*** . The Plan Administrator has full discretionary authority to administer and interpret the Plan, including discretionary authority to determine eligibility for benefits under the Plan and the amount of benefits (if any) payable per Participant. Any determination by the Plan Administrator will be final and conclusive upon all persons.
2. ***Benefits*** . The Company is not required to establish a trust to fund the Plan. The benefits provided under this Plan are not assignable and may be conditioned upon the Participant's compliance with the Release of claims signed by the Participant and any confidentiality agreement and/or proprietary information and invention assignment agreement between the Company and the Participant.
3. ***Indebtedness of Participants*** . If a Participant is indebted to the Company on the effective date of the Participant's Qualifying CIC Termination, the Company reserves the right to offset the payment of any benefits under the Plan by the amount of such indebtedness.

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Such offset will be made in accordance with all applicable laws. The Participant's execution of the Participation Notice constitutes knowing written consent to the foregoing.

4. **Plan Terms.** This Plan supersedes any and all prior separation, severance and salary continuation arrangements, programs and plans that were previously offered by the Company, either orally or in writing, for which a Participant was eligible. In no event shall a Participant receive cash severance benefits under this Plan and under any other Plan, program or arrangement, including, without limitation the Etsy, Inc. Severance Plan. In the event benefits are triggered to a Participant under both this Plan and the Etsy, Inc. Severance Plan, the Participant shall receive benefits only under this Plan.
5. **Plan Amendment or Termination .** If not earlier terminated pursuant to the terms of this Section (IV)(5), the Plan shall terminate on the third anniversary of the date of its adoption (the "Expiration"). The Company, acting through its Board or its Compensation Committee, reserves the right to terminate or amend the Plan at any time and in any manner, subject to this Section (IV)(5). Any termination (including an Expiration) or amendment of the Plan may be made effective immediately with respect to any benefits not yet paid, whether or not prior notice of such amendment or termination has been given to affected employees; however, no termination (including an Expiration) or amendment that negatively impacts the rights or potential benefits of a Participant shall become effective within the three months prior to or twelve months following the date of a Change in Control.
6. **Taxes .** All payments and benefits under the Plan will be subject to all applicable deductions and withholdings, including, without limitation, obligations to withhold for federal, state, provincial, foreign and local income and employment taxes. By becoming a Participant in the Plan, the Participant agrees to review with Participant's own tax advisors the federal, state, provincial, local, and foreign tax consequences of participation in the Plan. The Participant will rely solely on such advisors and not on any statements or representations of the Company or any of its agents. The Participant understands that the Participant (and not the Company) will be responsible for the Participant's own tax liability that may arise as a result of becoming a Participant in the Plan.
7. **No Right to Employment .** This Plan does not provide you with any right to continue employment with the Company (or any parent or subsidiary) or affect the Company's right (or the right of any parent or subsidiary employing a Participant), which right is hereby expressly reserved, to terminate the employment of any individual at any time for any reason with or without cause.

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**ETSY, INC.**  
**CHANGE IN CONTROL SEVERANCE PLAN**  
**PARTICIPATION NOTICE**

To: \_\_\_\_\_  
Date: \_\_\_\_\_

You have been designated as eligible to participate in the Etsy, Inc. Change in Control Severance Plan. A copy of the Plan document is attached to this Participation Notice. The terms and conditions of your participation in the Plan are as set forth in the Plan document and this Participation Notice.

Severance Period:            months  
COBRA Period:            months  
Acceleration Factor:        %

Please return to the Company a copy of this Participation Notice signed by you and retain a copy of this Participation Notice, along with the Plan document and related materials, for your records.

I acknowledge and agree that the Severance Plan and the Severance Benefits (as defined in the Plan) to which I am entitled pursuant to the Plan and this Participation Notice supersede any and all prior separation, severance and salary continuation arrangements, programs and plans that were previously offered to me by the Company, either orally or in writing.

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Signature

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Print Name

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Date

**E TSY, INC.**

**M ANAGEMENT C ASH I NCENTIVE P LAN**

**(A S A DOPTED E FFECTIVE M ARCH 4, 2015)**

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**E TSY, INC.**

**M ANAGEMENT C ASH I NCENTIVE P LAN**

**ARTICLE 1. BACKGROUND AND PURPOSE**

**1.1 Effective Date**. The Plan was adopted by the Committee on the date set forth above, became effective immediately, and is subject to approval by the Company's stockholders.

**1.2 Purpose of the Plan**. The Plan is intended to motivate Participants to achieve excellent short- and long-term performance for the Company.

**ARTICLE 2. DEFINITIONS**

The following words and phrases shall have the meanings set forth below, unless a different meaning is plainly required by the context:

2.1 "**Actual Award**" means, as to any Performance Period, the actual award (if any) payable to a Participant for the Performance Period. Each Actual Award is determined by the Payout Formula for the Performance Period, subject to the Committee's authority under Section 3.5 to increase, eliminate or reduce the award and under Section 3.6 to adjust the results under Performance Goals.

2.2 "**Award**" means an award granted pursuant to the Plan, the payment of which shall be contingent on the attainment of Performance Goals with respect to a Performance Period.

2.3 "**Affiliate**" means any corporation or other entity (including, without limitation, partnerships and joint ventures) controlled by the Company.

2.4 "**Base Salary**" means, as to any Performance Period, the actual salary earned by a Participant during the Performance Period. Base Salary shall be calculated before both (a) deductions for taxes or benefits and (b) deferrals of compensation pursuant to Company-sponsored plans or Affiliate-sponsored plans.

2.5 "**Board**" means the Company's Board of Directors.

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

2.7 "**Committee**" means the Compensation Committee of the Board.

2.8 "**Company**" means Etsy, Inc., a Delaware corporation, or any successor thereto.

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2.9 “**Employee**” means any employee of the Company or of an Affiliate, whether such employee is so employed when the Plan is adopted or becomes so employed after the adoption of the Plan.

2.10 “**Fiscal Quarter**” means a fiscal quarter within a Fiscal Year of the Company.

2.11 “**Fiscal Year**” means the fiscal year of the Company.

2.12 “**Participant**” means, as to any Performance Period, an Employee who has been selected for participation in the Plan for that Performance Period pursuant to Section 3.1.

2.13 “**Payout Formula**” means, as to any Performance Period, the formula or payout matrix established by the Committee pursuant to Section 3.4 in order to determine the Actual Awards (if any) to be paid to Participants. The formula or matrix may differ from Participant to Participant.

2.14 “**Performance Period**” means a Fiscal Year, or any longer or shorter period determined by the Committee.

2.15 “**Performance Goals**” means the goal(s) determined by the Committee to be applicable to a Participant for a Target Award for a Performance Period. As determined by the Committee, the Performance Goal(s) may provide for a targeted level or levels of achievement using the performance criteria specified by the Committee. For Awards intended to qualify as performance-based compensation under Section 162(m) of the Code, such criteria shall be based on one or more of the performance metrics set forth in **Appendix A** attached to the Plan.

2.16 “**Plan**” means this Etsy, Inc. Management Cash Incentive Plan, as set forth in this instrument and as hereafter amended from time to time.

2.17 “**Target Award**” means the target award payable under the Plan to a Participant for the Performance Period, as applicable, expressed as a percentage of his or her Base Salary or a specific dollar amount, as determined by the Committee in accordance with Section 3.3.

2.18 “**Termination of Employment**” means a cessation of the employee-employer relationship between an Employee and the Company or an Affiliate for any reason, including (without limitation) a termination by resignation, discharge, death, disability, retirement or the disaffiliation of an Affiliate, but excluding a transfer from the Company to an Affiliate or between Affiliates.

### **ARTICLE 3. SELECTION OF PARTICIPANTS AND DETERMINATION OF AWARDS**

**3.1 Selection of Participants**. The Committee shall determine the Participants for any Performance Period. The Committee also may designate as Participants one

or more individuals (by name, position or management level) who become Employees during a Performance Period. Participation in the Plan for Senior Vice Presidents and above is in the sole discretion of the Committee and shall be determined Performance Period by Performance Period. Accordingly, an Employee who is a Participant for a given Performance Period is in no way assured of being selected for participation in any subsequent Performance Period. For awards intended to qualify as performance-based compensation under Section 162(m) of the Code, Participants shall be designated no later than the earlier of (a) the 90<sup>th</sup> day of the Performance Period or (b) the date on which 25% of the Performance Period has elapsed. A newly hired or newly eligible employee may be designated as a Participant and eligible to receive a pro-rated Award (based on the number of days such employee is eligible for an Award during the Performance Period) if the date such employee becomes eligible to participate in the Plan is no later than the date on which 75% of the Performance Period has elapsed.

**3.2 Determination of Performance Goals** . The Committee shall establish the Performance Goals for each Participant for the Performance Period. For Awards intended to qualify as performance-based compensation under Section 162(m) of the Code, the Performance Goals shall be established no later than the earlier of (a) the 90<sup>th</sup> day of the Performance Period or (b) the date on which 25% of the Performance Period has elapsed. Such Performance Goals shall be set forth in writing and, for Awards intended to qualify as performance-based compensation under Section 162(m) of the Code, shall be based on one or more of the performance metrics set forth in **Appendix A** attached to the Plan. Any criteria used may be measured (a) in absolute terms, (b) in relative terms, including (without limitation) the passage of time and/or against other companies or metrics, (c) on a per-share basis, (d) against the performance of the Company as a whole or against particular segments or products of the Company and/or (e) on a pre-tax or after-tax basis. Any Performance Goal may be measured on a basis other than generally accepted accounting principles. To the extent an Award is intended to qualify as performance-based compensation under Section 162(m) of the Code, the outcome of the Performance Goals shall be substantially uncertain at the time the Performance Goals are established.

**3.3 Determination of Target Awards** . The Committee shall establish a Target Award for each Participant for each Performance Period prior to, or reasonably promptly following the commencement of such Performance Period (and for Awards intended to qualify as performance-based compensation under Section 162(m), no later than the earlier of (a) the 90<sup>th</sup> day of the Performance Period or (b) the date on which 25% of the Performance Period has elapsed. Such Target Award shall be set forth in writing.

**3.4 Determination of Payout Formula or Formulae** . The Committee shall establish a Payout Formula or Formulae for purposes of determining the Actual Award (if any) payable to each Participant. Each Payout Formula shall (a) be in writing, (b) be based on a comparison of actual performance to the Performance Goals, (c) provide for the payment of a Participant's Target Award if the Performance Goals for the Performance Period are achieved at the predetermined level, (d) provide for the payment of an Actual Award greater than or less than the Participant's Target Award, depending upon the extent to which actual performance exceeds or falls below the Performance Goals and (e) be determined prior to, or reasonably promptly following the commencement of, such Performance Period (and, for Awards intended to qualify as performance-based compensation under Section 162(m), no later than the earlier of (a) the 90<sup>th</sup> day of the Performance Period or (b) the date on which 25% of the Performance Period has elapsed).

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**3.5 Determination of Actual Awards**. After the end of each Performance Period the Committee shall certify the extent to which the Performance Goals applicable to each Participant for the Performance Period were achieved or exceeded, as determined by the Committee. To the extent an Award is intended to qualify as performance-based compensation under Section 162(m) of the Code, the Committee's certification shall be in writing, and shall include the extent to which the applicable performance Goals have been achieved and the Actual Award. The Actual Award for each Participant shall be determined by applying the Payout Formula to the level of actual performance that has been certified by the Committee. Any contrary provision of the Plan notwithstanding, the Committee may (a) reduce or eliminate the Actual Award that otherwise would be payable under the Payout Formula, (b) increase an Actual Award that otherwise would be payable under the Payout Formula and is not intended to qualify as performance-based compensation under Section 162(m) of the Code or (c) determine whether or not any Participant will receive an Actual Award in the event that the Participant incurs a Termination of Employment before such Actual Award is to be paid pursuant to Section 4.2. Unless otherwise determined by the Committee or set forth in Section 4.4, a Participant must be an active employee in good standing on the date of payment in order to receive payment of an Actual Award.

**3.6 Adjustments**. The Committee may adjust the results under any Performance Goal to exclude any of the following events that occurs during a Performance Period: (a) asset write-downs, (b) litigation, claims, judgments or settlements, (c) the effect of changes in tax law, accounting principles or other such laws or provisions affecting reported results, (d) accruals for reorganization and restructuring programs, (e) mergers or acquisitions, (f) exchange rate effects for non-U.S. dollar denominated net sales and operating earnings, (g) statutory adjustments to corporate tax rates, or (h) any other extraordinary, unusual or non-recurring items; provided that, to the extent an Award is intended to qualify as performance-based compensation under Section 162(m) of the Code, no adjustment shall be made if the effect would be to cause such Award to fail to so qualify.

**3.7 Leaves of Absence**. If a Participant is on a leave of absence for a portion of a Performance Period, to the extent permissible by applicable law, the Participant will be eligible to receive only a pro-rated Award reflecting participation for the period during which he or she was actively employed and not any period when the Participant was on leave.

## **ARTICLE 4. PAYMENT OF AWARDS**

**4.1 Right to Receive Payment**. Each Actual Award that may become payable under the Plan shall be paid solely from the general assets of the Company or the Affiliate that employs the Participant (as the case may be), as determined by the Company. No amounts awarded or accrued under the Plan shall be funded, set aside or otherwise segregated prior to payment. The obligation to pay Actual Awards under the Plan shall at all times be an unfunded and unsecured obligation of the Company. Participants shall have the status of general creditors of the Company or the Affiliate that employs the Participant.

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**4.2 Timing of Payment** . Subject to Section 3.5, payment of each Actual Award shall be made as soon as administratively practicable, but in no event later than two and one-half months after the end of the later of the calendar or Company fiscal year (as applicable) in which the Participant becomes vested in such payment.

**4.3 Form of Payment** . Each Actual Award shall be paid in cash (or its equivalent) in a single lump sum.

**4.4 Payment in the Event of Death** . If a Participant dies during a Performance Period, then the Participant's designated beneficiary or, if no beneficiary has been designated, the administrator or representative of his or her estate shall be paid a pro-rated portion (based on the number of days in the Performance Period prior to the Participant's termination of employment due to death) of the Actual Award, if any, that the Participant would have been entitled to receive had the Participant remained employed through the payment date. If a Participant dies after the end of a Performance Period but before receiving the Actual Award, if any, for such Performance Period , then the Participant's designated beneficiary or, if no beneficiary has been designated, to the administrator or representative of his or her estate shall be paid the Actual Award, if any, that the Participant would have been entitled to receive had the Participant remained employed through the payment date. Any beneficiary designation or revocation of a prior designation shall be effective only if it is in writing, signed by the Participant and received by the Company prior to the Participant's death. Any payment pursuant to this Section 4.4 shall be made at the same time and in the same manner as Actual Awards are paid to other Participants for the applicable Performance Period.

## **ARTICLE 5. ADMINISTRATION**

**5.1 Committee Authority** . The Plan shall be administered by the Committee, subject to Section 5.3, which shall consist of at least two members, all of whom are "outside directors" as defined in Section 162(m) of the Code. The Committee shall have all powers and discretion necessary or appropriate to administer the Plan and to control its operation, including (without limitation) the power to (a) determine which Employees shall be granted awards, (b) prescribe the terms and conditions of the awards, (c) interpret the Plan, (d) adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees who are foreign nationals or employed outside of the United States, (e) adopt rules for the administration, interpretation and application of the Plan and (f) interpret, amend or revoke any such rules.

**5.2 Decisions Binding** . All determinations and decisions made by the Committee, the Board or any delegate of the Committee pursuant to the provisions of the Plan shall be final, conclusive and binding on all persons and shall be given the maximum deference permitted by law.

**5.3 Delegation by the Committee** . The Committee, on such terms and conditions as it may provide, may delegate all or part of its authority and powers under the Plan to one or more directors and/or employees of the Company, however, the Committee may not delegate its responsibility to (a) make Awards to executive officers, (b) make Awards that are intended to constitute qualified performance-based compensation under Section 162(m) of the

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Code, or (c) certify the satisfaction of the Performance Goals pursuant to Section 3.5 applicable to Awards intended to qualify as performance-based compensation under Section 162(m) of the Code, in each case, other than to a committee of the Board, consisting of at least two members, all of whom are “outside directors” as defined in Section 162(m) of the Code.

**5.4 Agents; Limitation of Liability** . The Committee may appoint agents to assist in administering the Plan. The Committee and each member thereof shall be entitled to, in good faith, rely or act upon any report or other information furnished to it or him by any officer or employee of the Company, the Company’s certified public accountants, consultants or any other agent assisting in the administration of the Plan. Members of the Committee and any officer or employee of the Company acting at the direction or on behalf of the Committee shall not be personally liable for any action or determination taken or made in good faith with respect to the Plan, and shall, to the extent permitted by law, be fully indemnified and protected by the Company with respect to any such action or determination.

## **ARTICLE 6. GENERAL PROVISIONS**

**6.1 Maximum Amount Payable** . The maximum amount payable under any individual Actual Award shall not exceed \$7,500,000.

**6.2 Tax Withholding** . The Company or an Affiliate, as applicable, shall withhold all required taxes from an Actual Award, including any federal, state, local or other taxes.

**6.3 No Effect on Employment** . Nothing in the Plan shall interfere with or limit in any way the right of the Company or an Affiliate, as applicable, to terminate any Participant’s employment or service at any time, with or without cause. Employment with the Company and its Affiliates is on an at-will basis only. The Company expressly reserves the right, which may be exercised at any time and without regard to when during or after a Performance Period such exercise occurs, to terminate any individual’s employment with or without cause, and to treat him or her without regard to the effect that such treatment might have upon him or her as a Participant.

**6.4 No Effect on Other Benefits** . Except as expressly set forth in a Participant’s employment agreement with the Company, any Actual Awards under the Plan shall not be considered for the purpose of calculating any other benefits to which such Participant may be entitled, including (a) any termination, severance, redundancy or end-of-service payments, (b) other bonuses or long-service awards, (c) overtime premiums, (d) pension or retirement benefits or (e) future Base Pay or any other payment to be made by the Company to such Participant.

**6.5 Successors** . All obligations of the Company and any Affiliate under the Plan, with respect to awards granted hereunder, shall be binding on any successor to the Company and/or such Affiliate, whether the existence of such successor is the result of a merger, consolidation, direct or indirect purchase of all or substantially all of the business or assets of the Company or such Affiliate, or any similar transaction.

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**6.6 Nontransferability of Awards .** No award granted under the Plan shall be sold, transferred, pledged, assigned or otherwise alienated or hypothecated, other than by will, by the laws of descent and distribution or to the limited extent provided in Section 4.4. All rights with respect to an award granted to a Participant shall be available during his or her lifetime only to the Participant.

**6.7 Stockholder Approval .** This Plan shall be effective upon approval by the Company's stockholders.

**6.8 Section 162(m) .** It is the intent of the Company that the Plan and the Awards made under the Plan to participants who are or may become persons whose compensation is subject to Section 162(m) of the Code satisfy any applicable requirements to be treated as qualified performance-based compensation under Section 162(m) of the Code. The provisions of the Plan may at any time be bifurcated by the Committee so that certain provisions of the Plan or any Award intended to qualify as performance-based compensation under Section 162(m) of the Code are only applicable to such Awards.

**6.9 Clawback .** Notwithstanding any other provisions in this Plan, any Award that is subject to recovery under any law, government regulation, stock exchange listing requirement or Company policy, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, stock exchange listing requirement or Company policy.

**6.10 Section 409A .** It is intended that payments under the Plan qualify as short-term deferrals exempt from the requirements of Section 409A of the Code. In the event that any Award does not qualify for treatment as an exempt short-term deferral, it is intended that such amount will be paid in a manner that satisfies the requirements of Section 409A of the Code. The Plan shall be interpreted and construed accordingly.

## **ARTICLE 7. DURATION, AMENDMENT AND TERMINATION**

**7.1 Duration of the Plan .** The Plan shall commence on the date specified herein and shall remain in effect thereafter until terminated pursuant to Section 7.2.

**7.2 Amendment, Suspension or Termination .** The Board or the Committee may amend, suspend or terminate the Plan, or any part thereof, at any time and for any reason; provided that no amendment that requires stockholder approval in order for the Plan to continue to comply with Section 162(m) of the Code shall be effective unless approved by the requisite vote of the Company's stockholders. Notwithstanding the foregoing, no amendment shall adversely affect the rights of any Participant to an Award allocated prior to such amendment, suspension or termination. No award may be granted during any period of suspension or after termination of the Plan.

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## **ARTICLE 8. LEGAL CONSTRUCTION**

**8.1 Severability** . In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

**8.2 Requirements of Law** . The granting of awards under the Plan shall be subject to all applicable laws, rules and regulations, and to such approvals by any governmental agencies or national securities markets as may be required.

**8.3 Governing Law** . The Plan and all awards shall be construed in accordance with and governed by the laws of the State of New York, without regard to their conflict-of-law provisions.

**8.4 Captions** . Captions are provided herein for convenience only and shall not serve as a basis for interpretation or construction of the Plan.

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## A PPENDIX A

### P ERFORMANCE M ETRICS

The Committee may establish Performance Goals derived from the following metrics for Awards intended to qualify as performance-based compensation under Section 162(m) of the Code:

- Budget performance
- Buyer acquisition, retention and/or growth
- Cash flow
- Cash flow return on investment
- Comparisons with various stock market indices
- Costs & expenses, including reduction of both.
- Earnings or earnings per share (including earnings before taxes, earnings before interest and taxes, earnings before interest, taxes and depreciation, or earnings before interest, taxes, depreciation and amortization, including adjusted measures)
- Employee satisfaction and/or retention
- Free cash flow or free cash flow per share
- Gross margin
- Gross profits
- Headcount
- Market share
- Net income (before or after taxes)
- Operating income or EBIT (Earnings before Interest and Taxes) on a GAAP or non-GAAP basis
- Operating or EBIT margin
- Return on assets, investment or capital employed
- Return on equity or average stockholders' equity
- Revenue (gross or net)
- GMS (Gross Merchandise Sales)
- Seller acquisition, retention and/or growth
- Member satisfaction
- Stockholders' equity
- Stock price return relative to market indices and/or peer group
- Total stockholder return
- Working capital

**E TSY , I NC .**  
**C OMPENSATION P ROGRAM FOR N ON -E MPLOYEE D IRECTORS**

**E FFECTIVE AS OF THE IPO D ATE**

This program has been established in order to attract and retain non-employee directors who have the knowledge, skills and experience to serve as a member of the Board of Directors of Etsy, Inc.

All equity awards granted under this program shall be granted under the Company's then-current equity incentive plan (or director equity incentive plan, if any). Capitalized terms used but not defined will have the meaning set forth in the applicable equity incentive plan or equity award agreement.

**A. Annual Retainers**

Beginning in 2016, each non-employee director who will continue serving on the Board after the Company's regular annual meeting of stockholders will receive the Annual Board Retainer and any applicable Additional Retainers, as described below.

*Annual Board Retainers*

The Annual Board Retainer will be paid annually in the form of Options and/or Restricted Stock Units in the discretion of the Compensation Committee (in each case, "Equity") with a fair value <sup>1</sup> equal to the Annual Board Retainer; however, a director may elect to receive a portion of the Annual Board Retainer, up to a maximum of 50%, in cash. Such election shall be made no later than December 31<sup>st</sup> for the Annual Board Retainer to be paid in the next calendar year.

Each Annual Board Retainer Equity award will be granted on the date of the Company's annual meeting of stockholders and will vest in full on the date of the next annual meeting of stockholders, provided that the director has served continuously as a member of the Board during the vesting period. Notwithstanding the foregoing, an Annual Board Retainer Equity award will vest in full in the event that the Company is subject to a Change in Control or in the event of the director's death.

The portion of the Annual Board Retainer paid in cash, if any, shall be paid in full within 30 days of the Company's annual meeting of stockholders.

*Additional Retainers*

Additional Retainer fees shall be paid in full in cash within 30 days of the Company's annual meeting of stockholders.

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<sup>1</sup> "Fair value" of all equity awards described in this Compensation Program will be calculated in accordance with FASB ASC Topic 718.

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In the event that a director's committee service or role on a committee changes, he or she will be entitled to a pro-rated Additional Retainer, as applicable, in cash, which shall be determined based on the number of whole months of service before the next annual meeting of stockholders.

**B. New Directors**

Each new, non-employee director who joins the Board on or after the date of the Company's initial public offering will be granted Equity upon the effective date of his or her election to the Board with a fair value equal to the New Director Fee. Equity awards for new directors will vest in equal annual installments on the first three anniversaries of the grant date, provided that the director has served continuously as a member of the Board through the applicable vesting date. Notwithstanding the foregoing, Equity awards for new directors will vest in full in the event that the Company is subject to a Change in Control or in the event of the director's death.

A director who receives a New Director Fee will not receive an Annual Board Retainer in the same calendar year.

In addition, each new non-employee director shall be entitled to a pro-rated Additional Retainer, as applicable, in cash, which shall be determined based on the number of whole months that the new director serves on the Board before the next annual meeting of stockholders.

**C. Schedule of Fees**

1. **Annual Board Retainer** : Equity and/or cash with a total fair value of \$175,000
2. **New Director Fee** : Equity with fair value on the grant date equal to \$350,000
3. **Additional Retainers** : Cash equal to:

Lead Independent Director	\$15,000
Chairman of the Audit Committee	\$18,000
Member of the Audit Committee	\$ 9,000
Chairman of the Compensation Committee	\$10,000
Member of the Compensation Committee	\$ 5,000
Chairman of the Nominating and Corporate Governance Committee	\$ 6,000
Member of the Nominating and Corporate Governance Committee	\$ 3,000

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**D. Expenses**

The reasonable expenses incurred by non-employee directors in connection with attendance at Board or committee meetings or other Company-related activities will be reimbursed upon submission of appropriate documentation.

**E. Administration**

This Program shall be administered by the Compensation Committee, which shall have the power to interpret these provisions and approve changes from time to time as it deems appropriate.

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the use in this Registration Statement on Form S-1 of Etsy, Inc. of our report dated March 4, 2015 relating to the financial statements of Etsy, Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP  
New York, New York  
March 4, 2015

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the use in this Registration Statement on Form S-1 of Etsy, Inc. of our report dated November 3, 2014 relating to the financial statements of Jarvis Labs, Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP  
New York, New York  
March 4, 2015

Consent of Independent Accountants

We hereby consent to the use in this Registration Statement on Form S-1 of Etsy, Inc. of our report dated November 3, 2014 relating to the financial statements of Incubart SAS, which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/PricewaterhouseCoopers Audit

Pierre Marty  
Partner

Neuilly-sur-Seine, France  
March 4, 2015