

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

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

FOR THE QUARTERLY PERIOD ENDED June 30, 2020

OR

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

FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission File Number: 001-37523



PURPLE INNOVATION, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

47-4078206

(IRS Employer
Identification No.)

4100 NORTH CHAPEL RIDGE ROAD, SUITE 200
LEHI, UTAH 84043

(Address of principal executive offices, including zip code)

(801) 756-2600

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock, par value \$0.0001 per share	PRPL	The NASDAQ Stock Market LLC
Warrants to purchase one-half of one share of Class A Common Stock	PRPLW	The NASDAQ Stock Market LLC

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

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

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

Large accelerated filer ☐

Non-accelerated filer ☒

Accelerated filer ☐

Smaller reporting company ☒

Emerging growth company ☒

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

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

As of August 10, 2020, 36,626,348 shares of the registrant's Class A common stock, \$0.0001 par value per share, and 17,381,935 shares of the registrant's Class B common stock, \$0.0001 par value per share, were outstanding.

PURPLE INNOVATION, INC.

QUARTERLY REPORT ON FORM 10-Q

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In this Quarterly Report on Form 10-Q, references to “dollars” and “\$” are to United States (“U.S.”) dollars.

We have a number of trademarks registered with the U.S. Patent and Trademark Office, including EquaPressure[®], WonderGel[®] and EquaGel[®] (for cushions), and Purple[®] (the logo and standard character mark) (for mattresses and pillows as well as plasticized elastomeric gel), No Pressure[®] and Hyper-Elastic Polymer[®] (for plasticized elastomeric gel and certain types of products, including mattresses); and the color “purple” (for mattresses). We also have a number of common law trademarks, including Purple Powerbase[™], Purple Powerbase Premier[™], Purple Powerbase Plus[™], Purple Glove[™], Eidertech[™], Purple Grid[™], Mattress Max[™], WonderGel Original[™], WonderGel Extreme[™], DoubleGel[™], DoubleGel Plus[™], DoubleGel Ultra[™], Roll n' Go[™], Fold N' Go[™], Purple Bed[™], Purple Top[™], Purple Pillow[™], Portable Purple[™], Everywhere Purple[™], Simply Purple[™], Lite Purple[™], Royal Purple[™], Double Purple[™], Deep Purple[™], Ultimate Purple[™], Purple Back[™], EquaGel Straight Comfort[™], EquaGel General[™], EquaGel Protector[™] and EquaGel Adjustable[™]. Many of the common law marks have registrations pending with the USPTO and other international jurisdictions. Solely for convenience, we refer to our trademarks in this Quarterly Report without the [™] or [®] symbol, but such references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights to our trademarks.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

PURPLE INNOVATION, INC.

Condensed Consolidated Balance Sheets (In thousands, except par value) (Unaudited)

	June 30, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	\$ 95,402	\$ 33,478
Accounts receivable, net	19,029	28,692
Inventories, net	39,821	47,628
Prepaid inventory	2,175	879
Other current assets	5,195	3,442
Total current assets	161,622	114,119
Property and equipment, net	38,285	31,979
Intangible assets, net	2,320	1,101
Deferred income taxes	100,643	—
Other long-term assets	525	525
Total assets	<u>\$ 303,395</u>	<u>\$ 147,724</u>
Liabilities and Stockholders' Equity (Deficit)		
Current liabilities:		
Accounts payable	\$ 51,424	\$ 50,240
Accrued sales returns	11,949	7,271
Accrued compensation	10,328	7,954
Customer prepayments	8,338	6,258
Accrued sales tax	6,741	5,602
Income tax payable	8,498	274
Accrued rebates and allowances	4,420	5,311
Other current liabilities	9,520	3,955
Total current liabilities	111,218	86,865
Long-term debt, related-party	38,190	35,399
Warrant liabilities	46,958	21,622
Tax receivable agreement liability, net of current portion	78,076	—
Other long-term liabilities, net of current portion	11,484	8,570
Total liabilities	285,926	152,456
Commitments and contingencies (Note 11)		
Stockholders' equity (deficit):		
Class A common stock; \$0.0001 par value, 210,000 shares authorized; 36,468 issued and outstanding at June 30, 2020 and 22,494 issued and outstanding at December 31, 2019	4	2
Class B common stock; \$0.0001 par value, 90,000 shares authorized; 17,510 issued and outstanding at June 30, 2020 and 31,394 issued and outstanding at December 31, 2019	2	3
Additional paid-in capital	20,584	5,990
Accumulated earnings (deficit)	(1,495)	(8,349)
Total stockholders' equity (deficit)	19,095	(2,354)
Noncontrolling interest	(1,626)	(2,378)
Total equity (deficit)	17,469	(4,732)
Total liabilities and stockholders' equity (deficit)	<u>\$ 303,395</u>	<u>\$ 147,724</u>

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

PURPLE INNOVATION, INC.

Condensed Consolidated Statements of Operations
(In thousands, except per share amounts)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Revenues, net	\$ 165,096	\$ 103,004	\$ 287,471	\$ 186,652
Cost of revenues	83,465	60,221	152,658	109,800
Gross profit	81,631	42,783	134,813	76,852
Operating expenses:				
Marketing and sales	39,423	35,967	76,107	59,984
General and administrative	8,677	7,933	16,225	12,498
Research and development	1,580	1,244	3,025	1,934
Total operating expenses	49,680	45,144	95,357	74,416
Operating income (loss)	31,951	(2,361)	39,456	2,436
Other income (expense):				
Interest expense	(1,424)	(1,301)	(2,813)	(2,445)
Other income, net	16	6	106	235
Loss on extinguishment of debt	—	—	—	(6,299)
Change in fair value – warrant liabilities	(38,970)	(3,685)	(25,337)	(1,988)
Tax receivable agreement expense	(32,823)	—	(32,945)	—
Total other income (expense), net	(73,201)	(4,980)	(60,989)	(10,497)
Net loss before income taxes	(41,250)	(7,341)	(21,533)	(8,061)
Income tax benefit	35,428	—	35,712	—
Net income (loss)	(5,822)	(7,341)	14,179	(8,061)
Net income (loss) attributable to noncontrolling interest	(3,841)	(6,003)	7,325	(6,593)
Net income (loss) attributable to Purple Innovation, Inc.	\$ (1,981)	\$ (1,338)	\$ 6,854	\$ (1,468)
Net income (loss) per share:				
Basic	\$ (0.07)	\$ (0.16)	\$ 0.26	\$ (0.17)
Diluted	\$ (0.11)	\$ (0.16)	\$ 0.26	\$ (0.17)
Weighted average common shares outstanding:				
Basic	29,277	8,457	25,976	8,447
Diluted	53,997	8,457	55,021	8,447

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

PURPLE INNOVATION, INC.

Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(In thousands)
(Unaudited)

	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Equity (Deficit)	Total Stockholders' Equity (Deficit)	Noncontrolling Interest	Total Equity (Deficit)
	Shares	Par Value	Shares	Par Value					
Balance - December 31, 2019	22,494	\$ 2	31,394	\$ 3	\$ 5,990	\$ (8,349)	\$ (2,354)	\$ (2,378)	\$ (4,732)
Net income	—	—	—	—	—	8,835	8,835	11,166	20,001
Stock-based compensation	—	—	—	—	250	—	250	—	250
Exchange of stock	1,124	—	(1,124)	—	—	—	—	—	—
Exercise of warrants	1	—	—	—	12	—	12	—	12
Tax Receivable Agreement liability	—	—	—	—	(221)	—	(221)	—	(221)
Accrued distributions	—	—	—	—	(196)	—	(196)	—	(196)
Issuance of common stock	3	—	—	—	—	—	—	—	—
Impact of transactions affecting NCI	—	—	—	—	120	—	120	(120)	—
Balance – March 31, 2020	23,622	\$ 2	30,270	\$ 3	\$ 5,955	\$ 486	\$ 6,446	\$ 8,668	\$ 15,114
Net income (loss)	—	—	—	—	—	(1,981)	(1,981)	(3,841)	(5,822)
Stock-based compensation	—	—	—	—	962	—	962	—	962
Exchange of stock	12,760	1	(12,760)	(1)	—	—	—	—	—
Exercise of warrants	1	—	—	—	11	—	11	—	11
Exercise of stock options	5	—	—	—	(61)	—	(61)	—	(61)
Tax Receivable Agreement liability	—	—	—	—	56,857	—	56,857	—	56,857
Deferred income taxes	—	—	—	—	(45,266)	—	(45,266)	—	(45,266)
Accrued distributions	—	—	—	—	(4,327)	—	(4,327)	—	(4,327)
Issuance of common stock	80	1	—	—	—	—	1	—	1
Impact of transactions affecting NCI	—	—	—	—	6,453	—	6,453	(6,453)	—
Balance – June 30, 2020	36,468	\$ 4	17,510	\$ 2	\$ 20,584	\$ (1,495)	\$ 19,095	\$ (1,626)	\$ 17,469

	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit	Noncontrolling Interest	Total Deficit
	Shares	Par Value	Shares	Par Value					
Balance - December 31, 2018	9,731	\$ 1	44,071	\$ 4	\$ 3,655	\$ (4,322)	\$ (662)	\$ (1,349)	\$ (2,011)
Net loss	—	—	—	—	—	(130)	(130)	(590)	(720)
Stock-based compensation	—	—	—	—	73	—	73	—	73
Balance – March 31, 2019	9,731	\$ 1	44,071	\$ 4	\$ 3,728	\$ (4,452)	\$ (719)	\$ (1,939)	\$ (2,658)
Net loss	—	—	—	—	—	(1,338)	(1,338)	(6,003)	(7,341)
Stock-based compensation	—	—	—	—	6,733	—	6,733	—	6,733
Repurchase of stock options	—	—	—	—	(97)	—	(97)	—	(97)
Issuance of common stock	96	—	—	—	—	—	—	—	—
Balance – June 30, 2019	9,827	\$ 1	44,071	\$ 4	\$ 10,364	\$ (5,790)	\$ 4,579	\$ (7,942)	\$ (3,363)

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

PURPLE INNOVATION, INC.

Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2020	2019
Cash flows from operating activities:		
Net income (loss)	\$ 14,179	\$ (8,061)
Adjustments to reconcile net income (loss) to net cash from operating activities:		
Depreciation and amortization	3,816	1,574
Non-cash interest	2,791	1,565
Loss on extinguishment of debt	—	6,299
Loss on change in fair value - warrant liabilities	25,337	1,988
Tax receivable agreement expense	32,945	—
Stock-based compensation	1,212	6,806
Deferred income taxes	(44,007)	—
Changes in operating assets and liabilities:		
Decrease (increase) in accounts receivable	9,663	(14,604)
Decrease (increase) in inventories	7,807	(2,117)
Increase in prepaid inventory and other assets	(3,049)	(1,231)
Increase in accounts payable	903	4,610
Increase in accrued sales returns	4,678	544
Increase in accrued compensation	2,374	2,069
Increase (decrease) in customer prepayments	2,080	(2,448)
Increase in income tax payable	8,224	—
Increase in other accrued liabilities	3,399	5,155
Net cash provided by operating activities	<u>72,352</u>	<u>2,149</u>
Cash flows from investing activities:		
Purchase of property and equipment	(8,010)	(3,136)
Investment in intangible assets	(2,435)	(121)
Net cash used in investing activities	<u>(10,445)</u>	<u>(3,257)</u>
Cash flows from financing activities:		
Proceeds from related-party debt	—	10,000
Proceeds from exercise of warrants	23	—
Repurchase of stock options	—	(97)
Payments for debt issuance costs	—	(758)
Principal payments on capital lease obligations	(6)	(14)
Net cash provided by financing activities	<u>17</u>	<u>9,131</u>
Net increase in cash	61,924	8,023
Cash, beginning of the period	33,478	12,232
Cash, end of the period	<u>\$ 95,402</u>	<u>\$ 20,255</u>
Supplemental disclosures of cash flow information:		
Cash paid during the period for interest	\$ 22	\$ 912
Cash paid during the period for income taxes	<u>\$ 72</u>	<u>\$ —</u>
Supplemental schedule of non-cash investing and financing activities:		
Property and equipment included in accounts payable	\$ 1,025	\$ 482
Equipment acquired through capital lease	<u>\$ —</u>	<u>\$ 350</u>
Non-cash leasehold improvements	\$ 615	\$ —
Accrued distributions	<u>\$ 4,523</u>	<u>\$ —</u>
Tax Receivable Agreement liability	<u>\$ 45,266</u>	<u>\$ —</u>
Deferred income taxes	<u>\$ 56,636</u>	<u>\$ —</u>

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Organization

The Company's mission is to help people feel and live better through innovative comfort solutions.

Purple Innovation, Inc. collectively with its subsidiary (the "Company" or "Purple Inc.") is a digitally-native vertical brand founded on comfort product innovation with premium offerings. The Company designs and manufactures a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, bases, sheets, and other products. The Company markets and sells its products through its direct-to-consumer ("DTC") online channels, retail brick-and-mortar wholesale partners, third-party online retailers and its Company factory outlet and showrooms.

The Company was incorporated in Delaware on May 19, 2015 as a special purpose acquisition company under the name of Global Partnership Acquisition Corp ("GPAC") for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination involving the Company and one or more businesses. On February 2, 2018, the Company consummated a transaction structured similar to a reverse recapitalization (the "Business Combination") pursuant to which the Company acquired a portion of the equity of Purple Innovation, LLC ("Purple LLC"). At the closing of the Business Combination (the "Closing"), the Company became the sole managing member of Purple LLC, and GPAC was renamed Purple Innovation, Inc.

As the sole managing member of Purple LLC, Purple Inc. through its officers and directors is responsible for all operational and administrative decision making and control of the day-to-day business affairs of Purple LLC without the approval of any other member, unless specified in the amended operating agreement.

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The Company consists of Purple Inc. and its consolidated subsidiary, Purple LLC. Pursuant to the Business Combination described in Note 3—*Business Combination*, Purple Inc. acquired approximately 18% of the common units of Purple LLC, while InnoHold, LLC ("InnoHold") retained approximately 82% of the common units in Purple LLC. As of June 30, 2020, Purple Inc. held approximately 68% of the common units of Purple LLC and InnoHold and other Purple LLC Class B Unit holders held approximately 32% of the common units in Purple LLC.

The Business Combination was structured similar to a reverse recapitalization. The historical operations of Purple LLC are deemed to be those of the Company. Thus, the financial statements included in this report reflect (i) the historical operating results of Purple LLC prior to the Business Combination; (ii) the combined results of the Company following the Business Combination; (iii) the assets and liabilities of Purple LLC at their historical cost; and (iv) the Company's equity and earnings per share for all periods presented.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting and reflect the financial position, results of operations and cash flows of the Company. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. As such, these unaudited condensed consolidated financial statements should be read in conjunction with the audited financial statements and accompanying notes included in the Company's Annual Report on Form 10-K filed March 9, 2020. The unaudited condensed consolidated financial statements were prepared on the same basis as the audited financial statements and, in the opinion of management, reflect all adjustments (all of which were considered of normal recurring nature) considered necessary to present fairly the Company's financial results. The results of the three and six months ended June 30, 2020 are not necessarily indicative of the results to be expected for the fiscal year ending December 31, 2020 or for any other interim period or other future year.

COVID-19 Pandemic Developments

The COVID-19 pandemic has impacted many aspects of our operations, directly and indirectly, including disruption of our employees, consumer behavior, distribution and logistics, our suppliers, and the market overall. The scope and nature of these impacts continue to evolve. In light of the COVID-19 pandemic, we have taken a number of precautionary measures to manage our resources and mitigate the adverse impact of the pandemic, which is intended to help minimize the risk to our Company, employees, customers, and the communities in which we operate. Employees at the Company's headquarters and certain other employees have been asked to work from home where possible, with only limited access given to employees to work in the office when necessary. For roles that require employees to be on-site, such as our manufacturing facility and distribution center, we are providing protective equipment, practicing social distancing and increasing sanitizing standards.

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

Despite the ongoing challenges from COVID-19, the Company has been able to capitalize on the opportunities created by this situation. We continue to serve our customers through our Direct to Consumer (“DTC”) channel, which has remained strong throughout the quarter as consumer demand for our premium, differentiated product offerings shifted to our DTC channel. We continue to focus our efforts in our DTC core competencies resulting in a continued acceleration in DTC channel sales across all of our product categories throughout the quarter. This increase in demand was a contributing factor to DTC net revenue growth of 128% over the prior year second quarter. There can be no assurance that this trend of increased demand through our DTC channel will continue. We initially experienced a sharp decline in the wholesale side of our business as temporary shutdowns of non-essential businesses and shelter-at-home directives occurred in most U.S. states. As the shutdowns were lifted and stores began to open again, demand through the wholesale channel increased. In addition, we were able to re-open our three Company showrooms in California in June 2020, one of which subsequently closed again in July 2020 in compliance with local orders.

This increase in DTC and Wholesale demand allowed us to work through a portion of our on-hand inventory and required us to ramp up production. We continue to take advantage of our vertically integrated business model to adjust production schedules to leverage inventory on hand and tightly manage labor costs. We also continue to dynamically adjust our significant discretionary online advertising spend in response to any changes in DTC trends as they develop.

Our supply chain has not been significantly affected by COVID-19. Currently, our domestic suppliers are able to continue operations and provide necessary materials when needed. Suppliers in China were temporarily closed as a result of the pandemic but we had sufficient inventory on hand. Many of our suppliers have resumed production and are able to supply materials as needed.

Although the Company has taken measures to protect the business, we cannot predict the specific duration for which these precautionary measures will stay in effect, and we may elect or need to take additional measures as the information available to us continues to develop, including with respect to our employees, manufacturing facility and distribution center, and relationships with our suppliers and customers. Subject to certain assumptions regarding the duration and severity of the COVID-19 pandemic, and government, consumer, and our responses thereto, based on our current projections we believe our cash on hand, ongoing cash generated from e-commerce and continuing resumption and ramp up of store operations and our wholesale business, will be sufficient to cover our working capital requirements and anticipated capital expenditures for the next 12 months. However, the extent to which the COVID-19 pandemic and our precautionary measures in response thereto may impact our business will depend on future developments, which are highly uncertain and cannot be precisely predicted at this time.

Variable Interest Entities

Purple LLC is a variable interest entity (“VIE”). The Company determined that it is the primary beneficiary of Purple LLC as it is the sole managing member and has the power to direct the activities most significant to Purple LLC’s economic performance as well as the obligation to absorb losses and receive benefits that are potentially significant. At June 30, 2020, Purple Inc. had approximately a 68% economic interest in Purple LLC and consolidated 100% of Purple LLC’s assets, liabilities and results of operations in the Company’s unaudited condensed consolidated financial statements contained herein. At June 30, 2020, InnoHold and other parties owned approximately 32% of the economic interest in Purple LLC; however, InnoHold and other parties have disproportionately fewer voting rights, and are shown as the noncontrolling interest (“NCI”) holder of Purple LLC. For further discussion see Note 13 — *Stockholders’ Equity*.

Reclassification

Certain amounts in the prior period financial statements have been reclassified to conform to the presentation of the current period financial statements. These reclassifications had no effect on the previously reported net loss.

Use of Estimates

The preparation of the unaudited condensed consolidated financial statements requires management to make estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and accompanying notes. The Company regularly makes significant estimates and assumptions including, but not limited to, estimates that affect the Company’s revenue recognition, accounts receivable and allowance for doubtful accounts, valuation of inventories, cost of revenues, sales returns, warranty returns, the recognition and measurement of loss contingencies, warrant liabilities, estimates of current and deferred income taxes, deferred income tax valuation allowances and amounts associated with the Company’s Tax Receivable Agreement with InnoHold (the “Tax Receivable Agreement” or “TRA”). Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. The Company bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results could differ materially from those estimates.

Revenue Recognition

In May 2014, in addition to several amendments issued during 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2014-09, Revenue from Contracts with Customers (Topic 606). Topic 606 outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. The Company adopted this ASU effective January 1, 2019 on a modified retrospective basis. Adoption of this standard did not result in significant changes to the Company’s accounting policies, business processes, systems or controls, or have a material impact on the Company’s financial position, results of operations, or cash flows. As such, the Company did not record a cumulative adjustment to the opening equity balance of accumulated deficit as of January 1, 2019. However, additional disclosures have been added in accordance with the requirements of Topic 606 and are reflected in Note 4 – *Revenue from Contracts with Customers*.

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

The Company markets and sells its products through direct-to-consumer online channels, traditional wholesale partners, third-party online retailers, the Company factory outlet store and Company showrooms. Revenue is recognized when the Company satisfies its performance obligations under the contract which is transferring the promised products to the customer. This principle is achieved in the following steps:

Identify the contract with the customer. A contract with a customer exists when (i) the Company enters into an enforceable contract with a customer that defines each party's rights regarding the goods to be transferred and identifies the payment terms related to these goods, (ii) the contract has commercial substance and, (iii) the Company determines that collection of substantially all consideration for the goods that are transferred is probable based on the customer's intent and ability to pay the promised consideration. The Company does not have significant costs to obtain contracts with customers.

Identify the performance obligations in the contract. The Company's contracts with customers do not include multiple performance obligations to be completed over a period of time. The performance obligations generally relate to delivering products to a customer, subject to the shipping terms of the contract. The Company has made an accounting policy election to account for shipping and handling activities performed after a customer obtains control of the goods, including "white glove" delivery services, as activities to fulfill the promise to transfer the good. The Company does not offer extended warranty or service plans. The Company does not provide an option to its customers to purchase future products at a discount and therefore there are no material option rights.

Determine the transaction price. Payment for sale of products through the direct-to-consumer online channels and third-party online retailers is collected at point of sale in advance of shipping the products. Amounts received for unshipped products are recorded as customer prepayments. Payment by traditional wholesale customers is due under customary fixed payment terms. None of the Company's contracts contain a significant financing component. Revenue is recorded at the net sales price, which includes estimates of variable consideration such as product returns, volume rebates, and other adjustments. The estimates of variable consideration are based on historical return experience, historical and projected sales data, and current contract terms. Variable consideration is included in revenue only to the extent that it is probable that a significant reversal of the revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Taxes collected from customers relating to product sales and remitted to governmental authorities are excluded from revenues.

Allocate the transaction price to performance obligations in the contract. The Company's contracts with customers do not include multiple performance obligations. Therefore, the Company recognizes revenue upon transfer of the product to the customer's control at contractually stated pricing.

Recognize revenue when or as we satisfy a performance obligation. The Company satisfies performance obligations at a point in time upon either shipment or delivery of goods, in accordance with the terms of each contract with the customer. With the exception of third-party "white glove" delivery and certain wholesale partners, revenue generated from product sales is recognized at shipping point, the point in time the customer obtains control of the products. Revenue generated from sales through third-party "white glove" delivery is recognized at the point in time when the product is delivered to the customer. Revenue generated from certain wholesale partners is recognized at a point in time when the product is delivered to the wholesale partner's warehouse. The Company does not have service revenue.

Debt Issuance Costs and Discounts

Debt issuance costs and discounts are presented in the balance sheet as a direct deduction from the carrying amount of the related debt liability and are amortized into interest expense using an effective interest rate over the duration of the debt. Refer to Note 8 – *Long-Term Debt, Related-Party*.

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Liability Warrants

The Company accounts for liability warrants under the provisions of ASC 480 - *Distinguishing Liabilities from Equity*. ASC 480 requires the recording of certain liabilities at their fair value. Changes in the fair value of these liabilities are recognized in earnings. The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement contain a warrant repurchase provision which, upon an occurrence of a fundamental transaction as defined in the warrant agreement, could give rise to an obligation of the Company to pay cash to the warrant holders. In addition, other provisions may require the exercise price of the warrants to be reduced. The Company has determined that the fundamental transaction provisions require the warrants to be accounted for as a liability at fair value on the date of the transaction, with changes in fair value recognized in earnings. The Company uses the Monte Carlo Simulation of a Geometric Brownian Motion stock path model to determine the fair value of the liability. The model uses key assumptions and inputs such as exercise price, fair market value of common stock, risk free interest rate, warrant life, expected volatility and the probability of the warrant re-price. Refer to Note 9 – *Warrant Liabilities*.

Fair Value Measurements

The Company uses the fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is 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, essentially an exit price, based on the highest and best use of the asset or liability. The levels of the fair value hierarchy are:

Level 1—Quoted market prices in active markets for identical assets or liabilities;

Level 2—Significant other observable inputs (e.g. quoted prices for similar items in active markets, quoted prices for identical or similar items in markets that are not active, inputs other than quoted prices that are observable, such as interest rate and yield curves, and market-corroborated inputs); and

Level 3—Unobservable inputs in which there is little or no market data, which require the reporting unit to develop its own assumptions.

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The classification of fair value measurements within the established three-level hierarchy is based upon the lowest level of input that is significant to the measurements. Financial instruments, although not recorded at fair value on a recurring basis include cash and cash equivalents, receivables, accounts payable, accrued expenses and the Company's debt obligations. The carrying amounts of cash and cash equivalents, receivables, accounts payable and accrued expenses approximate fair value because of the short-term nature of these accounts. The fair value of the Company's debt instrument is estimated to be its face value based on the contractual terms of the debt instrument and market-based expectations. The warrant liability is a Level 3 instrument and uses an internal model to estimate fair value using certain significant unobservable inputs which requires determination of relevant inputs and assumptions. Accordingly, changes in these unobservable inputs may have a significant impact on fair value. Such inputs include risk free interest rate, expected average life, expected dividend yield, and expected volatility. These Level 3 liabilities would decrease (increase) in value based upon an increase (decrease) in risk free interest rate and expected dividend yield. Conversely, the fair value of these Level 3 liabilities would generally increase (decrease) in value if the expected average life or expected volatility were to increase (decrease).

Income Taxes

In calculating the provision for interim income taxes, in accordance with ASC Topic 740, an estimated annual effective tax rate is applied to year-to-date ordinary income. At the end of each interim period, the Company estimates the effective tax rate expected to be applicable for the full fiscal year. This differs from the method utilized at the end of an annual period.

For annual periods, the Company accounts for income taxes using the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. In assessing the realizability of deferred tax assets, management considers whether it is more-likely-than-not that the deferred tax assets will be realized. Deferred tax assets and liabilities are calculated by applying existing tax laws and the rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the year of the enacted rate change. Our effective tax rate is primarily impacted by the allocation of income taxes to the noncontrolling interest and changes in our valuation allowance.

The Company accounts for uncertainty in income taxes using a recognition and measurement threshold for tax positions taken or expected to be taken in a tax return, which are subject to examination by federal and state taxing authorities. The tax benefit from an uncertain tax position is recognized when it is more likely than not that the position will be sustained upon examination by taxing authorities based on technical merits of the position. The amount of the tax benefit recognized is the largest amount of the benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The effective tax rate and the tax basis of assets and liabilities reflect management's estimates of the ultimate outcome of various tax uncertainties. The Company recognizes penalties and interest related to uncertain tax positions within the provision (benefit) for income taxes line in the accompanying consolidated statements of operations. As of the second quarter of 2020, no uncertain tax positions have been recorded. The Company will continue to monitor this position each interim period.

The Company files U.S. federal and certain state income tax returns. The income tax returns of the Company are subject to examination by U.S. federal and state taxing authorities for various time periods, depending on those jurisdictions' rules, generally after the income tax returns are filed.

Net Income (Loss) Per Share

The two-class method of computing net income (loss) per share is required for entities that have participating securities. The two-class method is an earnings allocation formula that determines net income (loss) per share for participating securities according to dividends declared (or accumulated) and participation rights in undistributed earnings. The Company's Class B Stock has no economic interest in the earnings of the Company, resulting in the two-class method not being applicable as of June 30, 2020 or in prior periods. Basic net income (loss) per common share is calculated by dividing net loss attributable to common shareholders by the weighted average number of shares of Class A Stock outstanding each period. Diluted net income (loss) per share adds to those shares the incremental shares that would have been outstanding and potentially dilutive assuming exchanges of the Company's outstanding warrants, stock options and Class B Stock for Class A Stock, and the vesting of unvested and restricted Class A Stock. An anti-dilutive impact is an increase in net income per share or a reduction in net loss per share resulting from the conversion, exercise or contingent issuance of certain securities.

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The Company uses the “if-converted” method to determine the potential dilutive effect of conversions of its outstanding Class B Stock, and the treasury stock method to determine the potential dilutive effect of its outstanding warrants and stock options exercisable for shares of Class A Stock and the vesting of unvested and restricted Class A Stock.

Recent Accounting Pronouncements

New Lease Guidance

In February 2016, the FASB issued ASU No. 2016-02, “Leases,” and in March 2019, the FASB issued ASU No. 2019-01, “Leases: Codification Improvements”, which updated the accounting guidance related to leases to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. They also clarify implementation issues. These updates are effective for public companies for annual periods beginning after December 15, 2018, including interim periods therein. The Company is allowed to use the private company adoption timelines, and therefore the standard is effective for the Company for its annual period beginning January 1, 2020, and interim periods within annual periods beginning January 1, 2021. The standard is to be applied utilizing a modified retrospective approach, with early adoption permitted. We are in the process of implementing a new lease accounting system in connection with the adoption. While we expect a material impact to our consolidated balance sheet as a result of the adoption of this new guidance, we continue to evaluate the effect of the new standard on our consolidated financial statements and related disclosures. We also expect that adoption of the new guidance will require changes to our internal controls over financial reporting.

Simplifying the Accounting for Income Taxes

In December 2019, the FASB issued ASU No. 2019-12, Simplifying the Accounting for Income Taxes (ASU No. 2019-12). The new guidance eliminates certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. The new guidance also simplifies aspects of the accounting for franchise taxes and enacted changes in tax laws or rates and clarifies the accounting for transactions that result in a step-up in the tax basis of goodwill. The guidance is effective for fiscal years beginning after December 15, 2020 and for interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating the impact of adopting ASU 2019-12.

New Internal-Use Software Guidance

In August 2018, the FASB issued ASU 2018-15, Intangibles - Goodwill and Other - Internal-Use Software (Subtopic 350) (“ASU 2018-15”). The objective of ASU 2018-15 is to align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with those incurred to develop or obtain internal-use software. The guidance is effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years. Early adoption is permitted. The amendments can be applied either retrospectively or prospectively. We do not expect the adoption of this standard to have a material impact on its consolidated financial statements.

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3. Business Combination

On February 2, 2018, upon consummation of the Business Combination, Purple LLC merged with and into a wholly owned subsidiary of GPAC (PRPL Acquisition, LLC), with Purple LLC being the survivor in that merger pursuant to an Agreement and Plan of Merger (the “Merger Agreement”), by and among GPAC, PRPL Acquisition, LLC, a Delaware limited liability company and a wholly owned subsidiary of GPAC (“Merger Sub”), Purple LLC and InnoHold. In connection with the Closing, GPAC was renamed “Purple Innovation, Inc.” and its articles of incorporation were amended to rename its common stock to Class A common stock (“Class A Stock”) and created a new class of stock named Class B common stock (“Class B Stock”) of which 44.1 million shares of Class B Stock were issued to InnoHold (refer to Note 13 — *Stockholders’ Equity* for a description of the Class A Stock and Class B Stock).

Additionally, at the Closing, 9.7 million Class A Units of Purple LLC were issued and are solely held by Purple Inc. They are voting common units entitled to share in the profits and losses of Purple LLC and receive distributions as declared by Purple LLC’s manager. 44.1 million Class B Units of Purple LLC were issued to InnoHold who has limited voting rights in Purple LLC and is entitled to share in the profits and losses of Purple LLC and to receive distributions as declared by Purple LLC’s manager. As of June 30, 2020, 17.5 million Class B Units of Purple LLC remain outstanding. The amended operating agreement appoints Purple Inc. as the sole managing member of Purple LLC. As the sole managing member, Purple Inc. has the sole voting interest in and control of the management and operations of Purple LLC, including when it had only a minority economic interest in Purple LLC.

4. Revenue from Contracts with Customers

The Company markets and sells its products through direct-to-consumer online channels, traditional wholesale partners, third-party online retailers and Company factory outlet and showrooms. Revenue is recognized when the Company satisfies its performance obligations under the contract which is transferring the promised products to the customer as described in Note 2 – *Summary of Significant Accounting Policies*.

Contract Balances

Payment for sale of products through the direct-to-consumer online channels, third-party online retailers and Company factory outlet and showrooms is collected at point of sale in advance of shipping the products. Amounts received for unshipped products are recorded as customer prepayments. Customer prepayments were \$8.7 million at June 30, 2020 and \$6.3 million at December 31, 2019. During the six months ended June 30, 2020, the Company recognized \$6.3 million of revenue that was deferred in customer prepayments at December 31, 2019.

Disaggregated Revenue

The following table presents the Company’s revenue disaggregated by sales channel and product (in thousands):

Channel	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Direct-to-consumer	\$ 145,180	\$ 63,710	\$ 225,867	\$ 117,474
Wholesale partner	19,916	39,294	61,604	69,178
Revenues, net	<u>\$ 165,096</u>	<u>\$ 103,004</u>	<u>\$ 287,471</u>	<u>\$ 186,652</u>

Product	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Bedding	\$ 150,503	\$ 96,383	\$ 265,004	\$ 173,826
Other	14,593	6,621	22,467	12,826
Revenues, net	<u>\$ 165,096</u>	<u>\$ 103,004</u>	<u>\$ 287,471</u>	<u>\$ 186,652</u>

The Company sells products through two channels: Direct-to-Consumer and Wholesale. The Direct-to-Consumer channel includes product sales through various direct-to-consumer channels including Company outlet and showrooms. The Wholesale channel includes all product sales to traditional third-party retailers for their in store and online channels. The Company classifies products into two major categories: Bedding and Other. Bedding products include mattresses, platforms, adjustable bases, mattress protectors, pillows and sheets. Other products include cushions and various other products.

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5. Inventories

Inventories consist of the following (in thousands):

	June 30, 2020	December 31, 2019
Raw materials	\$ 17,722	\$ 16,220
Work-in-process	1,317	2,713
Finished goods	21,373	29,485
Inventory obsolescence reserve	(591)	(790)
Inventories, net	<u>\$ 39,821</u>	<u>\$ 47,628</u>

6. Property and Equipment

Property and equipment consist of the following (in thousands):

	June 30, 2020	December 31, 2019
Equipment	\$ 25,709	\$ 19,761
Equipment in progress	5,858	5,278
Leasehold improvements	8,056	7,040
Furniture and fixtures	5,125	4,252
Office equipment	2,012	1,523
Equipment under capital lease	662	662
Total property and equipment	<u>47,422</u>	<u>38,516</u>
Accumulated depreciation and amortization	<u>(9,137)</u>	<u>(6,537)</u>
Property and equipment, net	<u>\$ 38,285</u>	<u>\$ 31,979</u>

The Company recorded depreciation and amortization related to property and equipment of \$1.4 million and \$0.8 million during the three months ended June 30, 2020 and 2019, respectively. Depreciation and amortization of \$2.6 million and \$1.5 million were recorded during the six months ended June 30, 2020 and 2019, respectively.

7. Other Current Liabilities

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

	June 30, 2020	December 31, 2019
Accrued distributions	4,666	—
Warranty accrual – current portion	1,692	1,567
Website commissions	1,203	897
Tax Receivable Agreement liability – current portion	636	501
Insurance financing	510	350
All other current liabilities	813	640
Total other current liabilities	<u>\$ 9,520</u>	<u>\$ 3,955</u>

8. Long-Term Debt, Related-Party

Long-term debt, related-party consists of the following (in thousands):

	June 30, 2020	December 31, 2019
Long-term debt, related-party	\$ 41,616	\$ 39,202
Less: unamortized debt issuance costs and discounts	(3,426)	(3,803)
Total long-term debt, related-party	<u>\$ 38,190</u>	<u>\$ 35,399</u>

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Credit Agreement

On February 2, 2018, Purple LLC entered into a Credit Agreement (the “Credit Agreement”) with Coliseum Capital Partners, L.P. (“CCP”), Blackwell Partners LLC – Series A (“Blackwell”) and Coliseum Co-invest Debt Fund, L.P. (“CDF”) and together with CCP and Blackwell, the “Lenders”), pursuant to which the Lenders agreed to make a loan in an aggregate principal amount of \$25.0 million. The Credit Agreement was closed and funded in connection with the Closing on February 2, 2018. In conjunction with the Credit Agreement, Global Partner Sponsor I LLC (the “Sponsor”) agreed to assign to the Lenders an aggregate of 2.5 million warrants to purchase 1.3 million shares of its Class A Stock. The Credit Agreement was amended and restated on January 28, 2019 as discussed below.

Amended and Restated Credit Agreement

On January 28, 2019, Purple LLC entered into a First Amendment to the Credit Agreement (the “First Amendment”) with the Lenders. In the First Amendment, Purple LLC agreed to enter into the Amended and Restated Credit Agreement, under which two of the Lenders (“Incremental Lenders”) agreed to provide an incremental loan of \$10.0 million such that the total amount of principal indebtedness provided to Purple LLC is increased to \$35.0 million. A stockholder meeting was held on February 25, 2019 at which time a majority of non-interested stockholders voted in favor of this transaction. The Amended and Restated Credit Agreement, and each of the related documents, was accordingly closed, and the incremental \$10.0 million loan was funded on February 26, 2019, and the Company issued to the Incremental Lenders 2.6 million warrants to purchase 2.6 million shares of the Company’s Class A Stock at a price of \$5.74 per share, subject to certain adjustments. Among other things, the terms of the Amended and Restated Credit Agreement extends the maturity date for all loans under the Credit Agreement to five years from closing of the incremental loan, lowers the amount allowed for an asset-based loan to \$10.0 million, revises certain restrictive covenants to make them more applicable to the Company’s current business, provides the ability for the Company to request additional loans from the Lenders not to exceed \$10 million and other closing conditions, representations, warranties and covenants customary for a transaction of this type. All indebtedness under the Amended and Restated Credit Agreement bears interest at 12.0% per annum and is payable on the last business day of each fiscal quarter, provided that Purple LLC will be required to pay up to an additional 4.0% of interest per annum if it fails to meet certain EBITDA thresholds and an additional 2.0% of interest per annum if the Company is not in material compliance with the Sarbanes-Oxley Act of 2002. In addition, Purple LLC may elect for interest in excess of 5.0% per annum to be capitalized and added to the principal amount. Any principal pre-payments in the first year are subject to a make-whole payment, while principal pre-payments in years two through four are subject to certain pre-payment penalties. The Amended and Restated Credit Agreement provided for certain remedies to the Lenders in the event of customary events of default and provides for standard indemnification of the Lenders. Purple LLC continues to be restricted from making annual capital expenditures in excess of \$20.0 million and incurring capital lease obligations in excess of \$10.0 million at any time outstanding, subject to limited exceptions. As of June 30, 2020, the Company was in compliance with all of the covenants in the Amended and Restated Credit Agreement.

In conjunction with the incremental loan under the Amended and Restated Credit Agreement, the Company paid fees and debt issuance costs in the amount of \$0.5 million and \$0.3 million, respectively. Additionally, the \$4.9 million fair value of the 2.6 million warrants at the time of issuance was included as a component of the loss on extinguishment of debt.

On March 27, 2020 the Company entered into the First Amendment to the Amended and Restated Credit Agreement with the Lenders. The purpose of this Amendment is to allow the Company to defer the remaining 5% of interest for the quarterly payments due March 31 and June 30, 2020 in an effort to reduce its cash disbursements during the COVID-19 impact. Pursuant to the Amendment, the Company was allowed to defer and capitalize the full amount of the interest payments due on March 31, 2020 and June 30, 2020. The Company accounted for the amendment as a modification of existing debt in accordance with ASC 470 - Debt.

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Interest expense related to the Amended and Restated Credit Agreement was \$1.2 million and \$1.2 million for the three months ended June 30, 2020 and 2019, respectively, and \$2.4 million and \$2.0 million for the six months ended June 30, 2020 and 2019, respectively. The interest expense incurred for the three and six months ended June 30, 2020 in the amount of \$1.2 million and \$2.4 million, respectively, was paid-in-kind through additions to the principal amount. Of the interest expense incurred for the three and six months ended June 30, 2019, \$0.7 million and \$1.2 million, respectively, was paid-in-kind through additions to the principal amount and \$0.5 million and \$0.8 million, respectively, was paid in cash.

Loss on Extinguishment of Debt

In 2019, the Company accounted for the debt restructuring under the Amended and Restated Credit Agreement in accordance with ASC 470 - *Debt*. The Company determined that there are separate lenders for purposes of determining if there was an extinguishment or modification. The amended debt terms with CDF were not determined to be substantial and therefore the existing debt attributable to CDF was accounted for as a modification of debt. The amended debt terms with the Incremental Lenders were determined to be substantially different terms from their existing debt and therefore required to be accounted for as an extinguishment of their existing debt. Accordingly, the Company recognized a loss on the extinguishment of their existing debt of approximately \$6.3 million for the three months ended March 31, 2019. This is a non-cash expense primarily associated with the recognition of related unamortized debt discount and debt issuance costs and the fair value of the incremental warrants issued.

9. Warrant Liabilities

The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement contain a warrant repurchase provision which, upon an occurrence of a fundamental transaction, as defined in the warrant agreement, could give rise to an obligation of the Company to pay cash to the warrant holders. In addition, upon the occurrence of any of the following events: (1) a fundamental transaction; (2) acquisition of 25% or more of the total voting power of all the securities of the entity by any one person or group of affiliated persons or entities; (3) Tony Pearce or Terry Pearce individually or together ceasing to beneficially own at least 50% of the voting securities of the Company; or (4) the Board of Directors ceasing to be comprised of a majority of independent directors as defined under NASDAQ rules, the exercise price of the warrant will be reduced by a value based upon a formula model established in the agreement. The formula model is a Black Scholes valuation model which would use the following inputs: (1) share price would be the greater of the volume weighted average price ("VWAP") of the common stock for the prior 30 days before the applicable event date or the VWAP of the trading day immediately preceding the event date; (2) exercise price of \$5.74, unless previously adjusted under other terms of the warrant; (3) volatility would be the greater of 100% and the historical volatility of the Company's common stock for the ninety days preceding the date of the triggering event; and (4) the assumed risk-free interest rate shall correspond to the US Treasury rate for a period equal to the remaining term of this warrant. In May 2020, Tony Pearce or Terry Pearce individually or together ceased to beneficially own at least 50% of the voting securities of the Company. As a result, the exercise price of the warrants were reduced to \$0, based on the formula established in the agreement.

The Company has determined that the fundamental transaction provisions require the warrants to be accounted for as a liability at fair value on the date of the transaction under guidance prescribed in ASC 480 - *Distinguishing Liabilities from Equity*. The liability for the warrants is subsequently re-measured to fair value at each reporting date with changes in the fair value included in earnings.

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The Company determined the fair value of the Incremental Loan Warrants to be \$47.0 million and \$21.6 million on June 30, 2020 and December 31, 2019, respectively using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model with the following assumptions:

	June 30, 2020	December 31, 2019
Trading price of common stock on measurement date	\$ 18.00	\$ 8.71
Exercise price	\$ —	\$ 5.74
Risk free interest rate	0.24%	1.69%
Warrant life in years	3.7	4.2
Expected volatility	50.57%	36.82%
Expected dividend yield	—	—
Probability of an event causing a warrant re-price	100.00%	95.00%

The Company recorded a \$39.0 million and \$3.7 million loss on the increase in fair value of the Incremental Loan Warrants for the three months ended June 30, 2020 and 2019, respectively. The Company recorded a \$25.3 million and \$2.0 million loss on the increase in fair value of the Incremental Loan Warrants for the six months ended June 30, 2020 and 2019, respectively.

10. Other Long-Term Liabilities

Other long-term liabilities consist of the following (in thousands):

	June 30, 2020	December 31, 2019
Deferred rent expense	\$ 6,285	\$ 5,115
Warranty accrual	6,715	4,621
Capital leases	474	488
Total other long-term liabilities	13,474	10,224
Less: current portion of long-term liabilities	(1,990)	(1,654)
Other long-term liabilities, net of current portion	<u>\$ 11,484</u>	<u>\$ 8,570</u>

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11. Commitments and Contingencies

Required Member Distributions

Prior to the Business Combination and pursuant to the then applicable First Amended and Restated Limited Liability Company Agreement (the “First Purple LLC Agreement”), Purple LLC was required to distribute to InnoHold an amount equal to 45 percent of Purple LLC’s net taxable income following the end of each fiscal year. The First Purple LLC Agreement was amended and replaced by the Second Amended and Restated Limited Liability Company Agreement (the “Second Purple LLC Agreement”) on February 2, 2018 as part of the Business Combination. The Second Purple LLC Agreement does not include any mandatory distributions, other than tax distributions. No distributions have been made under the Second Purple LLC Agreement in 2019. As of June 30, 2020, the Company has recorded an accrued tax distributions liability in the amount of \$4.7 million, which was distributed in July 2020.

Service Agreement

In October 2017, the Company entered into an electric service agreement with the local power company. The agreement provided for the construction and installation of certain utility improvements to provide increased power capacity to the manufacturing and warehouse facility in Grantsville, Utah. The Company prepaid \$0.5 million related to the improvements and agreed to a minimum contract billing amount over a 15-year period based on regulated rate schedules and changes in actual demand during the billing period. The agreement includes an early termination clause that requires the Company to pay a pro-rata termination charge if the Company terminates within the first 10 years of the service start date. The original early termination charge was \$1.3 million and is reduced annually on a straight-line basis over the 10-year period. During 2018, the utility improvements construction was completed and were made available to the Company. As of June 30, 2020, the early termination penalty was \$0.9 million and the Company expects to fulfill its commitments under the agreement in the normal course of business, and as such, no liability has been recorded.

Operating Leases

The Company leases various office and warehouse facilities under non-cancellable operating leases. Office and manufacturing space for its facility in Alpine, Utah is leased from TNT Holdings an entity that prior to the Business Combination was under common control with InnoHold, which was the majority and controlling owner of Purple LLC. The lease was originally entered into in 2010, but in October 2017 was amended with a lease term of 10 years that expires in September 2027 with an early-out clause without penalties after 5 years and includes an option for a 5-year extension. The Company leases a facility located in Grantsville, Utah for use primarily as manufacturing and warehouse space. The lease was entered into in August 2016 with a lease term of 66 months and expires in January 2022 with two 5-year extension options. The Company also leases another facility in Grantsville, Utah for use as temporary warehouse space. The lease was entered into in May 2019 with a lease term of 4 months which expired in August 2019 with a holdover option on a month to month basis. In June 2019, the Company entered into a lease for the Company factory outlet in Salt Lake City, Utah with a lease term of 36 months and one 5-year extension option. Also in June 2019, the Company entered into a lease for Corporate office space in Lehi, Utah with a lease term of 10 years, an option to early terminate after the eighty-fourth calendar month, and an option for two 5-year extensions. The Lehi lease commenced in November 2019 and the Company moved its headquarters into the building in February 2020. During 2019, the Company entered into leases for Company showrooms in Seattle, Washington, San Diego, California, Santa Clara, California and Santa Monica, California which commenced in October and November 2019, with lease terms of 3 to 16 months without any renewal options. The Company recognizes rent expense on lease payments, including those with rent escalations and rent-free periods, on a straight-line basis over the expected lease term. During the three months ended June 30, 2020 and 2019, the Company recognized rent expense in the amount of \$1.3 million and \$0.9 million, respectively. During the six months ended June 30, 2020 and 2019, the Company recognized rent expense in the amount of \$2.6 million and \$1.8 million, respectively. At June 30, 2020, the Company had deferred rent of \$6.3 million, of which \$0.2 million is short-term and included in other current liabilities and \$6.1 million is long-term and included in other long-term liabilities on the accompanying balance sheets. At December 31, 2019, the Company had deferred rent of \$5.1 million all of which is long-term and included in other long-term liabilities on the accompanying balance sheets.

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Purchase Agreement

In February 2018, the Company entered into a purchase contract with a supplier of mineral oil that includes a minimum purchase commitment over a two-year period. In April 2019, the contract was amended to provide for a minimum purchase commitment over a four-year period ending in April 2023. In exchange, the Company is offered a further discount per gallon. As of June 30, 2020, approximately \$10.0 million remains on the purchase contract. Based on current usage rates, the Company expects to fulfill its commitments under the agreement in the normal course of business, and as such, no liability has been recorded.

Indemnification Obligations

From time to time, the Company enters into contracts that contingently require it to indemnify parties against claims. These contracts primarily relate to provisions in the Company's services agreements with related parties that may require the Company to indemnify the related parties against services rendered; and certain agreements with the Company's officers and directors under which the Company may be required to indemnify such persons for liabilities. In connection with the Closing, to secure the payment of a certain portion of specified post-closing indemnification rights of the Company under the Merger Agreement, 0.5 million shares of Class B Stock and 0.5 million Class B Units otherwise issuable to InnoHold as equity consideration have been deposited in an escrow account for up to three years from the Closing pursuant to a contingency escrow agreement. As of June 30, 2020, 0.5 million shares of Class B Stock and 0.5 million Class B Units otherwise issuable to InnoHold as equity consideration remain deposited in an escrow account and no indemnification claims have been made.

Subscription Agreement and Preemptive Rights

In February 2018, in connection with the Business Combination, the Company entered into a subscription agreement with CCP and Blackwell, pursuant to which CCP and Blackwell agreed to purchase from the Company an aggregate of 4.0 million shares of Class A Stock at a purchase price of \$10.00 per share (the "Coliseum Private Placement"). In connection with the Coliseum Private Placement, the Sponsor assigned (i) an aggregate of 1.3 million additional shares of Class A Stock to CCP and Blackwell and (ii) an aggregate of 3.3 million warrants to purchase 1.6 million shares of Class A Stock to CCP, Blackwell, and CDF. The subscription agreement provides CCP and Blackwell with preemptive rights with respect to future sales of the Company's securities. It also provides them with a right of first refusal with respect to certain debt and preferred equity financings by the Company. The Company also entered into a registration rights agreement with CCP, Blackwell, and CDF, providing for the registration of the shares of Class A Stock issued and assigned to CCP and Blackwell in the Coliseum Private Placement, as well as the shares of Class A Stock underlying the warrants received by CCP, Blackwell and CDF. The Company has filed a registration statement with respect to such securities.

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Rights of Securities Holders

The holders of certain Warrants exercisable into Class A Stock and certain other unregistered Class A Stock were entitled to registration rights pursuant to certain registration rights agreements of the Company as of the Business Combination date. In March 2018, the Company filed a registration statement registering the Warrants (and any shares of Class A Stock issuable upon the exercise of the Warrants), and certain unregistered shares of Class A Stock. The registration statement was declared effective on April 3, 2018.

The holders of the Incremental Warrants exercisable into Class A Stock were entitled to registration rights pursuant to the registration rights agreement of the Company in connection with the Amended and Restated Credit Agreement. In March 2019, the Company filed a registration statement registering the Warrants (and any shares of Class A Stock issuable upon the exercise of the Warrants). The registration statement was declared effective on May 17, 2019.

On February 2, 2018, in connection with the closing of the Business Combination, the Company entered into a Registration Rights Agreement with InnoHold and the Parent Representative (the “InnoHold Registration Rights Agreement”). Under the InnoHold Registration Rights Agreement, InnoHold holds registration rights that obligate the Company to register for resale under the Securities Act, all or any portion of the Equity Consideration (including Class A Common Stock issued in exchange for the equity consideration received in the Business Combination) (the “Registrable Securities”). InnoHold is entitled to make a written demand for registration under the Securities Act of all or part of its Registrable Securities (up to a maximum of three demands in total). Pursuant to the InnoHold Registration Rights Agreement, the Company filed a registration statement on Form S-3 that was declared effective on November 8, 2019, pursuant to which InnoHold, Tony Pearce and Terry Pearce sold 11.5 million shares of Class A Common Stock. The Company filed a second registration statement on Form S-3 that was declared effective on May 14, 2020, pursuant to which InnoHold sold 12.4 million shares of Class A Common Stock.

Purple LLC Class B Unit Exchange Right

On February 2, 2018, in connection with the Closing, the Company entered into an exchange agreement with Purple LLC and InnoHold and Class B Unit holders who become a party thereto (the “Exchange Agreement”), which provides for the exchange of Purple LLC Class B Units (the “Class B Units”) and shares of Class B Stock (together with an equal number of Class B Units, the “Paired Securities”) for, at the Company’s option, either (A) shares of Class A Stock at an initial exchange ratio equal to one Paired Security for one share of Class A Stock or (B) a cash payment equal to the product of the average of the volume-weighted closing price of one share of Class A Stock for the ten trading days immediately prior to the date InnoHold or other Class B Unit holders deliver a notice of exchange multiplied by the number of Paired Securities being exchanged. In December 2018, InnoHold distributed Paired Securities to Terry Pearce and Tony Pearce who also agreed to become parties to the Exchange Agreement. In June 2019, InnoHold distributed Paired Securities to certain current and former employees who also agreed to become parties to the exchange agreement. Holders of Class B Units may elect to exchange all or any portion of their Paired Securities as described above by delivering a notice to Purple LLC. See Note 16 — *Equity Compensation Plans*.

In certain cases, adjustments to the exchange ratio will occur in case of a split, reclassification, recapitalization, subdivision or similar transaction of or relating to the Class B Units or the shares of Class A Stock and Class B Stock or a transaction in which the Class A Stock is exchanged or converted into other securities or property. The exchange ratio will also adjust in certain circumstances when the Company acquires Class B Units other than through an exchange for its shares of Class A Stock.

The right of a holder of Paired Securities to exchange may be limited by the Company if it reasonably determines in good faith that such restrictions are required by applicable law (including securities laws), such exchange would not be permitted under other agreements of such holder with the Company or its subsidiaries, including the Operating Agreement, or if such exchange would cause Purple LLC to be treated as a “publicly traded partnership” under applicable tax laws.

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The Company and each holder of Paired Securities shall bear its own expense regarding the exchange except that the Company shall be responsible for transfer taxes, stamp taxes and similar duties.

During the six months ended June 30, 2020, 13.9 million Paired Securities were exchanged for shares of Class A Stock.

Maintenance of One-to-One Ratios

The Second Purple LLC Agreement includes provisions intended to ensure that the Company at all times maintains a one-to-one ratio between (a) (i) the number of outstanding shares of Class A Stock and (ii) the number of Class A Units owned by the Company (subject to certain exceptions for certain rights to purchase equity securities of the Company under a “poison pill” or similar stockholder rights plan, if any, certain convertible or exchangeable securities issued under the Company’s equity compensation plan and certain equity securities issued pursuant to the Company’s equity compensation plan (other than a stock option plan) that are restricted or have not vested thereunder) and (b) (i) the number of other outstanding equity securities of the Company (including the warrants exercisable for shares of Class A Stock) and (ii) the number of corresponding outstanding equity securities of Purple LLC. These provisions are intended to result in InnoHold and other non-controlling interest holders having a voting interest in the Company that is identical to their economic interest in Purple LLC.

Non-Income Related Taxes

The U.S. Supreme Court ruling in *South Dakota v. Wayfair, Inc.*, No.17-494, reversed a longstanding precedent that remote sellers are not required to collect state and local sales taxes. We cannot predict the effect of these and other attempts to impose sales, income or other taxes on e-commerce. The Company currently collects and reports on sales tax in all states in which it does business. However, the application of existing, new or revised taxes on our business, in particular, sales taxes, VAT and similar taxes would likely increase the cost of doing business online and decrease the attractiveness of selling products over the internet. The application of these taxes on our business could also create significant increases in internal costs necessary to capture data and collect and remit taxes. There have been, and will continue to be, substantial ongoing costs associated with complying with the various indirect tax requirements in the numerous markets in which we conduct or will conduct business.

Legal Proceedings

On January 9, 2018, Chris Knudsen, a former consultant to the company, filed a complaint against Purple LLC in the Fourth Judicial District Court of the State of Utah. Mr. Knudsen alleged that before his consulting contract ended in March 2016, he and Purple LLC reached an oral agreement under which Mr. Knudsen would become the company’s chief executive officer on April 1, 2016, and under which Mr. Knudsen would immediately receive a 4% equity interest in Purple LLC. Mr. Knudsen also alleged that Purple LLC’s failure to convey to him a 4% equity interest in the company constitutes a breach of that oral agreement, and Mr. Knudsen claimed damages of \$10.75 million, based on his calculation of the value of a 4% interest in Purple LLC. The Company maintains insurance to defend against claims of this nature. In October 2019, Purple LLC moved for summary judgment on Mr. Knudsen’s claims. In June 2020, the court granted that motion and entered judgment on behalf of Purple LLC, fully disposing of all claims in the lawsuit. No appeal was filed by Mr. Knudsen and the time period for filing an appeal has expired.

On September 9, 2019, Purple LLC filed a Statement of Claim against PerfectSense Home Inc. and PerfectSense Trading Co. Ltd. (collectively, “PerfectSense”) in the Federal Court of Canada. PerfectSense is a manufacturer and supplier of mattresses and related products. PerfectSense owns the domain name www.purplesleep.ca, which used to, but no longer, redirects to its website at www.perfectsense.ca. In addition to this, Purple LLC has alleged that PerfectSense has: designed their mattresses with the same look as the Purple mattresses (white mattress top, purple stripe, and grey bottom); used many of the marketing elements on Purple’s website (including a similar “exploded view” image of their mattress); and adopted the color purple as their dominant marketing color. Purple LLC is suing for a declaration that PerfectSense has infringed Purple LLC’s copyright and trademark rights and committed the tort of passing off. Purple LLC is asking for injunctive relief, damages, an accounting of profits, interest, costs, and delivery up or destruction of the infringing products (including delivery up of the www.purplesleep.ca domain). After filing the statement of claim, Purple LLC posted \$15,000 CAD as security for PerfectSense’s costs. PerfectSense recently brought a motion to strike that was resolved on consent. Pleadings are now closed, and the action is proceeding under case management.

On April 2, 2020, Mary Harper, an individual purporting to reside in Montana, filed a class action complaint against Purple Innovation Inc., in the United States District Court District of Montana, Billings Division. Ms. Harper alleged Purple Innovation, Inc. sent her text message advertisements to her cellular telephone and the cellular telephones of numerous other individuals across the country in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). The Company moved to dismiss the lawsuit on jurisdictional grounds and provided evidence regarding Ms. Harper’s express consent to receive telephonic communications. Subsequently thereto, on July 27, 2020, Ms. Harper voluntarily dismissed her lawsuit against Purple Innovation, LLC.

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The Company is from time to time involved in various other claims, legal proceedings and complaints arising in the ordinary course of business. The Company does not believe that adverse decisions in any such pending or threatened proceedings, or any amount that the Company might be required to pay by reason thereof, would have a material adverse effect on the financial condition or future results of the Company.

12. Related Party Transactions

The Company had various transactions with entities or individuals which are considered related parties.

Coliseum Capital Management, LLC

Immediately following the Business Combination, Adam Gray was appointed to the Company's board of directors. Mr. Gray is a manager of Coliseum Capital, LLC, which is the general partner of CCP and CDF, and he is also a managing partner of Coliseum Capital Management, LLC ("CCM"), which is the investment manager of Blackwell. Mr. Gray has voting and dispositive control over securities held by CCP, CDF and Blackwell which are also Lenders under the Amended and Restated Credit Agreement. In 2018, the Lenders agreed to make a loan in an aggregate principal amount of \$25.0 million pursuant to the Credit Agreement entered into as part of the Business Combination. In conjunction with the Credit Agreement, the Sponsor agreed to assign to the Lenders an aggregate of 2.5 million warrants to purchase 1.3 million shares of its Class A Stock. In 2019, two of the Lenders agreed to provide an incremental loan of \$10.0 million (see Note 10 – *Long-term Debt, Related-party*). The Lenders in aggregate had \$41.6 million in principal borrowings outstanding as of June 30, 2020, comprised of \$35.0 million in original loan amount and \$6.6 million in capitalized interest. Pursuant to the First Amendment to the Amended and Restated Credit Agreement, the Company did not make any cash interest payments to the Lenders during the three or six months ended June 30, 2020. The Company made a cash interest payment of \$0.5 million and \$0.8 million during the three and six months ended June 30, 2019, respectively. Pursuant to the Second Amendment to the Amended and Restated Credit Agreement, a negative covenant was removed so that there would not be an event of default if Lenders acquired 25% or more ownership of the Company. As part of the Amended and Restated Credit Agreement, CCP and Blackwell were granted 2.6 million warrants to purchase 2.6 million shares of the Company's Class A Stock at a price of \$5.74 per share, subject to certain adjustments. In May 2020, pursuant to the terms of the warrant agreement upon the condition that Tony Pearce or Terry Pearce individually or together ceased to beneficially own at least 50% of the voting securities of the Company, the exercise price of the warrants were adjusted to \$0 per share.

In February 2018, in connection with the Business Combination, the Company entered into a subscription agreement with CCP and Blackwell, pursuant to which CCP and Blackwell agreed to purchase from the Company an aggregate of 4.0 million shares of Class A Stock at a purchase price of \$10.00 per share (the "Coliseum Private Placement"). In connection with the Coliseum Private Placement, the Sponsor assigned (i) an aggregate of 1.3 million additional shares of Class A Stock to CCP and Blackwell and (ii) an aggregate of 3.3 million warrants to purchase 1.6 million shares of Class A Stock to CCP, Blackwell, and CDF. The subscription agreement provides CCP and Blackwell with preemptive rights with respect to future sales of the Company's securities. It also provides them with a right of first refusal with respect to certain debt and preferred equity financings by the Company. The Company also entered into a registration rights agreement with CCP, Blackwell, and CDF, providing for the registration of the shares of Class A Stock issued and assigned to CCP and Blackwell in the Coliseum Private Placement, as well as the shares of Class A Stock underlying the warrants received by CCP, Blackwell and CDF. The Company has filed a registration statement with respect to such securities.

Purple Founder Entities

TNT Holdings, LLC (herein "TNT Holdings"), EdiZONE, LLC (herein "EdiZONE") and InnoHold, LLC (herein "InnoHold") (the "Purple Founder Entities") were entities under common control with Purple LLC prior to the Business Combination as TNT Holdings and InnoHold are majority owned and controlled by Terry Pearce and Tony Pearce (with EdiZONE being wholly owned by TNT Holdings) who also were the founders of Purple LLC and immediately following the Business Combination were appointed to the Company's Board (the "Purple Founders"). InnoHold is a majority shareholder of the Company.

TNT Holdings owns the Alpine facility Purple LLC has been leasing since 2010. Effective as of October 31, 2017, Purple LLC entered into an Amended and Restated Lease Agreement with TNT Holdings. The Company determined that TNT Holdings is not a VIE as neither the Company nor Purple LLC hold any explicit or implicit variable interest in TNT Holdings and do not have a controlling financial interest in TNT Holdings. The Company incurred \$0.2 million and \$0.3 million in rent expense to TNT Holdings for the building lease of the Alpine facility for the three months ended June 30, 2020 and 2019, respectively and \$0.4 million and \$0.6 million for the six months ended June 30, 2020 and 2019, respectively. The Company continues to lease the Alpine facility that was formerly the Company headquarters, for use in production, research and development and video production.

During the six months ended June 30, 2020, 13.9 million Paired Securities have been exchanged for Class A Stock by Innohold and certain current and former employees of the Company who received distributions of such Paired Securities from InnoHold.

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13. Stockholders' Equity

Prior to the Business Combination, GPAC was a shell company with no operations, formed as a vehicle to effect a business combination with one or more operating businesses. After the Closing, the Company became a holding company whose sole material asset consists of its interest in Purple LLC.

Class A Common Stock

The Company has 210.0 million shares of Class A Stock authorized at a par value of \$0.0001 per share. Holders of the Company's Class A Stock are entitled to one vote for each share held on all matters to be voted on by the stockholders and participate in dividends, if declared by the Board, or receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock. Holders of the Class A Stock and holders of the Class B Stock voting together as a single class, have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Holders of Class A Stock and Class B Stock are entitled to one vote per share on matters to be voted on by stockholders. At June 30, 2020, 36.5 million shares of Class A Stock were outstanding.

In accordance with the terms of the Business Combination, approximately 1.3 million shares of Class A Stock were subject to vesting and forfeiture. The shares of Class A Stock subject to vesting will be forfeited eight years from the Closing, unless any of the following events (each a "Triggering Event") occurs prior to that time: (i) the closing price of the Class A Stock on the principal exchange on which it is listed is at or above \$12.50 for 20 trading days over a thirty trading day period (subject to certain adjustments), (ii) a change of control of the Company, (iii) a "going private" transaction by the Company pursuant to Rule 13e-3 under the Exchange Act or such other time as the Company ceases to be subject to the reporting obligations under Section 13 or 15(d) of the Exchange Act, or (iv) the time that the Company's Class A Stock ceases to be listed on a national securities exchange. During the six months ended June 30, 2020, a Triggering Event occurred as the closing price of the Class A Stock on the principal exchange on which it is listed was at or above \$12.50 for 20 trading days over a thirty trading day period. Accordingly, the shares of Class A Stock are no longer subject to vesting or forfeiture.

Class B Common Stock

The Company has 90.0 million shares of Class B Stock authorized at a par value of \$0.0001 per share. Holders of the Company's Class B Stock will vote together as a single class with holders of the Company's Class A Stock on all matters properly submitted to a vote of the stockholders. Shares of Class B Stock may be issued only to InnoHold, their respective successors and assigns, as well as any permitted transferees of InnoHold. A holder of Class B Stock may transfer shares of Class B Stock to any transferee (other than the Company) only if such holder also simultaneously transfers an equal number of such holder's Purple LLC Class B Units to such transferee in compliance with the Second Purple LLC Agreement. The Class B Stock is not entitled to receive dividends, if declared by the Board, or to receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock.

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In connection with the Business Combination, approximately 44.1 million shares of Series B Stock were issued to InnoHold as part of the equity consideration. At June 30, 2020, 17.5 million shares of Class B Stock were outstanding.

Preferred Stock

The Company has 5.0 million shares of preferred stock authorized at a par value of \$0.0001 per share. The preferred stock may be issued from time to time in one or more series. The directors are expressly authorized to provide for the issuance of shares of the preferred stock in one or more series and to establish from time to time the number of shares to be included in each such series and to fix the voting rights, designations and other special rights or restrictions. At June 30, 2020, there were no shares of preferred stock outstanding.

Public and Sponsor Warrants

There were 15.5 million public warrants (the “Public Warrants”) issued in connection with GPAC’s formation and IPO and 12.8 million warrants (the “Sponsor Warrants”), issued pursuant to a private placement simultaneously with the IPO. Each of the Company’s warrants entitles the registered holder to purchase one-half of one share of the Company’s Class A Stock at a price of \$5.75 per half share (\$11.50 per full share), subject to adjustment pursuant to the terms of the warrant agreement. Pursuant to the warrant agreement, a warrant holder may exercise its warrants only for a whole number of shares of the Class A Stock. For example, if a warrant holder holds one warrant to purchase one-half of one share of Class A Stock, such warrant will not be exercisable. If a warrant holder holds two warrants, such warrants will be exercisable for one share of the Class A Stock. In no event will the Company be required to net cash settle any warrant. The warrants have a five-year term which commenced on March 2, 2018, 30 days after the completion of the Business Combination, and will expire on February 2, 2023, or earlier upon redemption or liquidation.

The Company may call the warrants for redemption if the reported last sale price of the Class A Stock equals or exceeds \$24.00 per share for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date the Company sends the notice of redemption to the warrant holders; provided, however, that the Sponsor Warrants are not redeemable by the Company so long as they are held by the Sponsor or its permitted transferees. In addition, with respect to the Sponsor Warrants, so long as such Sponsor Warrants are held by the Sponsor or its permitted transferee, the holder may elect to exercise the Sponsor Warrants on a cashless basis, by surrendering their Sponsor Warrants for that number of shares of Class A Stock equal to the quotient obtained by dividing (x) the product of the number of shares of Class A Stock underlying the Sponsor Warrants, multiplied by the difference between the exercise price of the Sponsor Warrants and the “fair market value” (defined below), by (y) the fair market value. The “fair market value” means the average reported last sale price of the Class A Stock for the 10 trading days ending on the third trading day prior to the date on which the notice of warrant exercise is sent to the warrant agent. All other terms, rights and obligations of the Sponsor Warrants remain the same as the Public Warrants. Both the Public and Sponsor Warrants are classified as equity instruments in the accompanying condensed consolidated balance sheet.

From the time of GPAC’s IPO up to the Business Combination with Purple LLC, GPAC had 28.3 million warrants outstanding. During the six months ended June 30, 2020, a few exercises of warrants occurred for a de minimis amount. At June 30, 2020, approximately 28.3 million warrants remain outstanding.

Incremental Loan Warrants

In connection with the Amended and Restated Credit Agreement, the Company issued to CCP and Blackwell, as the Incremental Lenders funding the Incremental Loan, 2.6 million Incremental Loan Warrants to purchase 2.6 million shares of the Company’s Class A Stock. Each Incremental Loan Warrant entitles the registered holder to purchase one share of the Company’s Class A Stock at a price of \$5.74 per share, subject to adjustment pursuant to the terms of the warrant agreement. The Incremental Loan Warrants have a five-year term and will expire on February 26, 2024, or earlier upon redemption or liquidation.

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The Company may call the warrants for redemption at a price of \$0.01 per Share of Class A Stock if the reported last sale price of the Class A Stock equals or exceeds \$24.00 per share for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date the Company sends the notice of redemption to the warrant holders. If the Company calls the Incremental Loan Warrants for redemption, it will have the option to require the holder to exercise the Incremental Loan Warrants on a cashless basis, by surrendering their Incremental Loan Warrants for that number of shares of Class A Stock equal to the quotient obtained by dividing (x) the product of the number of shares of Class A Stock underlying the Incremental Loan Warrants, multiplied by the difference between the exercise price of the Sponsor Warrants and the “fair market value” (defined below), by (y) the fair market value. The “fair market value” means the average reported last sale price of the Class A Stock for the 10 trading days ending on the third trading day prior to the date on which the notice of redemption is sent to the holders of Incremental Loan Warrants.

In the event of a “fundamental transaction” as defined in the warrant agreement, the holder will have the right to purchase and receive the same kind and amount of consideration receivable by the stockholders of the Company upon the occurrence of such fundamental transaction. The warrant agreement requires the Company to cause the surviving company in a fundamental transaction, to assume the obligations of the Company under the Incremental Loan Warrants. In addition, a clause in the Incremental Loan Warrant Agreement states, upon the occurrence of a fundamental transaction, that the holders of the Incremental Loan Warrants may elect to either (i) have the exercise price of the warrant reduced by the Black-Scholes value of the Incremental Loan Warrants (as set forth in the Incremental Loan Warrants Agreement) or (ii) cause the Company or its successor to repurchase all or a portion of the Incremental Loan Warrants at the Black-Scholes value (as set forth in the Incremental Loan Warrants). In addition, upon the occurrence of any of the additional following events: (1) acquisition of 25% or more of the total voting power of all the securities of the entity by any one person or group of affiliated persons or entities; (2) Tony Pearce or Terry Pearce individually or together ceasing to beneficially own at least 50% of the voting securities of the Company; or (3) the Board of Directors ceasing to be comprised of a majority of independent directors as defined under NASDAQ rules, the exercise price of the warrant will be reduced by a value based upon a formula model established in the agreement. As a result of these clauses, the Incremental Loan Warrants embody an obligation to repurchase the Company’s equity shares, or is indexed to such an obligation, and may require the Company to settle the obligation by transferring assets. As such, the Incremental Loan Warrants are classified as liabilities under ASC 480 - *Distinguishing Liabilities from Equity*.

During the six months ended June 30, 2020, Tony Pearce or Terry Pearce individually or together ceased to beneficially own at least 50% of the voting securities of the Company. As a result, the exercise price of the warrants were reduced to \$0, based on the formula established in the agreement.

Noncontrolling Interest

Noncontrolling interest (“NCI”) is the membership interest held by holders other than the Company. On February 2, 2018, upon the close of the Business Combination, and at December 31, 2018, InnoHold’s and other Purple LLC Class B Unit holders’ combined NCI percentage in Purple LLC was approximately 82%. At June 30, 2020, the combined NCI percentage in Purple LLC was approximately 32%. The Company has consolidated the financial position and results of operations of Purple LLC and reflected the proportionate interest held by all such Purple LLC Class B Unit holders as NCI.

14. Income Taxes

The Company’s sole material asset is Purple LLC, which is treated as a partnership for U.S. federal income tax purposes and for purposes of certain state and local income taxes. Purple LLC’s net taxable income and any related tax credits are passed through to its members and are included in the members’ tax returns, even though such net taxable income or tax credits may not have actually been distributed. While the Company consolidates Purple LLC for financial reporting purposes, the Company will be taxed on its share of earnings of Purple LLC not attributed to the noncontrolling interest holders, which will continue to bear their share of income tax on its allocable earnings of Purple LLC. The income tax burden on the earnings taxed to the noncontrolling interest holders is not reported by the Company in its consolidated financial statements under GAAP. As a result, the Company’s effective tax rate differs materially from the statutory rate. The primary factors impacting the expected tax are the allocation of tax benefit to noncontrolling interest and the impact of the valuation allowance.

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In prior periods the Company had maintained a full valuation allowance on its net deferred tax assets which are comprised primarily of basis differences in Purple LLC. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income sufficient to utilize the deferred tax assets on income tax returns. In prior periods, management had determined that its net deferred tax assets were not more likely than not going to be realized due to existence of critical negative evidence that the Company was in a three-year cumulative loss position. Considering this and other factors, a valuation allowance of \$44.3 million was maintained through the period ending March 31, 2020.

For the period ended June 30, 2020, and in assessing the realizability of deferred tax assets, management determined that it is now more likely than not that its net deferred tax assets will be realized and that a full valuation allowance for its deferred tax assets is no longer appropriate. As of the period ended June 30, 2020, the Company is no longer in a three-year cumulative loss position. As a result of the removal of this negative evidence and other items of positive evidence, the Company has determined that the deferred tax assets are now more likely than not to be realized. Accordingly, \$32.8 million of the valuation allowance associated with the Company's federal and state deferred tax assets was released and recorded as an income tax benefit during the period ended June 30, 2020. An additional \$2.7 million of remaining valuation allowance will be released in subsequent quarters as taxes are recorded. In addition, and in conjunction with the removal of the valuation allowance, the Company recorded an additional \$59.0 million in deferred tax assets primarily related to tax basis increases resulting from exchanges of Class B Paired Securities during the six months ended June 30, 2020. The deferred tax assets at June 30, 2020 are \$112.1 million with \$11.5 million of remaining valuation allowance recorded against the deferred tax assets, which will be released in subsequent quarters. \$8.8 million of valuation allowance has been recorded against the residual outside partnership basis for the amount the Company believes is not more likely than not realizable.

The Company currently estimates its annual effective income tax rate to be 0.4%. The annualized effective tax rate for the Company differs from the federal rate of 21% primarily due to (1) the release of a portion of the valuation allowance through the current year's annual effective tax rate calculation, and (2) NCI in Purple LLC that is allocated to InnoHold and others.

The effective tax rate as of June 30, 2020, is (166)% primarily due to the tax benefit from the release of the valuation allowance. For the three months and six months ended June 30, 2020, the Company has recorded an income tax benefit of \$35.4 million and \$35.7 million, respectively.

In response to the COVID-19 pandemic, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law in March 2020. The CARES Act lifts certain deduction limitations originally imposed by the Tax Cuts and Jobs Act of 2017 (2017 Tax Act). Corporate taxpayers may carryback net operating losses (NOLs) originating during 2018 through 2020 for up to five years, which was not previously allowed under the 2017 Tax Act. The CARES Act also eliminates the 80% of taxable income limitations by allowing corporate entities to fully utilize NOL carryforwards to offset taxable income in 2018, 2019 or 2020. Taxpayers may generally deduct interest up to the sum of 50% of adjusted taxable income plus business interest income (30% limit under the 2017 Tax Act) for tax years beginning January 1, 2019 and 2020. The CARES Act allows taxpayers with alternative minimum tax credits to claim a refund in 2020 for the entire amount of the credits instead of recovering the credits through refunds over a period of years, as originally enacted by the 2017 Tax Act.

In addition, the CARES Act raises the corporate charitable deduction limit to 25% of taxable income and makes qualified improvement property generally eligible for 15-year cost-recovery and 100% bonus depreciation. The enactment of the CARES Act resulted in two adjustments to our income tax provision for the six months ended June 30, 2020, relating to increased 2019 NOL utilization and tax benefits from NOL carrybacks. We have recorded a discrete benefit of \$0.5 million in our income tax provision for the six months ended June 30, 2020 related to the CARES Act.

In connection with the Business Combination, the Company entered into the TRA with InnoHold, which provides for the payment by the Company to InnoHold of 80% of the net cash savings, if any, in U.S. federal, state and local income tax that the Company actually realizes (or is deemed to realize in certain circumstances) in periods after the Closing as a result of (i) any tax basis increases in the assets of Purple LLC resulting from the distribution to InnoHold of the cash consideration, (ii) the tax basis increases in the assets of Purple LLC resulting from the redemption by Purple LLC or the exchange by the Company, as applicable, of Class B Paired Securities or cash, as applicable, and (iii) imputed interest deemed to be paid by the Company as a result of, and additional tax basis arising from, payments it makes under the TRA.

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Notes to Condensed Consolidated Financial Statements
(Unaudited)

As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of their Class B Units, a TRA Liability is recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. The amount of the increase in asset basis, the related estimated cash tax savings and the attendant TRA Liability to be recorded will depend on the price of the Company's Class A Stock at the time of the relevant redemption or exchange.

The estimation of liability under the TRA is by its nature imprecise and subject to significant assumptions regarding the amount and timing of future taxable income. As a result of the initial merger transaction and 26.6 million to date exchanges of Class B Units for Class A Stock, the potential future TRA liability is \$81.5 million, of which \$78.7 million has been recorded through the second quarter of 2020. Due to the release of the Company's valuation allowance on the deferred tax assets to which the Tax Receivable Agreement liability relates, only \$78.7 of the \$81.5 million has been recorded to date (\$0.5 million in 2019 and an incremental \$78.2 million through June 30, 2020). Of the total liability recorded during 2020, \$45.3 million relates to current year exchanges and was recorded as an adjustment to equity and \$32.9 was recorded to expense in order to reestablish the TRA related to prior year exchanges. The additional \$2.8 million is expected to be recorded in the third and fourth quarters of the year ending December 31, 2020.

The effects of uncertain tax positions are recognized in the consolidated financial statements if these positions meet a "more-likely-than-not" threshold. For those uncertain tax positions that are recognized in the consolidated financial statements, liabilities are established to reflect the portion of those positions it cannot conclude "more-likely-than-not" to be realized upon ultimate settlement. The Company's policy is to recognize interest and penalties related to unrecognized tax benefits on the income tax expense line in the accompanying consolidated statement of operations. Accrued interest and penalties would be included on the related tax liability line in the consolidated balance sheet. As of June 30, 2020, no uncertain tax positions were recognized as liabilities in the condensed consolidated financial statements.

15. Net Income (Loss) Per Common Share

The Business Combination was structured similar to a reverse recapitalization by which the Company issued stock for the net assets of Purple LLC accompanied by a recapitalization. The following table sets forth the calculation of basic and diluted weighted average shares outstanding and earnings per share for the periods presented (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Net income (loss) (numerator):				
Net income (loss) attributable to Purple Innovation, Inc.-basic	\$ (1,981)	\$ (1,338)	\$ 6,854	\$ (1,468)
Add: Net income (loss) attributed to the noncontrolling interest	(3,841)	—	7,325	—
Net income (loss) attributable to Purple Innovation, Inc.-diluted	<u>\$ (5,822)</u>	<u>\$ (1,338)</u>	<u>\$ 14,179</u>	<u>\$ (1,468)</u>
Weighted average shares (denominator):				
Weighted average shares—basic	29,277	8,457	25,976	8,447
Add: Dilutive effects of equity awards	—	—	1,515	—
Add: Dilutive effects of Class B Common Stock	<u>24,720</u>	<u>—</u>	<u>27,530</u>	<u>—</u>
Weighted average shares—diluted	<u>53,997</u>	<u>8,457</u>	<u>55,021</u>	<u>8,447</u>
Net income (loss) per common share:				
Basic	\$ (0.07)	\$ (0.16)	\$ 0.26	\$ (0.17)
Diluted	<u>\$ (0.11)</u>	<u>\$ (0.16)</u>	<u>\$ 0.26</u>	<u>\$ (0.17)</u>

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

For the three months ended June 30, 2020, the Company excluded 4.9 million shares of Class A Stock issuable upon conversion of certain Company warrants and stock options and 0.1 million shares of issued Class A Stock subject to vesting as the effect was anti-dilutive. For the six months ended June 30, 2020, the Company excluded 2.6 million shares of Class A Stock issuable upon conversion of certain Company warrants and stock options and 0.1 million shares of issued Class A Stock subject to vesting as the effect was anti-dilutive. For the three and six months ended June 30, 2019, the Company excluded 44.1 million Paired Securities convertible into shares of Class A Stock, 18.1 million shares of Class A Stock issuable upon conversion of the Company's warrants and 1.3 million shares of issued Class A Stock subject to vesting as the effect was anti-dilutive.

16. Equity Compensation Plans

2017 Equity Incentive Plan

The Purple Innovation, Inc. 2017 Equity Incentive Plan (the "2017 Incentive Plan") provides for grants of stock options, stock appreciation rights, restricted stock and other stock-based awards. Directors, officers and other employees and subsidiaries and affiliates, as well as others performing consulting or advisory services for the Company and its subsidiaries, will be eligible for grants under the 2017 Incentive Plan. The aggregate number of shares of Common Stock which may be issued or used for reference purposes under the 2017 Incentive Plan or with respect to which awards may be granted may not exceed 4.1 million shares. As of June 30, 2020, approximately 2.0 million shares remain available under the 2017 Incentive Plan.

Class A Common Stock Awards

In March 2020, the Company granted a restricted stock award under the Company's 2017 Equity Incentive Plan to the Company's independent Board advisor and GPAC observer. The stock award vests in March 2021. As this award includes a service condition, the estimated fair value of the restricted stock is measured on the grant date and is recognized over the service period. The Company determined that the fair value of the restricted stock on the grant date was immaterial.

In May 2020, the Company granted restricted stock awards under the Company's 2017 Equity Incentive Plan to the Certain employees of the Company. The stock awards vest over 3 to 4 years. The estimated fair value of the restricted stock is measured on the grant date and is recognized over the vesting period. The Company determined that the fair value of the restricted stock on the grant dates were \$0.7 million.

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

Employee Stock Options

During the six months ended June 30, 2020, the Company granted stock options under the Company's 2017 Equity Incentive Plan to certain management of the Company. The stock options have an exercise price ranging from of \$12.76 to \$15.12 per option. The stock options expire in five years and vest over a four-year period. The estimated fair value of the stock options, less expected forfeitures, is amortized over the options vesting period on a straight-line basis. The Company determined the fair value of the options granted during the six months ended June 30, 2020 using the Black Scholes method with the following assumptions:

Fair market value	\$	8.02 – 15.12
Exercise price	\$	12.76 – 15.12
Risk free interest rate		0.21 - 0.61%
Expected term in years		2.50 - 3.56
Expected volatility		38.28 – 54.45%
Expected dividend yield		—

The following table summarizes the Company's total stock option activity for the six months ended June 30, 2020:

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Intrinsic Value \$
As of June 30, 2020:				
Options outstanding as of January 1, 2020	2,136	\$ 6.95	4.3	\$ 3,752
Granted	309	13.11	—	—
Exercised	(14)	6.51	—	—
Forfeited/cancelled	(20)	6.51	—	—
Options outstanding as of June 30, 2020	<u>2,411</u>	<u>\$ 7.75</u>	<u>3.9</u>	<u>\$ 24,719</u>

Outstanding and exercisable stock options as of June 30, 2020 are as follows:

Exercise Prices	Options Outstanding		Options Exercisable		
	Number of Options Outstanding (in thousands)	Weighted Average Remaining Life (Years)	Number of Options Exercisable (in thousands)	Weighted Average Remaining Life (Years)	Intrinsic Value
\$ 5.75	250	3.64	83	\$ 3.64	\$ 1,021
5.95	538	3.25	224	3.25	2,701
6.51	325	3.89	92	3.89	1,059
6.65	200	3.86	54	3.86	615
7.99	28	4.42	9	4.42	86
8.07	8	4.16	—	—	—
8.17	325	4.25	102	4.25	998
8.32	250	4.00	—	—	—
8.55	179	4.25	—	—	—
12.76	25	4.70	—	—	—
13.12	281	4.69	17	3.88	83
15.12	3	4.88	—	—	—

The estimated fair value of the Company stock options, less expected forfeitures, is amortized over the options vesting period on the straight-line basis. The Company recognized \$0.4 million and \$0.1 million in stock-based compensation expenses related to stock options during the three months ended June 30, 2020 and 2019, respectively. The Company recognized \$0.6 million and \$0.2 million in stock-based compensation expenses related to stock options during the six months ended June 30, 2020 and 2019, respectively.

As of June 30, 2020, there was \$3.7 million of total unrecognized stock compensation cost with a remaining recognition period of 2.85 years.

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

InnoHold Incentive Units

In January 2017, pursuant to the 2016 Equity Incentive Plan approved by InnoHold and Purple LLC that authorized the issuance of 12.0 million incentive units, Purple LLC granted 11.3 million incentive units to Purple Team LLC, an entity for the benefit of certain employees who were participants in that plan. In conjunction with the Business Combination, Purple Team LLC was merged into InnoHold with InnoHold being the surviving entity and the Purple Team LLC incentive units were cancelled and new incentive units were issued by InnoHold under its own limited liability company agreement (the “InnoHold Agreement”). On February 8, 2019, InnoHold initiated a tender offer to each of these incentive unit holders, some of which are current employees of Purple LLC, to distribute to each a pro rata number of 2.5 million Paired Securities held by InnoHold in exchange for the cancellation of their ownership interests in InnoHold. All InnoHold incentive unit holders accepted the offer, and the terms and distribution of each transaction were finalized and closed on June 25, 2019. At the closing of the tender offer, those incentive unit holders received, based on their pro rata holdings of InnoHold Class B Units, a portion of 2.5 million Paired Securities held by InnoHold. The distribution by InnoHold to current employees of Purple LLC as of the distribution date resulted in the recognition of non-cash stock compensation expense for Purple LLC in the amount of \$6.3 million which represented the fair value of the Paired Securities as of the distribution date in 2019. As of June 30, 2020, 0.8 million of the Paired Securities remain to be exchanged for Class A Stock by the incentive unit holders. A small number of Paired Securities remain subject to vesting contingent upon such current employees’ continued employment with the Company.

Aggregate Non-Cash Stock-Based Compensation

The Company has accounted for all stock-based compensation under the provisions of ASC 718 Compensation—Stock Compensation. This standard requires the Company to record a non-cash expense associated with the fair value of stock-based compensation over the requisite service period. The table below summarizes the aggregate non-cash stock-based compensation recognized in the statement of operations for stock awards, employee stock options and the distribution by InnoHold of Paired Securities.

(in thousands)	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Non-Cash Stock-Based Compensation				
Cost of revenues	\$ 45	\$ 453	\$ 80	\$ 465
Marketing and sales	88	2,883	148	2,883
General and administrative	507	2,881	659	2,942
Research and development	322	516	325	516
Total non-cash stock-based compensation	\$ 962	\$ 6,733	\$ 1,212	\$ 6,806

17. Employee Retirement Plan

In July 2018 the Company established a 401(k) plan that qualifies as a deferred compensation arrangement under Section 401 of the IRS Code. All eligible employees over the age of 18 and with 4 months’ service are eligible to participate in the plan. The plan provides for Company matching of employee contributions up to 5% of eligible earnings. Company contributions immediately vest. The Company matching contribution expense was \$0.6 million and \$0.3 million for the three months ended June 30, 2020 and 2019, respectively, and \$1.0 million and \$0.6 million for the six months ended June 30, 2020 and 2019, respectively.

18. Subsequent Events

On July 21, 2020, the Company signed a Lease (the “Lease”) with PNK S2, LLC for approximately 520,000 square feet of warehouse and manufacturing space in McDonough, Georgia. The Company anticipates immediately preparing the building for use as a manufacturing, distribution and office facility and expects it to be fully operational in 2021. The term of the Lease is 128 months including an eight-month free rent period, which will commence upon completion of the landlord’s work on the Company’s space in the building which is anticipated to be completed in November 2020.

In July 2020, the Company’s showroom in Santa Clara, California was temporarily closed a second time in order to be in compliance with locally mandated shelter-in-place requirements.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion is intended to provide a more comprehensive review of the operating results and financial condition of Purple Innovation, Inc. than can be obtained from reading the Unaudited Condensed Consolidated Financial Statements alone. The discussion should be read in conjunction with the Unaudited Condensed Consolidated Financial Statements and the notes thereto included in "Part I. Item 1. Financial Statements."

FORWARD-LOOKING STATEMENTS

This quarterly report on Form 10-Q (this "Quarterly Report") contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that represent our current expectations and beliefs. All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws. In some cases, you can identify these statements by forward-looking words such as "believe," "expect," "project," "anticipate," "estimate," "intend," "plan," "targets," "likely," "will," "would," "could," "may," "might," the negative of these words and other similar words.

All forward-looking statements included in this Quarterly Report are made only as of the date thereof. It is routine for our internal projections and expectations to change throughout the year, and any forward-looking statements based upon these projections or expectations may change prior to the end of the next quarter or year. Investors are cautioned not to place undue reliance on any such forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise, except as required by law.

We caution and advise readers that these statements are based on assumptions that may not be realized and involve risks and uncertainties that could cause actual results to differ materially from the expectations and beliefs contained herein. These risks include the evolving impact and duration of the COVID-19 pandemic. For a summary of these risks, see the risk factors included in the "Risk Factors" section in this Quarterly Report, in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 9, 2020.

Introductory Note

On February 2, 2018, our predecessor, GPAC, consummated the Business Combination pursuant to the Merger Agreement, by and among GPAC, Merger Sub, Purple LLC, InnoHold and the Sponsor, which provided for the Company's acquisition of Purple LLC's business through the merger of Merger Sub with and into Purple LLC, with Purple LLC being the survivor in the Business Combination.

In connection with the Closing, the Company changed its name from "Global Partner Acquisition Corp." to "Purple Innovation, Inc." The Business Combination was accounted for as a reverse recapitalization because the former owners of Purple LLC had control over the combined company through their 82% ownership of the common stock of the Company. Although the Company was the legal acquirer, the historical operations of Purple LLC are deemed to be those of the Company. Thus, the financial statements included in this Quarterly Report on Form 10-Q reflect (i) the historical operating results of Purple LLC prior to the Business Combination; (ii) the combined results of the Company following the Business Combination; (iii) the assets and liabilities of Purple LLC at their historical cost; and (iv) the Company's equity and earnings per share for all periods (both pre- and post-Business Combination) presented.

Overview of Our Business

Our mission is to help people feel and live better through innovative comfort solutions.

We are a digitally-native vertical brand founded on comfort product innovation with premium offerings. We design and manufacture a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, frames, sheets, and other products. Our products are the result of over 30 years of innovation and investment in proprietary and patented comfort technologies and the development of our own manufacturing processes. Our proprietary gel technology, Hyper-Elastic Polymer, underpins many of our comfort products and provides a range of benefits that differentiate our offerings from other competitors' products. We market and sell our products through our direct-to-consumer ("DTC") online channels, retail brick-and-mortar wholesale partners, third-party online retailers and our Company showrooms.

COVID-19 Pandemic Developments

The COVID-19 pandemic has impacted many aspects of our operations, directly and indirectly, including disruption of our employees, consumer behavior, distribution and logistics, our suppliers, and the market overall. The scope and nature of these impacts continue to evolve. In light of the COVID-19 pandemic, we have taken a number of precautionary measures to manage our resources and mitigate the adverse impact of the pandemic, which is intended to help minimize the risk to our Company, employees, customers, and the communities in which we operate. Employees at the Company's headquarters and certain other employees have been asked to work from home where possible, with only limited access given to employees to work in the office when necessary. For roles that require employees to be on-site, such as our manufacturing facility and distribution center, we are providing protective equipment, practicing social distancing and increasing sanitizing standards.

Despite the ongoing challenges from COVID-19, the Company has been able to capitalize on the opportunities created by this situation. We continue to serve customers through our Direct to Consumer ("DTC") channel, which has remained strong throughout the quarter as consumer demand for our premium, differentiated product offerings shifted to our DTC channel. We continue to focus our efforts in our DTC core competencies resulting in a continued acceleration in DTC channel sales across all of our product categories throughout the quarter. This increase in demand was a contributing factor to DTC net revenue growth of 128% over the prior year second quarter. There can be no assurance that this trend of increased demand through our DTC channel will continue. We initially experienced a sharp decline in the wholesale side of our business as temporary shutdowns of non-essential businesses and shelter-at-home directives occurred in most U.S. states. As the shutdowns were lifted and stores began to open again, demand through the wholesale channel increased. In addition, we were able to re-open our three showrooms in California in June 2020, one of which subsequently closed again in July 2020 in compliance with local orders.

This increase in DTC and Wholesale demand allowed us to work through a portion of our on-hand inventory and required us to ramp up production. We continue to take advantage of our vertically integrated business model to adjust production schedules to leverage inventory on hand and tightly manage labor costs. We also continue to dynamically adjust our significant discretionary online advertising spend in response to any changes in DTC trends as they develop.

Our supply chain has not been significantly affected by COVID-19. Currently, our domestic suppliers are able to continue operations and provide necessary materials when needed. Suppliers in China were temporarily closed as a result of the pandemic but we had sufficient inventory on hand. Many of our suppliers have resumed production and are able to supply materials as needed.

Although the Company has taken numerous measures to protect the business, we cannot predict the specific duration for which these precautionary measures will stay in effect, and we may elect or need to take additional measures as the information available to us continues to develop, including with respect to our employees, manufacturing facility and distribution center, and relationships with our suppliers and customers. Subject to certain assumptions regarding the duration and severity of the COVID-19 pandemic, and government, consumer, and our responses thereto, based on our current projections we believe our cash on hand, ongoing cash generated from e-commerce and eventual resumption and ramp up of store operations and our wholesale business, will be sufficient to cover our working capital requirements and anticipated capital expenditures for the next 12 months. However, the extent to which the COVID-19 pandemic and our precautionary measures in response thereto may impact our business will depend on future developments, which are highly uncertain and cannot be precisely predicted at this time.

Operating Results for the Three Months Ended June 30, 2020 and 2019

The following table sets forth for the periods indicated, our results of operations and the percentage of total revenue represented in our statements of operations:

	Three Months Ended June 30,			
	2020	% of Net Revenues	2019	% of Net Revenues
Revenues, net	\$ 165,096	100.0%	\$ 103,004	100.0%
Cost of revenues	83,465	50.6	60,221	58.5
Gross profit	81,631	49.4	42,783	41.5
Operating expenses:				
Marketing and sales	39,423	23.9	35,967	34.9
General and administrative	8,677	5.3	7,933	7.7
Research and development	1,580	1.0	1,244	1.2
Total operating expenses	49,680	30.1	45,144	43.8
Operating income (loss)	31,951	19.4	(2,361)	(2.3)
Other income (expense):				
Interest expense	(1,424)	(0.9)	(1,301)	(1.3)
Other income (expense), net	16	0.0	6	0.0
Change in fair value – warrant liabilities	(38,970)	(23.6)	(3,685)	(3.6)
Tax receivable agreement expense	(32,823)	(19.9)	—	—
Total other expense, net	(73,201)	(44.3)	(4,980)	(4.8)
Net loss before income taxes	(41,250)	(25.0)	(7,341)	(7.1)
Income tax benefit	35,428	21.5	—	—
Net loss	(5,822)	(3.5)	(7,341)	(7.1)
Net loss attributable to noncontrolling interest	(3,841)	(2.3)	(6,003)	(5.8)
Net loss attributable to Purple Innovation, Inc.	\$ (1,981)	(1.2)	\$ (1,338)	(1.3)

Revenue

Total net revenue increased \$62.1 million, or 60.3%, to \$165.1 million for the three months ended June 30, 2020 from \$103.0 million for the three months ended June 30, 2019 due to a \$40.1 million increase in mattress sales, a \$14.0 million increase in top of mattress sales and a \$8.0 million net increase in other products. These increases in revenue were primarily attributable to a channel shift toward DTC across all product lines due to recent increases in online shopping in home furnishings.

Cost of Revenues

The cost of revenues increased \$23.2 million, or 38.6%, to \$83.5 million for the three months ended June 30, 2020 from \$60.2 million for the three months ended June 30, 2019. The increase was due to a \$9.3 million increase in direct material costs, a \$4.8 million increase in labor and overhead, a \$4.8 million increase in freight charges and a \$4.3 million increase in merchant processing fees.. The gross profit percentage increased to 49.4% of net revenues for the three months ended June 30, 2020 from 41.5% for the same period in 2019. The improvement in gross profit was primarily driven by higher margins due to channel shift toward higher margin DTC sales.

Marketing and Sales

Marketing and sales expenses increased \$3.4 million, or 9.6%, to \$39.4 million for the three months ended June 30, 2020 from \$36.0 million for the three months ended June 30, 2019. The increase was due to a \$2.3 million increase in advertising costs, and a \$3.0 million increase in marketing salaries related to an increase in personnel, partially offset by a decrease of \$1.9 million increase in other marketing and sales expenses. The marketing and sales expense as a percentage of net revenue was 23.9% for the three months ended June 30, 2020. This is a decrease from 34.9% for the three months ended June 30, 2019 due to efficiencies in our advertising spending created from enhanced marketing strategies, lower advertising costs and a temporary reduction in advertising spending as part of our cash preservation initiatives.

General and Administrative

General and administrative expenses increased \$0.8 million, or 9.4%, to \$8.7 million for the three months ended June 30, 2020 from \$7.9 million for the three months ended June 30, 2019. The increase was primarily due to increases in salaries related to an increase in personnel, software subscriptions, legal fees, partially offset by decreases in other expenses.

Research and Development

Research and development costs increased \$0.4 million, or 27.0%, to \$1.6 million for the three months ended June 30, 2020 from \$1.2 million for the three months ended June 30, 2019. The increase was due to a \$0.4 million increase in salaries and other R&D expenses as we added resources for new product innovation.

Operating Income (loss)

Operating income increased \$34.4 million to \$32.0 million for the three months ended June 30, 2020, from operating loss of \$2.4 million for the three months ended June 30, 2019. The increase was primarily due to increased DTC sales with higher margins and lower marketing and sales costs as a percentage of revenue.

Interest Expense

We incurred \$1.4 million in interest expense for the three months ended June 30, 2020 including \$1.2 million related to the Amended and Restated Credit Agreement and \$0.2 million in other interest. The Amended and Restated Credit Agreement had an outstanding principal balance of \$41.6 million at June 30, 2020. Interest accrues at a fixed rate of 12% and we have been historically capitalizing 7% interest and paying 5% interest in cash. In March 2020, we signed the first amendment to the Amended and Restated Credit Agreement that allows the Company to capitalize the full 12% interest, or approximately \$1.2 million for each of the two quarterly payments due March 31 and June 30, 2020. This was part of an effort to reduce cash disbursements during the current COVID-19 pandemic. Interest expense was \$1.3 million for the three months ended June 30, 2019. The portion relating to the Amended and Restated Credit Agreement was \$1.2 million of which \$0.7 million was paid-in-kind through additions to the principal amount and \$0.5 million was paid in cash. In addition, we incurred discounts and debt issuance costs related to the debt in the amount of \$0.2 million which was amortized to interest expense as non-cash interest.

Change in Fair Value – Warrant Liabilities

The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement are classified as liabilities and recorded at fair value on the date of the transaction and subsequently re-measured to fair value at each reporting date with changes in the fair value included in earnings. An increase in fair value for the three months ended June 30, 2020 resulted in a non-cash loss in the amount of \$39.0 million recorded in earnings for the period. The increase in the fair value of the Incremental Loan Warrants as of June 30, 2020 was due primarily to the increase in our stock price and the decrease of the Pearce's ownership interest below 50%, which triggered a change in the exercise price of the outstanding Incremental Loan Warrants to \$0.

Tax Receivable Agreement Expense

In connection with the Business Combination, the Company entered into the TRA with InnoHold. As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of their Class B Units, a TRA Liability is recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. As a result of the initial merger transaction and 26.6 million life to date exchanges of Class B Stock for Class A Stock and the release of the Company's valuation allowance on the deferred tax assets to which the TRA liability relates, \$78.7 million has been recorded as of June 30, 2020, of which \$78.1 million was recorded during the three months ended June 30, 2020. Of the total liability recorded during the three months ended June 30, 2020, \$45.3 million relates to current period exchanges and was recorded as an adjustment to equity and \$32.8 was recorded to expense as it related to reestablishing the TRA related to prior year exchanges. There was no TRA expense incurred for the three months ended June 30, 2019 as the Company had a full valuation allowance on the deferred tax assets and no TRA liability was recorded.

Income Tax Benefit

Our income tax benefit was \$35.4 million for the three months ended June 30, 2020, compared to no income tax benefit for the three months ended June 30, 2019. Our income tax benefit for the three months ended June 30, 2020 is primarily due to the release of the federal and state valuation allowance and the recognition of deferred tax assets as of June 30, 2020. No income tax benefit was recorded during the three months ended June 30, 2019 as the Company had a full valuation allowance on the deferred tax assets.

Noncontrolling Interest

As a result of the Business Combination in 2018, we attribute net income or loss to the Class B units in Purple LLC, owned by InnoHold and other parties, as a noncontrolling interest at their aggregate ownership percentage. At June 30, 2020, this ownership percentage was approximately 32%, a decrease from approximately 82% at June 30, 2019. This decrease was the result of the exchange of 26.6 million Paired Securities for Class A Stock, mostly attributed to InnoHold's two secondary public offerings concluded in November 2019 and May 2020.

Operating Results for the Six Months Ended June 30, 2020 and 2019

The following table sets forth for the periods indicated, our results of operations and the percentage of total revenue represented in our statements of operations:

	Six Months Ended June 30,			
	2020	% of Net Revenues	2019	% of Net Revenues
Revenues, net	\$ 287,471	100.0%	\$ 186,652	100.0%
Cost of revenues	152,658	53.1	109,800	58.8
Gross profit	134,813	46.9	76,852	41.2
Operating expenses:				
Marketing and sales	76,107	26.5	59,984	32.1
General and administrative	16,225	5.6	12,498	6.7
Research and development	3,025	1.1	1,934	1.0
Total operating expenses	95,357	33.2	74,416	39.9
Operating income	39,456	13.7	2,436	1.3
Other income (expense):				
Interest expense	(2,813)	(1.0)	(2,445)	(1.3)
Other income (expense), net	106	(0.0)	235	(0.1)
Loss on extinguishment of debt	—	—	(6,299)	(3.4)
Change in fair value – warrant liabilities	(25,337)	(8.8)	(1,988)	(1.1)
Tax receivable agreement expense	(32,945)	(11.5)	—	—
Total other expense, net	(60,989)	(21.2)	(10,497)	(5.6)
Net loss before income taxes	(21,533)	(7.5)	(8,061)	(4.3)
Income tax benefit	35,712	12.4	—	—
Net Income (loss)	14,179	4.9	(8,061)	(4.3)
Net income (loss) attributable to noncontrolling interest	7,325	2.5	(6,593)	(3.5)
Net income (loss) attributable to Purple Innovation, Inc.	\$ 6,854	2.4	\$ (1,468)	(0.8)

Revenue

Total net revenue increased \$100.8 million, or 54.0%, to \$287.5 million for the six months ended June 30, 2020 from \$186.7 million for the six months ended June 30, 2019 due mainly to a \$66.6 million increase in mattress sales, a \$24.5 million increase in top of mattress sales and a \$9.6 million net increase in other products. These increases in revenue were primarily attributable to a channel shift toward DTC across all product lines due to recent increases in online shopping in home furnishings.

Cost of Revenues

The cost of revenues increased \$42.9 million, or 39.0%, to \$152.7 million for the six months ended June 30, 2020 from \$109.8 million for the six months ended June 30, 2019. The increase was primarily due to a \$19.2 million increase in direct material costs, a \$10.4 million increase in labor and overhead, \$6.6 million increase in freight charges, \$5.8 million increase in merchant processing fees, and a \$0.9 million increase in other costs, all associated with increased sales. The gross profit percentage increased to 46.9% of net revenues for the six months ended June 30, 2020 from 41.2% for the same period in 2019. The improvement in gross profit was primarily driven by higher margins due to channel shift toward higher margin DTC sales.

Marketing and Sales

Marketing and sales expenses increased \$16.1 million, or 26.9%, to \$76.1 million for the six months ended June 30, 2020 from \$60.0 million for the six months ended June 30, 2019. The increase was due to a \$10.5 million increase in advertising costs, a \$5.1 million increase in marketing salaries related to an increase in personnel and a \$0.5 million increase in other marketing and sales expenses. The marketing and sales expense as a percentage of net revenue was 26.5% for the six months ended June 30, 2020. This is a decrease from 32.1% for the six months ended June 30, 2019 due to efficiencies in our advertising spending created from enhanced marketing strategies, lower advertising costs and a temporary reduction in advertising spending as part of our cash preservation initiatives.

General and Administrative

General and administrative expenses increased \$3.7 million, or 29.8%, to \$16.2 million for the six months ended June 30, 2020 from \$12.5 million for the six months ended June 30, 2019. The increase was primarily due to a \$3.5 million increase in salaries related to an increase in personnel, a \$1.1 million increase in software subscriptions, legal fees and a new corporate building lease and \$1.4 million increase in all other expenses, partially offset by a decrease of \$2.3 million of stock compensation expense.

Research and Development

Research and development costs increased \$1.1 million, or 56.4%, to \$3.0 million for the six months ended June 30, 2020 from \$1.9 million for the six months ended June 30, 2019. The increase was primarily due to \$0.6 million in amortization of a one-year license agreement for innovative technology and a \$0.5 million increase in salaries and other R&D expenses as we added resources for new product innovation.

Operating Income

Operating income increased \$37.1 million, or 1,519.7%, to \$39.5 million for the six months ended June 30, 2020, from operating income of \$2.4 million for the six months ended June 30, 2019. The increase was primarily due to increased DTC sales with higher margins and lower marketing and sales costs as a percentage of revenue.

Interest Expense

We incurred \$2.8 million in interest expense for the six months ended June 30, 2020 including \$2.4 million related to the Amended and Restated Credit Agreement and \$0.4 million in other interest. The Amended and Restated Credit Agreement had an outstanding principal balance of \$41.6 million at June 30, 2020. Interest accrues at a fixed rate of 12% and we have been historically capitalizing 7% interest and paying 5% interest in cash. In March 2020, we signed the first amendment to the Amended and Restated Credit Agreement that allows the Company to capitalize the full 12% interest, or approximately \$1.2 million for the two quarterly payments due March 31 and June 30, 2020. This was part of an effort to reduce cash disbursements during the current COVID-19 pandemic. Interest expense was \$2.4 million for the six months ended June 30, 2019. The portion relating to the Amended and Restated Credit Agreement was \$2.0 million of which \$1.2 million was paid-in-kind through additions to the principal amount and \$0.8 million was paid in cash. In addition, there was \$0.4 million in other interest.

Loss on Extinguishment of Debt

In February 2019, in conjunction with the Incremental Loan under the Amended and Restated Credit Agreement, we determined that the amended debt terms resulted in substantially different terms for a portion of the existing debt and therefore was required to be accounted for as an extinguishment of a portion of the existing debt. Accordingly, we recognized a non-cash loss on the extinguishment of a portion of the existing debt of approximately \$6.3 million. This was a non-cash expense primarily associated with the recognition of related unamortized debt discount and debt issuance costs and the fair value of the Incremental Loan Warrants issued.

Change in Fair Value – Warrant Liabilities

The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement are classified as liabilities and recorded at fair value on the date of the transaction and subsequently re-measured to fair value at each reporting date with changes in the fair value included in earnings. An increase in fair value for the six months ended June 30, 2020 resulted in a non-cash loss in the amount of \$25.3 million recorded in earnings for the period. The increase in the fair value of the Incremental Loan Warrants as of June 30, 2020 was due primarily to the increase in our stock price and the decrease of the Pearce's ownership interest below 50%, which triggered a change in the exercise price of the outstanding Incremental Loan Warrants to \$0.

Tax Receivable Agreement Expense

In connection with the Business Combination, the Company entered into the TRA with InnoHold. As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of their Class B Units, a TRA Liability is recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. As a result of the initial merger transaction and 26.6 million life to date exchanges of Class B Stock for Class A Stock and the release of the Company's valuation allowance on the deferred tax assets to which the TRA liability relates, \$78.7 million has been recorded as of June 30, 2020, of which \$78.2 million was recorded during the six months ended June 30, 2020. Of the total liability recorded during the six months ended June 30, 2020, \$45.3 million relates to current year exchanges and was recorded as an adjustment to equity and \$32.9 was recorded to expense as it related to reestablishing the TRA related to prior year exchanges. There was no TRA expense incurred for the six months ended June 30, 2019 as the Company had a full valuation allowance on the deferred tax assets and no TRA liability was recorded.

Income Tax Benefit

Our income tax benefit was \$35.7 million for the six months ended June 30, 2020, compared to no income tax benefit for the six months ended June 30, 2019. Our income tax benefit is primarily due to the release of the federal and state valuation allowance and the recognition of deferred tax assets as of June 30, 2020. No income tax benefit was recorded during the three months ended June 30, 2019 as the Company had a full valuation allowance on the deferred tax assets.

Noncontrolling Interest

As a result of the Business Combination in 2018, we attribute net income or loss to the Class B units in Purple LLC, owned by InnoHold and other parties, as a noncontrolling interest at their aggregate ownership percentage. At June 30, 2020, this ownership percentage was approximately 32%, a decrease from approximately 82% at June 30, 2019. This decrease was the result of the exchange of 26.6 million Paired Securities for Class A, mostly attributed to InnoHold's two secondary public offerings concluded in November 2019 and May 2020.

Liquidity and Capital Resources

Our primary cash needs have historically consisted of working capital, capital expenditures and debt service. Our working capital needs depend upon the timing of cash receipts from sales, payments to vendors and others, changes in inventories, and capital and operating lease payment obligations. Our cash and working capital position are strong. We had cash in the amount of \$95.4 million as of June 30, 2020 and \$33.5 million as of December 31, 2019. We had working capital of \$50.4 million as of June 30, 2020, and we had working capital of \$27.3 million as of December 31, 2019. During the six months ended June 30, 2020, our accounts receivable decreased by \$9.7 million mainly due to a decrease in our wholesale revenue. Our capital expenditures primarily relate to acquiring and maintaining manufacturing equipment and expanding capacity. Our cash used for capital expenditures was \$8.0 million for the six months ended June 30, 2020. We financed these capital expenditures through cash provided by operating activities.

In response to the COVID-19 pandemic, we took a number of precautionary measures to manage our resources and mitigate the adverse impact of the pandemic. Given the initial difficulty in predicting how long this pandemic would persist and its full impact, we managed our business and opportunities to preserve liquidity. We temporarily reduced our capital spend by delaying all non-maintenance related projects and investments in non-essential initiatives and headcount additions. Other proactive steps were taken to carefully manage cash and quickly and prudently respond to the rapidly changing circumstances including temporarily furloughing a portion of our permanent workforce, temporarily deferring a portion of the cash compensation of Senior Executives and all the cash compensation of members of our Board of Directors, and limiting other discretionary expenses. We also entered into an amendment to our Amended and Restated Credit Agreement to allow the Company to defer 5% of the interest for quarterly payments due during the first two quarters of 2020. In addition, our receivables from our wholesale partners remain healthy. Most of our wholesale partners continue to make payments in accordance with their original contract terms and remain current on their outstanding balances.

As a result of our precautionary measures, continued payments from wholesale customers, and our strong DTC sales, our cash balance increased by \$61.9 million during the six months ended June 30, 2020. We have now ended many of the cash preservation programs and have returned to near full production to meet increased demand. Subject to certain assumptions regarding the duration and severity of the COVID-19 pandemic, and our responses thereto, based on our current projections we believe our cash on hand, along with ongoing cash generated from our DTC business, strong demand of our product in the Wholesale channel and eventual resumption and ramp up of store operations, will be sufficient to cover our working capital requirements and anticipated capital expenditures for the next 12 months.

On January 28, 2019, Purple LLC entered into the First Amendment, which amended the Credit Agreement. In the First Amendment, Purple LLC agreed to enter into the Amended and Restated Credit Agreement under which the Lenders agreed to provide an incremental loan of \$10.0 million such that the total amount of principal indebtedness provided to Purple LLC was increased to \$35.0 million. A stockholder meeting was held on February 25, 2019 at which time a majority of non-interested stockholders voted in favor of this transaction. Accordingly, the Amended and Restated Credit Agreement, and each related document, was closed and an incremental loan of \$10.0 million was funded. In addition, we issued to the Lenders warrants to purchase 2.6 million shares of the Company's Class A Stock at a price of \$5.74 per share, subject to certain adjustments. On February 26, 2019, we received approximately \$9.2 million in proceeds after debt issuance costs and fees. For additional information regarding our credit agreement with Coliseum, refer to Note 8 — *Long-Term Debt, Related Party* of our condensed consolidated financial statements.

Debt service for the six months ended June 30, 2020 totaled \$2.5 million and consisted of interest paid in-kind on the Amended and Restated Credit Agreement as well as principal and interest payments on certain capital leases.

In the event our cash flow from operations or other sources of financing are less than anticipated, we believe we will be able to fund operating expenses based on our ability to scale back operations, reduce marketing spend and postpone or discontinue our growth strategies. In such event, this could result in slower growth or no growth, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain all of our employees. In addition, we may be forced to restructure our obligations to current creditors or pursue work-out options.

If cash flow from operations or available financing under the Amended and Restated Credit Agreement are not sufficient to fund our operating expenses or our growth strategies, we may need to raise additional capital. Our ability to obtain additional capital on acceptable terms or at all is subject to a variety of uncertainties, including instability in the credit and financial markets resulting from the COVID-19 pandemic and approval from the Lenders. Adequate financing may not be available or, if available, may only be available on unfavorable terms. The U.S. government has recently announced that it is establishing a Main Street Lending Program to support lending to small and medium-sized businesses. However, there is no guarantee that we will be eligible to participate in such program or that, if we are eligible to participate, that we will receive any benefits under this program. Further, the Main Street Lending Program imposes restrictions on how funds received are used that would limit our ability to operate our business. The restrictive covenants in the Amended and Restated Credit Agreement may make it difficult to obtain additional capital on terms that are favorable to us, and the Lenders may not agree to lend us additional funds. There is no assurance we will obtain the capital we require. As a result, there can be no assurance that we will be able to fund our future operations or growth strategies. In addition, future equity or debt financings, including under the Amended and Restated Credit Agreement, may require us to also issue warrants or other equity securities that are likely to be dilutive to our existing stockholders. Newly issued securities may include preferences or superior voting rights or, as described above, may be combined with the issuance of warrants or other derivative securities, which each may have additional dilutive effects. Furthermore, we may incur substantial costs in pursuing future capital and financing, including investment banking fees, legal fees, accounting fees, printing and distribution expenses and other costs. We may also be required to recognize non-cash expenses in connection with certain securities we may issue, such as convertible notes and warrants, which will adversely impact our financial condition. If we cannot raise additional funds on favorable terms or at all, we may not be able to carry out all or parts of our long-term growth strategy, maintain our growth and competitiveness or continue in business.

We are required to make certain payments to InnoHold under the TRA, which payments may have a material adverse effect on our liquidity and capital resources. We are currently unable to determine the total future amount of these payments due to the unpredictable nature of several factors, including the timing of future exchanges, the market price of shares of Class A Stock at the time of the exchanges, the extent to which such exchanges are taxable and the amount and timing of future taxable income sufficient to utilize tax attributes that give rise to the payments under TRA. As of June 30, 2020, the estimated future payments under the TRA are \$78.7 million with approximately \$0.6 million due to be paid within the next 12 months.

Cash Flows for the Six Months Ended June 30, 2020 and 2019

The following summarizes our cash flows for the six months ended June 30, 2020 and 2019 as reported in our condensed consolidated statements of cash flows (in thousands):

	Six Months Ended June 30,	
	2020	2019
Net cash provided by operating activities	\$ 72,352	\$ 2,149
Net cash used in investing activities	(10,445)	(3,257)
Net cash provided by financing activities	17	9,131
Net increase in cash	61,924	8,023
Cash, beginning of the period	33,478	12,232
Cash, end of the period	<u>\$ 95,402</u>	<u>\$ 20,255</u>

Six months ended June 30, 2020 Compared to the Six months ended June 30, 2019

Cash provided by operating activities was \$72.4 million for the six months ended June 30, 2020, an increase of \$70.3 million from cash provided by operating activities of \$2.1 million during the six months ended June 30, 2019. This increase in cash provided by operations was due mainly to increased operating income of \$37.1 million, driven by an acceleration of DTC sales, \$24.3 million from the year-over-year change in accounts receivables due to the shift to more DTC sales in 2020, \$9.9 million from the year-over-year change in inventory partially offset by \$3.1 million from all other changes in operating activities.

Cash used in investing activities was \$10.4 million for the six months ended June 30, 2020, an increase of \$7.1 million from cash used in investing activities of \$3.3 million during the six months ended June 30, 2019. This increase is due mainly to the increase in purchases of property and equipment and investment in intangible assets of \$4.8 million and \$2.3 million, respectively.

Cash provided by financing activities was \$0.0 million in the six months ended June 30, 2020, a decrease of \$9.1 million from cash provided by financing of \$9.1 million during the six months ended June 30, 2019. The cash provided in 2019 was due to the \$10.0 million in funds received from the Amended and Restated Credit Agreement, partially offset by \$0.8 million in debt issuance cost and \$0.1 million in other financing payments.

Critical Accounting Policies

For a description of our critical accounting policies, refer to Note 2 — *Summary of Significant Accounting Policies* of our condensed consolidated financial statements.

Contractual Obligations

On July 21, 2020, the Company signed a Lease (the “Lease”) with PNK S2, LLC for approximately 520,000 square feet located at 1325 Hwy 42 S., Building B, McDonough, Georgia (the “Building”). A copy of the Lease is attached as Exhibit 10.3 to this report and incorporated by reference. The Company anticipates immediately preparing the Building for use as a manufacturing, distribution and office facility and expects it to be fully operational in 2021.

The term of the Lease is 128 months including an eight-month free rent period, which will commence upon completion of the landlord’s work on the Company’s space in the Building. The Company anticipates the landlord’s work to be completed in November, 2020. Prior to the commencement of the term, the Company has an immediate right to make use of the Building. Under the Lease, the Company will pay \$3.41 per square foot annually or \$147,675 per month for the initial lease year. Thereafter the basic monthly rent increases 2% per year. The Lease also provides the Company with an option to extend the Lease term for two additional five-year periods at rates for the first renewal term of \$4.24 per square foot with 2% annual increases and for the second renewal term of \$4.75 per square foot with annual increases of 3.5%. The Company is also responsible for its proportionate share of the operating expenses incurred by the landlord for the Building. The Lease provides for a tenant improvement allowance of \$12.50 per usable square foot. The Lease also provides the Company with signage rights and a right of first refusal on other contiguous space.

Seasonality and Cyclical

We believe that sales of our products are typically subject to seasonality corresponding to different periods of the consumer spending cycle, holidays and other seasonal factors. Our sales may also vary with the performance of the broader economy consistent with the market.

Available Information

Our website address is www.purple.com. We make available free of charge on the Investor Relations portion of our website, investors.purple.com, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission.

We also use the Investor Relations portion of our website, investors.purple.com, as a channel of distribution of additional Company information that may be deemed material. Accordingly, investors should monitor this channel, in addition to following our press releases, Securities and Exchange Commission filings and public conference calls and webcasts. The contents of our website shall not be deemed to be incorporated herein by reference.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not Applicable.

ITEM 4. CONTROLS AND PROCEDURES

As an emerging growth company, we are exempt from the auditor attestation requirements with respect to internal control over financial reporting under Section 404(b) of the Sarbanes Oxley Act of 2002.

(a) Evaluation of Disclosure Controls and Procedures

As of the end of the period covered by this report, under the supervision and with the participation of our management, including our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”), we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Disclosure controls and procedures are controls and other procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Certifying Officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

Based upon this evaluation, and the above criteria, our CEO and CFO concluded that due to the material weakness described below, the Company’s disclosure controls and procedures were not effective as of June 30, 2020.

Material Weakness

In connection with the preparation and interim review of our quarterly consolidated financial statements, we and our independently registered public accounting firm identified a material weakness in internal controls over the tax provision process, specifically related to the release of the valuation allowance and the unique recording of the Tax Receivable Agreement liability during the quarter as described in Note 14 – *Income Taxes*.

We have begun remediating the underlying cause of this material weakness including the implementation of additional steps in our process of reviewing unique and complicated tax transactions. We believe these additional steps will enable us to identify and remediate quickly any potential errors in our processes and broaden the scope and quality of our controls over our tax processes.

(b) Changes in Internal Controls Over Financial Reporting.

There have been no changes in our internal control over financial reporting that occurred during the six months ended June 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The Company is from time to time involved in various claims, legal proceedings and complaints arising in the ordinary course of business. Please refer to Note 11 — *Commitments and Contingencies* and Note 18 — *Subsequent Events* to the condensed consolidated financial statements contained in this report and to Part I, Item 3 of our Annual Report on Form 10-K filed on March 11, 2020 for certain information regarding our legal proceedings.

ITEM 1A. RISK FACTORS

Except as described below, there have been no material changes from the risk factors previously disclosed in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 9, 2020.

The ongoing COVID-19 pandemic and responses thereto have adversely affected and may continue to adversely affect aspects of our business operations, including, among other things, our supply chain, workforce, and liquidity.

In December 2019, a novel strain of coronavirus, SARS-CoV-2, was reported to have surfaced in Wuhan, China. Since then, SARS-CoV-2, and the resulting disease, COVID-19, has spread to multiple countries, including the United States and all of the primary markets where we conduct business. On March 10, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic, and the U.S. government-imposed travel restrictions on travel between the United States and Europe for a 30-day period. Further, on March 13, 2020, the President of the United States declared the COVID-19 pandemic a national emergency, invoking powers under the Stafford Act, the legislation that directs federal emergency disaster response. Almost all U.S. states and many local jurisdictions have issued at various times, and others in the future may issue, “shelter-in-place” orders, quarantines, executive orders and similar government orders, restrictions, and recommendations for their residents to control the spread of COVID-19. Such orders, restrictions and recommendations, and the perception that additional orders, restrictions or recommendations could occur, have resulted in widespread closures of businesses not deemed “essential,” work stoppages, slowdowns and delays, work-from-home policies, travel restrictions and cancellation of events, as well as record declines in stock prices, among other effects. While certain jurisdictions have begun easing restrictions as the outbreak has slowed in such jurisdictions, we cannot be certain that other jurisdictions will do so. Furthermore, some jurisdictions have experienced a resurgence in COVID-19 cases, which has prompted governments to reinstate previously scaled back restrictions. If other jurisdictions experience a resurgence in COVID-19 cases, they may also prolong restrictions that could negatively affect our business. We continue to monitor our operations and government mandates and may elect or be required to temporarily close our offices or Company showrooms to protect our employees, and limit our access to customers and limit customer use of our products as they are required to prioritize resources to address the public healthcare needs arising from the COVID-19 pandemic. The disruptions to our activities and operations may negatively impact our business, operating results and financial condition. There is a risk that government actions, or lack thereof, will not be effective at containing COVID-19, and that government actions or inactions, including the orders and restrictions described above and premature lessening of those restrictions, that are intended to contain the spread of COVID-19 while also minimizing harm to the economy, will have a devastating negative impact on the world economy at large, in which case the risks to our sales, operating results and financial condition described herein would be elevated significantly.

The duration of the COVID-19 pandemic’s impact on our business may be difficult to assess or predict. The widespread pandemic has resulted, and may continue to result for an extended period, in significant disruption of global financial markets, and may restrict our ability to access capital, which would negatively affect our liquidity. While we have been able to reverse some previous actions undertaken, such as, among others, temporarily deferring capital expenditures, furloughing certain employees, and temporarily deferring compensation for our senior executives, we may be required to take such actions again, or take additional actions, if there is a resurgence of COVID-19 cases or reinstatement of government restrictions. As a result of such actions or restrictions, we may be unable to complete capital expenditure projects or investments in the future, which would limit our ability to grow our business, and our results of operations and financial condition will be adversely affected.

Further, quarantines or government reaction or shutdowns for COVID-19 could disrupt our supply chain. Travel and import restrictions may also disrupt our ability to manufacture or distribute our products. Any import or export or other cargo restrictions related to our products or the raw materials used to manufacture our products would restrict our ability to manufacture and ship products and harm our business, financial condition and results of operations. Our key personnel and other employees could also be affected by COVID-19, potentially reducing their availability. In addition, the government responses to COVID-19 or the procedures we take to mitigate its effect on our workforce could reduce the efficiency of our operations or prove insufficient to mitigate the adverse impact of COVID-19 on our business. We may delay or reduce certain capital spending and related projects until the travel and logistical impacts of COVID-19 are lifted, which could delay the completion of such projects.

Even after initial quarantines and other government restrictions are scaled back, there is risk that we will be unable to continue normal production and operations, due to, among other things, disruptions and delays in our supply chain, reduced demand in our wholesale channel, government relief programs that enable production workers to remain out of the workforce, and difficulties in ramping up our own operations. We may also experience disputes with our suppliers and/or customers as a result of such difficulties. Further, there may be subsequent outbreaks of COVID-19 that could disrupt our operations. In addition, as employees return to work, we may face claims by such employees or regulatory authorities that we have not provided adequate protection to our employees with respect to the spread of COVID-19 at our facilities.

The global outbreak of COVID-19 continues to rapidly evolve. The ultimate impact of the COVID-19 outbreak is highly uncertain and subject to change. We do not yet know the full extent of potential delays or impacts on our business or the global economy as a whole. However, these effects have harmed our business, financial condition and results of operations in the near term and could have a continuing material impact on our operations, sales and ability to continue as a going concern. To the extent the COVID-19 pandemic adversely affects our business and financial results, it may also have the effect of heightening many of the other risks described in this “Risk Factors” section, such as those relating to our high level of indebtedness, our need to generate sufficient cash flows to service our indebtedness and our ability to comply with the covenants contained in the agreements that govern our indebtedness.

Customer demand for and our ability to sell and market our products, particularly within our wholesale business, has been and may continue to be adversely affected by the COVID-19 pandemic and responses thereto.

The COVID-19 pandemic has created significant uncertainty in our business, slowed our anticipated wholesale partner and showroom plans and resulted in a contraction of our wholesale business due to temporary shutdowns of non-essential businesses, reduced demand for physical retail locations, and shelter-at-home directives in most U.S. states. The future impact to our wholesale partners and consumer demand from the COVID-19 pandemic or a future health epidemic or other outbreak occurring in other locations, particularly in North America, is unknown. If we fail to anticipate changes in demand or consumer behavior resulting from the COVID-19 pandemic it could adversely affect our business or operating results.

If sales in our channels decline, including as a result of stay-at-home orders or temporary closures of our wholesale partners’ stores, our business may be adversely affected. Moreover, we may be impacted by difficulties experienced by our wholesale partners as a result of the COVID-19 pandemic, including disruptions in their supply chains, their liquidity challenges and their ability to keep open or reopen retail locations. In addition, while in the quarter ended June 30, 2020 we experienced an increase in demand for our products through our DTC channel, there can be no guarantee that sales through our DTC channel will continue to increase or will not decline.

We may not be eligible to participate in some of the relief programs provided under the recently adopted Coronavirus Aid Relief, and Economic Security (CARES) Act or other government programs and even if we are eligible we may not realize any material benefits from participating in such programs.

On March 27, 2020, the President of the United States signed the Coronavirus Aid Relief, and Economic Security (CARES) Act into law. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to tax depreciation methods for qualified improvement property. We continue to evaluate the applicability of the CARES Act to the Company, and the potential impacts on our business and are actively taking advantage of applicable programs.

While we may determine to apply for programs available under the CARES Act, there is no guarantee that we will meet any eligibility requirements to participate in such programs or, even if we are able to participate, that such programs will provide meaningful benefit to our business.

In addition to the CARES Act in connection with the COVID-19 pandemic, the U.S. government and state/local governments may offer additional programs intended to assist employers. We may fail to qualify for or take advantage of such COVID-19 relief programs, which may have a negative impact on our business. In the event we obtain financing through a government COVID-19 stimulus program, such financing may impose additional restrictions on our business and how those funds are used, such as bringing employees back from furlough even if production levels remain reduced, restrictions on the payment of distributions or dividends and limits on executive pay that could adversely affect our ability to recruit and retain qualified key employees.

The results of the U.S. Department of Commerce’s antidumping investigation could have a negative impact on our planned growth and future results of operations.

The U.S. Department of Commerce (the “Department”) previously opened an antidumping investigation into whether mattresses imported from China are being sold into the United States at below fair market value. The investigation results from a petition filed by U.S. mattress manufacturers claiming that in recent years Chinese exporters have unfairly made large gains in market share by undercutting prices. On May 29, 2019, the Department made a preliminary determination to impose import duties on Chinese exporters. On October 18, 2019, the Department made its final determination imposing import duties on exporters of Chinese mattresses. The U.S. International Trade Commission (the “ITC”) made its final injury determination on December 9, 2019. On December 16, 2019, the Department issued an antidumping duty order directing the U.S. Customs and Border Protection (“CBP”) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price, or constructed export price, of the subject merchandise for all relevant entries of mattresses from China. However, if the antidumping duties do not result in the prevention of dumping of underpriced Chinese mattresses into the U.S. market, or if the import duties enacted by the Department or the antidumping order issued by the ITC are removed, rescinded, or modified, we could experience or continue to experience a negative impact on our planned growth and the future results of operations.

In addition, in March 2020 several U.S. mattress manufacturers and two labor unions announced that they filed seven antidumping duty petitions and one countervailing duty petition with the Department charging that unfairly traded imports of finished mattresses from eight countries are causing material injury to the U.S. mattress industry. In April 2020 the Department opened an investigation into the petitions. If the Department fails to impose antidumping duties on the named exporting countries, we could experience continued negative impact on our planned growth and future results of operations.

We may experience significant fluctuations in our operating results and growth rate, which could adversely affect our performance and financial results.

Our revenue growth may not be sustainable, and our percentage growth rates may decrease. Our revenue and operating profit growth depend on the continued growth of demand for our products, and our business is affected by general economic and business conditions worldwide. Our business, our employees and our partners may also be negatively affected by political or social unrest including potential reputational damage, disruption of our physical facilities or those of our wholesale partners, and boycotts by employees or boycotts against us, our suppliers, our wholesale partners and our advertising partners. A softening of demand, whether caused by changes in customer confidence or preferences or a weakening of the U.S. or global economies, may result in decreased revenue or growth.

In addition, we rely on estimates and forecasts of our expenses and revenues to provide guidance and inform our business strategies, and some of our past estimates and forecasts have not been accurate. The rapidly evolving nature of our business makes forecasting operating results difficult. If we fail to accurately forecast our expenses and revenues, our business, prospects, financial condition and results of operations may suffer, and the value of our business may decline. If our estimates and forecasts prove incorrect, we may not be able to adjust our operations quickly enough to respond to lower than expected sales or higher than expected expenses.

Our sales and operating results will also fluctuate for many other reasons, including due to risks described elsewhere in this section and the following:

- our ability to attract new customers and the cost of acquiring new customers;
- our ability and the time required to develop new Mattress Max machines, develop new production lines, scale production capacity and appropriately train staff;
- the success of our wholesale and our Company showroom expansion efforts;
- our ability to have enough production capacity to meet customer demand;
- our ability to effectively manage increasing sales and marketing expenses;
- our access to sufficient capital resources and liquidity to fund the growth of our business;
- competition from the sublicensees of intellectual property licensed back to EdiZONE;
- our ability to offer products on favorable terms, manage inventory, fulfill orders and manage product returns;
- the introduction of competitive products, services, price decreases, discounts, or improvements;
- timing, effectiveness, and costs of expansion and upgrades of our systems and infrastructure;
- the success of our geographic and product line expansions, including but not limited to power requirements, labor needs, and ease of product distribution;
- the success of hiring, expeditiously training, and retaining engaged labor locally and worldwide;
- our ability to secure and retain superior global partners for specialized delivery services;
- the extent to which we use debt or equity financing, and the terms of any such financing for, our current operations and future growth;
- the outcomes of legal proceedings, claims, or governmental investigations or rulings, which may include significant monetary damages or injunctive relief and could have a material adverse impact on our operating results;
- the ability to obtain patent and other intellectual property rights of exclusive use, and the enforceability and validity of our intellectual property rights;
- our ability to accommodate variations in the mix of products we sell;
- variations in our level of product returns, as well as our methods of collecting product returns or exchanges;
- the extent to which we offer free shipping;
- the extent to which we invest in technology and content, manufacturing, fulfillment, and other expense categories;
- increases in the prices of materials used in the manufacturing of our products or the costs to produce our products, including but not limited to new or unanticipated tariffs;
- our ability to anticipate and prepare for disruptions to manufacturing;
- the extent to which operators of the networks between our customers and our websites successfully charge fees to grant our customers unimpaired and unconstrained access to our online services;

- our ability to collect amounts owed to us when they become due;
- the extent to which our internal network or website is affected by denial of service attacks, malicious unauthorized access, outages, and similar events;
- the extent to which our internal network is affected by spyware, viruses, phishing and other spam emails, intrusions, data theft, downtime, and similar events;
- our ability to manage the expenses associated with multiple facilities;
- our ability to secure attractive real estate locations for expansion with sustainable cost structures; and
- our ability to protect inventory assets from internal and external theft or damage.

The growth of our business places significant strain on our resources and if we are unable to manage our growth, we may not have profitable operations or sufficient capital resources.

We are rapidly and significantly expanding our operations, including expanding our workforce, increasing our product offerings and scaling our infrastructure to support expansion of our manufacturing capacity, our wholesale channel expansion and the opening of our Company showrooms. Our planned growth includes increasing our manufacturing capacity, developing and introducing new products and developing new and broader distribution channels, including wholesale and Company showrooms, and extending our global reach to other countries. This expansion increases the complexity of our business and places significant strain on our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions.

Our continued success depends, in part, upon our ability to manage and expand our operations and facilities and production capacity in the face of continued growth. The growth in our operations has placed, and may continue to place, significant demands on our management and operational and financial infrastructure. If we do not manage our growth effectively, the quality of our products and fulfillment capabilities may suffer which could adversely affect our operating results. Our revenue growth may not be sustainable, and our percentage growth rates may decrease. If we are unable to satisfy our liquidity and capital resource requirements, we may have to scale back, postpone or discontinue our growth strategies, which could result in slower growth or no growth, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain all of our employees. In addition, we may be forced to restructure our obligations to creditors or pursue work-out options.

Our growth depends in part on our ability to manage the opening and operating of new production facilities and our Company showrooms which will require our entering into leases and other obligations while the success of expanding operations geographically and opening additional Company showrooms remains unproven. To be successful, we will need to obtain or develop retail expertise and we will need to hire new employees in states that may have employment laws that could increase our expenses. In general, operating new production facilities and opening our Company showrooms in new locations exposes us to laws in other states that may not be as employer-friendly as those in which we currently operate, and may expose us to new liabilities. If we are not able to successfully manage the process of expanding operations geographically, opening our Company showrooms and maintaining operations in an expanding number of facilities and Company showrooms, we may have to close Company showrooms and incur sunk costs and continuing obligations that could put a strain upon our resources, damage our brand and reputation and limit our growth.

To manage our growth effectively, we will need to continue to implement operational, financial and management controls and reporting systems and procedures and improve the systems and procedures that are currently in place. There is no assurance that we will be able to fulfill our staffing requirements for our business, successfully train and assimilate new employees, or expand our management base and enhance our operating and financial systems. Failure to achieve any of these goals will prevent us from managing our growth in an effective manner and could have a material adverse effect on our business, financial condition or results of operations. In addition, our revenue and operating profit growth depends on the continued growth of demand for the products offered by us, and our business is affected by general economic and business conditions worldwide. A softening of demand, whether caused by changes in customer preferences or a weakening of the U.S. or global economies, may result in decreased revenue or growth. Further, we may not be able to accurately forecast our growth rate. We base our expense levels and investment plans on sales estimates. A significant portion of our expenses and investments is fixed, and we may not be able to adjust our spending quickly enough if our sales are less than expected.

When rolling out our new mattress lines through our direct-to-consumer sales channel, we identified a need for internal controls to avoid delays in the timely delivery of our new mattress products and to improve the customer's experience. Also, we have experienced rapid growth in our employee base, and the need to implement controls and procedures for improving employee training and retention. Competition for employees where our production facilities are located also has increased the costs for employee retention. We have implemented improved controls and procedures in an environment of continuous change but our use of resources may not be as effective as intended or we may need to apply more resources than expected to continue to make changes to improve our employee retention and effectiveness and the quality of our products and services over time. If we are unable to make continuous improvement, achieve greater efficiencies in our operating expenses and improve our products and services, our business could be adversely affected.

We may need additional capital to execute our business plan and fund operations and may not be able to obtain such capital on acceptable terms or at all.

In connection with the development and expansion of our business, we expect to incur significant capital and operational expenses. We believe that we can increase our sales and net income by implementing a growth strategy that focuses on (i) increasing our manufacturing capacity, including by establishing additional manufacturing locations; (ii) increasing our direct-to-consumer sales; (iii) expanding our wholesale distribution channel; (iv) opening our Company showrooms; (v) expanding our global sales; (vi) engaging global partners to improve distribution efficiencies and cost savings; and (vii) product assortment and category expansion.

We believe that our cash flow from operations, together with other available sources of liquidity, including the additional cash we received and may have further access to under that certain Amended and Restated Credit Agreement dated February 26, 2019 (the "Amended and Restated Credit Agreement") by and among Purple LLC, Coliseum Capital Partners, L.P. ("CCP"), Blackwell Partners LLC – Series A ("Blackwell"), and Coliseum Co-Invest Debt Fund, L.P. ("CDF" and together with CCP and Blackwell, the "Lenders"), will be sufficient to fund anticipated operating expenses, growth initiatives and our other anticipated liquidity needs for the next twelve months, based on our current operating conditions. Our ability to obtain other capital resources and sources of liquidity may not be sufficient to support future growth strategies. If we are unable to satisfy our liquidity and capital resource requirements, we may have to scale back, postpone or discontinue our growth strategies, which could result in slower growth or no growth, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain all of our employees. In addition, we may be forced to restructure our obligations to creditors, pursue work-out options or other protective measures.

Our ability to obtain additional capital on acceptable terms or at all is subject to a variety of uncertainties, including approval from the Lenders under the Amended and Restated Credit Agreement. Adequate financing may not be available or, if available, may only be available on unfavorable terms. The restrictive covenants in the Amended and Restated Credit Agreement may make it difficult to obtain additional capital on terms that are favorable to us, and the Lenders may not agree to lend us additional funds. There is no assurance we will obtain the capital we require. As a result, there can be no assurance that we will be able to fund our future operations or growth strategies. In addition, future equity or debt financings, including under the Amended and Restated Credit Agreement, may require us to also issue warrants or other equity securities that are likely to be dilutive to our existing stockholders. If we make additional borrowings under the Amended and Restated Credit Agreement, we will be required to issue additional warrants to the Lenders on the same terms as the Incremental Loan Warrants. Newly issued securities may include preferences or superior voting rights or, as described above, may be combined with the issuance of warrants or other derivative securities, which each may have additional dilutive effects. Furthermore, we may incur substantial costs in pursuing future capital and financing, including investment banking fees, legal fees, accounting fees, printing and distribution expenses and other costs. We may also be required to recognize non-cash expenses in connection with certain securities we may issue, such as convertible notes and warrants, which will adversely impact our financial condition. If we cannot raise additional funds on favorable terms or at all, we may not be able to carry out all or parts of our long-term growth strategy, maintain our growth and competitiveness or continue in business.

We have engaged in significant related-party transactions with affiliates and owners that may give rise to conflicts of interest, result in losses to the Company or otherwise adversely affect our operations and the value of our

We have engaged in numerous related-party transactions involving controlling persons and officers of the Company, as well as with other entities affiliated with controlling persons. Several of these transactions were entered into prior to the Business Combination. For example, since 2010, we have leased our facilities in Alpine, Utah from TNT Holdings, which is owned by Tony Pearce and Terry Pearce. As we grow, and our needs change, we may need to negotiate a termination or modification of this lease, and we have recently amended this lease to shift responsibility from TNT Holdings to the Company for arranging certain types of insurance. We have leased a new facility in Lehi, Utah and moved our headquarters into that building during the first quarter 2020. The Company continues to lease the Alpine facility that was formerly the Company headquarters, for use in production, research and development and video production. We also may at some time purchase this Alpine facility from TNT Holdings. Tony and Terry Pearce, either personally or through one or more of their other entities, also have tangible property located in this Alpine facility that has not been clearly identified and separated from our property. Although we expected this tangible property to be either removed or identified and separated in 2019, this has not yet occurred. Tony and Terry Pearce pay no rent or other compensation to us to store such property in our leased facility. While there is currently no dispute over the lease, and we do not anticipate a dispute, there could arise in the future a dispute between the Company and Tony and Terry Pearce over this lease, or ownership of the property located at this facility.

Prior to the Business Combination, we also entered into an Amended and Restated Confidential Assignment and License Back Agreement with EdiZONE, an entity beneficially owned and controlled by Tony Pearce and Terry Pearce through their ownership of TNT Holdings, pursuant to which EdiZONE transferred tangible and intellectual property to us and we licensed back to EdiZONE certain intellectual property previously licensed by EdiZONE to third parties prior to the Business Combination in order to enable EdiZONE to continue to meet certain pre-existing license obligations to those third parties. EdiZONE and the Pearces have agreed to not modify or extend these third-party licenses and to not enter new third-party licenses. As these third-party license obligations end all rights under the license revert to the Company. These third parties include direct competitors to us that at the time of the Business Combination were not selling products through retail channels in which we were selling our products. One of these third parties is now a domestic competitor of ours, as it now sells mattresses through some of the same retailers through which we also sell our products. This competitor's sales revenues have been increasing, resulting in increasing royalties paid to EdiZONE from this licensee. Another third-party licensee may make it difficult for us to expand into certain geographic regions, such as the European Union. Casey McGarvey, our Chief Legal Officer, is also entitled to receive a small percent of such royalties from EdiZONE related to these third-party licenses, in accordance with a small investment made in EdiZONE years before the Business Combination. While the current license back to EdiZONE, as amended following the Business Combination, is much narrower than the license that existed at the time of the Business Combination, these third-party licenses, including licenses by EdiZONE to our competitors, may lead to conflicts of interest between us and our insiders receiving royalties. At the time this agreement with EdiZONE was first entered into, Purple LLC had only Tony and Terry Pearce as directors. Subsequent to the Business Combination, the license to EdiZONE was amended to broaden our rights and narrow EdiZONE's rights with the approval of our independent directors.

Prior to the Business Combination, we also entered into a Shared Services Agreement with other entities controlled by Tony Pearce and Terry Pearce, including EdiZONE, which covered the provision of services to these entities by our employees. The Shared Services Agreement was terminated by us effective July 24, 2019. No legal or accounting services were provided by Purple LLC during 2019 prior to this termination.

Prior to the Business Combination, InnoHold, an entity owned by Terry and Tony Pearce and our controlling stockholder, also granted equity incentive awards in Purple LLC to certain key employees at that time. As a result of the structure of those awards being granted through a separate entity, the equity incentives were required, because of the structure of the Business Combination, to be exchanged for ownership units in InnoHold, to avoid those equity interests becoming of no value to the participants. Those participants' ownership interests had certain restrictions, including vesting requirements. These equity incentives granted to key employees prior to the Business Combination are forfeited to the extent the grant to an employee is not yet fully vested at the time that such employee's employment is terminated. Before and for a period of time since the Business Combination, all forfeitures occurring from departing employees have inured to the benefit of only the owners of InnoHold, and not all of our stockholders. This means that the forfeited equity did not increase our currently approved equity incentive pool. Because the forfeited equity resulting from these departures prior to this distribution was held at InnoHold, that forfeited equity did not replenish our equity incentive pool and could not be used for equity grants to those who have replaced and will replace these employees or for other purposes essential to the business. During 2019, to avoid future forfeitures from inuring only to the benefit of InnoHold's owners, InnoHold distributed to the incentive participants their pro rata share of InnoHold's ownership of Class B Stock in Purple Inc. and Class B Units in Purple LLC, after which any forfeitures would inure to the benefit of all of our stockholders. InnoHold distributed additional paired shares of Class B Stock in Purple Inc. and Class B Units in Purple LLC which also will be subject to the same vesting requirements and result in forfeitures inuring to the benefit of all shareholders. Our current equity incentive pool, as approved by the stockholders prior to the Business Combination in the 2017 Equity Incentive Plan, did not account for the departure, before this distribution by InnoHold, of such key employees who had existing equity grants through InnoHold, and there is a risk that we will have to seek approval from the Board and stockholders to refresh the equity incentive pool earlier than anticipated at the time of the Business Combination because of the unanticipated need to use shares from the existing pool to hire and retain other key employees needed to achieve the Company's growth objectives. If the equity pool is not refreshed, there is a risk that we may not be able to hire and retain such key employees. If the equity pool is refreshed with authorized shares of the Company that are issued in accordance with our 2017 Equity Incentive Plan, our stockholders will be diluted. Also, this distribution by InnoHold to the equity incentive participants has caused us to incur administrative expenses related to the distributions, the management of the differing vesting schedules and compliance with their rights under the distribution agreements. In addition, the calculations of the distributive share and related income tax withholdings with respect to holders of InnoHold's Class B Units, as well as the processes by which such distributions and withholdings are made, are highly complex. As a result, there is a risk that the recipients of such distributions or other third parties may claim that we have miscalculated the distribution or income tax withholding amounts or failed to timely pay the taxes. The cost of responding to such claims, including but not limited to the diversion of management's attention from our operations and defense or settlement costs, could negatively impact our operations and financial results.

In connection with the Business Combination, Purple LLC also entered into a Credit Agreement with certain lenders which was guaranteed by Purple Inc. The lenders also are stockholders and warrant holders of the Company and appointed one director to serve on our Board, Adam Gray. Further, on February 26, 2019, the Amended and Restated Credit Agreement between Purple LLC and the Lenders thereto, and each of the related documents, including the issuance of additional warrants to the Lenders, was closed and an incremental loan was funded. In connection with the funding of the incremental loan, we issued to the lenders warrants to purchase shares of our Class A Common Stock.

On March 27, 2020, this Amended and Restated Credit Agreement was amended to allow Purple LLC at its election a 5% paid-in-kind interest deferral for the first two quarters of 2020. Pursuant to the Second Amendment to the Amended and Restated Credit Agreement, a negative covenant was removed so that there would not be an event of default if Lenders acquired 25% or more ownership of the Company. The exercise of rights under this Amended and Restated Credit Agreement by the Lenders may create conflicts of interest between us and Mr. Gray. Should additional credit be granted under the Amended and Restated Credit Agreement, we will be required to issue to the Lenders additional incremental warrants on similar terms which could cause additional dilution of all shareholders' interests.

Our future growth and profitability depend, in part, upon our ability to achieve and maintain sufficient production capacity to meet customer demands.

We manufacture our mattresses using our proprietary and patented Mattress Max[™] machinery to make our Hyper-Elastic Polymer[®] cushioning material. Because of the unique features of our Mattress Max machines, new machines are not readily available and must be constructed. We also have experienced inefficiencies in sourcing of materials and production of finished products. We have taken steps to improve our processes and capabilities, but if we are unable to maintain our improvements and continue our improvement initiatives to increase efficiencies or if we are unable to promptly and efficiently open our new Georgia manufacturing facility, we may not be able to keep up with demand which would harm our business. If we are unable to construct new Mattress Max machines and implement them into our production process in a timely manner, if our existing Mattress Max machines are unable to function at the desired capacity, or if we are unable to develop replacements for the existing Mattress Max machines, our production capacity may be constrained and our ability to respond to customer demand may be adversely impacted. We manufacture mattresses and other products using components provided by third-party suppliers. If those third-party suppliers are unable to provide us with such components or if our assembly capacity is insufficient our ability to respond to customer demand may be adversely impacted. This would negatively impact our ability to grow our business and achieve profitability.

Disruption of operations in our manufacturing facilities, including as a result of pandemics or natural disasters, could increase our costs of doing business or lead to delays in shipping our products.

We have two manufacturing plants, which are located in Alpine, Utah and Grantsville, Utah. We have signed a lease for a third manufacturing plant in McDonough, Georgia that is not yet manufacturing products. Although we can produce some of our products at both Utah sites, we have consolidated production of certain products at each site. Therefore, the disruption of operations of our manufacturing facilities, particularly where manufacturing has been consolidated, for a significant period of time, or even permanently, or disruptions to the scheduled build-out of the Georgia facility such as through a closure related to the COVID-19 pandemic or the loss of the lease, may increase our costs of doing business and lead to delays in shipping our products to customers. Such delays could adversely affect our sales, customer satisfaction, profitability, cash flows, liquidity and financial condition. Because both of our currently operating manufacturing plants are located within the same geographic region, regional economic downturns, natural disasters or other issues could potentially disrupt all of our manufacturing and other operating activities, which could adversely affect our business. On March 18, 2020, Magna, Utah was the epicenter of a 5.7 magnitude earthquake that was felt approximately 20 miles away at our Grantsville, Utah manufacturing plant but not felt at our Alpine, Utah manufacturing plant. Since that date, there have been approximately one-thousand aftershocks. Though no damage occurred at either manufacturing plant from the 5.7 earthquake or its aftershocks, continued or increased earthquake activity in the area could disrupt manufacturing and other operating activities, which could adversely affect our business.

Significant product returns could harm our business.

We allow our customers to return products, subject to our returns policies. If product returns are higher than we anticipate, our business, prospects, financial condition and results of operations could be harmed. Further, we modify our policies and procedures relating to returns from time to time, and policies and methods of collecting returned products intended to reduce the number of product returns may result in customer dissatisfaction. The occurrence of any of the foregoing could have a material adverse effect on our business.

We operate in a highly competitive Comfort Industry, and if we are unable to compete successfully, we may lose customers and our sales may decline.

The Comfort Industry market is highly competitive and fragmented. We face competition from many manufacturers (including competitors that primarily manufacture and import from China and other low-cost countries), traditional brick-and-mortar retailers and online retailers, including direct-to-consumer competitors. Participants in the Comfort Industry compete primarily on price, quality, brand name recognition, product availability and product performance and compete across a range of distribution channels. The highly competitive nature of the Comfort Industry means we are continually subject to the risk of loss of market share, loss of significant customers, reductions in margins, and the inability to acquire new customers.

A number of our significant competitors offer products that compete directly with our products. Any such competition by established manufacturers and retailers or new entrants into the market could have a material adverse effect on our business, financial condition and operating results. Comfort Industry manufacturers and retailers are seeking to increase their channels of distribution and are looking for new ways to reach the consumer. Like us, many newer competitors in the mattress industry have begun to offer “bed-in-a-box” or similar products directly to consumers through the Internet and other distribution channels. Some of our established competitors have begun to offer “bed-in-a-box” products as well. Many of our competitors source their products from countries such as China and Vietnam, where the costs may be lower than our costs. Companies providing for the distribution of mattresses online or through retail stores, such as Amazon and Walmart, also have begun to offer competing products in their respective channels. In addition, retailers outside the U.S. have integrated vertically in the furniture and bedding industries, and it is possible that retailers may acquire other retailers or may seek to vertically integrate in the U.S. by acquiring a mattress manufacturer.

Many of our current and potential competitors may have substantially greater financial support, technical and marketing resources, larger customer bases, longer operating histories, greater name recognition, mature distribution methods, and more established relationships in the industry than we do and sell products through broader and more established distribution channels. These competitors, or new entrants into the market, may compete aggressively and gain market share with existing or new products, and may pursue or expand their presence in the Comfort Industry. We cannot be sure we will have the resources or expertise to compete successfully in the future. We have limited ability to anticipate the timing and scale of new product introductions, advertising campaigns or new pricing strategies by our competitors, which could inhibit our ability to retain or increase market share, or to maintain our product margins. Our current and potential competitors may secure better terms from vendors, adopt more aggressive pricing, and devote more resources to technology, infrastructure, fulfillment, and marketing. Also, due to the large number of competitors and their wide range of product offerings, we may not be able to continue to differentiate our products through value, styling or functionality from those of our competitors. Our products are also typically heavier than others and some markets we wish to expand into will not support delivery of our heavy products through parcel services or other affordable home delivery services, limiting our ability to serve the market.

One competitor, which has been a licensee of EdiZONE for over fifteen years, uses substantially similar technology to our Hyper-Elastic Polymer material and Purple Grid in its own mattress, topper and pillow products sold through branded retail stores domestically and in Canada. This competitor has been growing its sales and now distributes its products through wholesale partners with retail locations where our mattresses are sold. This competitor may continue to increase its sales and expand into additional distribution channels which could erode our sales in those retail locations and channels. The continuing growth of this single competitor could adversely affect our business.

A consolidation of the domestic market for foam may increase the prices for foam in the geographical market in which we purchase foam, which could adversely affect our business. We source a specialized type of foam from a supplier who has been in bankruptcy, and the result of that litigation may affect our ability to continue to obtain that specialized foam and require us to modify our product offerings, lose sales or incur increased expenses that could adversely affect our cash flows, margins and profitability.

In addition, the barriers to entry into the retail bedding industry are relatively low. New or existing bedding retailers could enter our markets and increase the competition we face. Competition in existing and new markets may also prevent or delay our ability to gain relative market share. Any of the developments described above could have a material adverse effect on our planned growth and future results of operations.

We will face different market dynamics and competition as we develop new products to expand our presence in our target markets. In some markets, our future competitors may have greater brand recognition and broader distribution than we currently enjoy. We may not be as successful as our competitors in generating revenues in those markets due to the lack of recognition of our brands, lack of customer acceptance, lack of product quality history and other factors. As a result, any new expansion efforts could be costlier and less profitable than our efforts in our existing markets. If we are not as successful as our competitors are in our target markets, our sales could decline, our margins could be impacted negatively and we could lose market share, any of which could materially harm our business.

If we are unable to effectively compete with other manufacturers and retailers of mattresses, pillows and cushions, our sales, profitability, cash flows and financial condition may be adversely impacted.

Our business exposes us to personal injury, property damage and product liability claims, which could result in adverse publicity and harm to our brands and our results of operations.

We may be subject to personal injury, property damage and product liability claims for the products that we sell or related to the Company showrooms we will operate. Any personal injury, property damage or product liability claim made against us, whether or not it has merit, could be time consuming and costly to defend, resulting in adverse publicity, or damage to our reputation, and have an adverse effect on our results of operations. In addition, any negative publicity involving our vendors, employees, labor contractors, delivery contractors and other parties who are not within our control could negatively impact us.

Further, the products we sell are subject to regulation by the U.S. Consumer Product Safety Commission (“CPSC”) and similar state and international regulatory authorities. Such products could be subject to recalls and other actions by these authorities. Product safety concerns may require us to voluntarily remove selected products from our stores. Such recalls and voluntary removal of products can result in, among other things, lost sales, diverted resources, potential harm to our reputation and increased customer service costs, which could have a material adverse effect on our financial condition.

We previously voluntarily reported to the CPSC concerning a potential defect in an accessory product supplied to us by third parties. After its review, CPSC staff closed the case with no action by the Commission. We are providing repair parts to customers with affected products as a warranty matter and are continuing to monitor the issue.

We anticipate at this time 40% of our customers who purchased this product will desire to receive our improvement which we will ship to them at no cost. Since we will incur the cost of this improvement, if our estimate is too low, we may incur additional expenses. Contacting customers with this improvement also may result in an increase in warranty claims or claims of injury or damage prior to receiving the improvement that has not yet been communicated to us. If a customer is harmed by a product failure there also could be litigation and expenses related to a claim of personal injury, which could harm our brand and reputation and negatively affect our operating results.

We maintain insurance against some forms of personal injury, property damage and product liability claims, but such coverage may not be adequate for liabilities actually incurred. A successful claim brought against us in excess of available insurance coverage, or any claim or product recall that results in significant adverse publicity against us, may have a material adverse effect on our sales, profitability, cash flows and financial condition.

Future sales of our Class A Stock by our existing stockholders may cause our stock price to fall.

The market price of our Class A Stock could decline as a result of sales by our existing stockholders in the market, or the perception that these sales could occur. These sales might also make it more difficult for us to sell equity securities at a time and price that we deem appropriate. In addition, subsequent public issuances of our stock would cause the interest of each current Purple Inc. stockholder to be diluted.

The founders, Tony and Terry Pearce, through InnoHold control a majority of the shares of Class B Stock of the Company which constitutes approximately 31% of all ownership interests in the Company at June 30, 2020. The founders already have exchanged 23.9 million of their Class B Stock for Class A Stock and sold them. Also, at this time, CCP and Blackwell own a substantial percentage of the shares of Class A Stock of the Company and warrants for additional Class A Stock. Any of these shareholders may choose to sell shares of common stock. The founders particularly may decide to liquidate additional large portions of their interests. The amount of shares they are able to sell, if sold in large blocks or relatively close to each other in time, could result in downward pressure on the price of our Class A Stock.

Purple LLC’s level of indebtedness could adversely affect Purple LLC’s and our ability to meet its obligations under its indebtedness, react to changes in the economy or its industry and to raise additional capital to fund operations.

As of June 30, 2020, Purple LLC had total debt of \$42.1 million outstanding, comprised of \$41.6 million outstanding under the Amended and Restated Credit Agreement and \$0.5 million in capital lease obligations. Under the original Amended and Restated Credit Agreement, we were allowed to defer 7% of the 12% quarterly interest payments and add those deferred payments in the outstanding debt balance. In March 2020, Purple LLC entered into the First Amendment to the Amended and Restated Credit Agreement (the “Amendment”). The purpose of this Amendment is to allow Purple LLC to defer the remaining 5% of interest for the quarterly payments due March 31 and June 30, 2020 in an effort to reduce cash disbursements during the current COVID-19 pandemic. Pursuant to the Amendment, we were allowed to defer and capitalize the full amount of the interest payments due on March 31, 2020 and June 30, 2020. The Amendment increased the total debt outstanding by approximately \$1.1 million.

Our level of indebtedness could have important consequences to stockholders. For example, it could:

- make it more difficult to satisfy our obligations with respect to our indebtedness, resulting in possible defaults on, and acceleration of, such indebtedness;
- increase our vulnerability to general adverse economic and industry conditions;

- require us to dedicate a substantial portion of our cash flows from operations to payments on indebtedness, thereby reducing the availability of such cash flows to fund working capital, capital expenditures and other general corporate requirements or to carry out other aspects of its business;
- limit our ability to obtain additional financing to fund future working capital, capital expenditures and other general corporate requirements or to carry out other aspects of our business;
- limit our ability to make material acquisitions or take advantage of business opportunities that may arise; and
- place us at a potential competitive disadvantage compared to our competitors that have less debt.

We may also incur future debt obligations that might subject us to additional restrictive covenants that could affect our financial and operational flexibility.

Future operating flexibility is limited in significant respects by the restrictive covenants in the Amended and Restated Credit Agreement, and we may be unable to comply with all covenants in the future.

The Amended and Restated Credit Agreement imposes restrictions that could impede Purple LLC's and the Company's ability to enter into certain corporate transactions, as well as increases our vulnerability to adverse economic and industry conditions, by limiting our flexibility in planning for, and reacting to, changes in our business and industry. These restrictions will limit our ability to, among other things:

- make capital expenditures in excess of \$20 million;
- incur capital lease obligations in excess of \$10 million;
- enter into future asset-based loans in excess of \$10 million;
- guarantee additional debt;
- pay dividends on capital stock or redeem, repurchase, retire or otherwise acquire any capital stock;
- make certain payments, dividends, distributions or investments; and
- merge or consolidate with other companies or transfer all or substantially all of Purple LLC's assets, other than with respect to the Business Combination.

In addition, the Amended and Restated Credit Agreement contains certain negative covenants that restrict the incurrence of indebtedness unless certain incurrence-based financial covenant requirements are met. The restrictions may prevent Purple LLC and the Company from taking actions that we believe would be in the best interests of the business and may make it difficult for us to successfully execute our business strategy or effectively compete with companies that are not similarly restricted. Further, the Amended and Restated Credit Agreement provides that Tony Pearce, Terry Pearce, and InnoHold, together, no longer controlling at least 25% of the outstanding voting power of the Company will result in an event of default. In addition, if we determine that we need to take any action that is restricted under the Amended and Restated Credit Agreement, we will need to first obtain a waiver from the Lenders. Obtaining such waivers, if needed, may impose additional costs on the Company or we may be unable to obtain such waivers. Purple LLC's ability to comply with these restrictive covenants in future periods will largely depend on its ability to successfully implement its overall business strategy. The breach of any of these covenants or restrictions could result in a default, which could result in the acceleration of Purple LLC's debt. In the event of an acceleration of Purple LLC's debt, Purple LLC could be forced to apply all available cash flows to repay such debt, which would reduce or eliminate distributions to us, which could also force us into bankruptcy or liquidation.

Certain outstanding warrants could be exercised and result in dilution of all shareholders without any concurrent payment or other benefit to the Company.

In connection with the closing of the Amended and Restated Credit Agreement, we issued to the Lenders, in a private placement, warrants (the "Incremental Loan Warrants") to purchase 2.6 million shares of our Class A Stock. The Incremental Loan Warrants are initially exercisable at a price of \$5.74 per share, subject to certain adjustments. In May 2020 Tony Pearce and Terry Pearce, individually or together, no longer own at least 50% of the voting securities of the Company, and pursuant to the terms of the warrant agreement, the exercise price was reduced to \$0. As a result, the Incremental Loan Warrants may be exercised without any further consideration paid to us, resulting in further dilution to existing shareholders. In addition, if we choose to make additional borrowings under the Amended and Restated Credit Agreement, we will be required to issue to the Lenders additional warrants on the same terms as the Incremental Loan Warrants.

Certain outstanding warrants held by former members of Global Partner Sponsor, LLC (the sponsor for Global Partner Acquisition Corp., our predecessor) and CCP and its affiliates may be exercised on a cashless basis, without any further consideration paid to us. In addition, in the event that the last sales price of our common stock reported has been at least \$24.00 per share on each of twenty trading days within a thirty (30) trading-day period, we may elect to redeem our outstanding warrants (other than those held by former members of Global Partner Sponsor, LLC and certain warrants held by CCP and its affiliates) at a redemption price of \$0.01 per warrant, or we may, alternatively, require such warrants to be exercised on a cashless basis. If we require such warrants to be exercised on a cashless basis, we will be required to issue shares of our Class A Common Stock without any further consideration being paid to us, which would result in further dilution to existing shareholders.

Although we may be entitled to tax benefits relating to additional tax depreciation or amortization deductions as a result of the tax basis step-up we receive in connection with the exchanges of Class B Units into our Class A Stock and related transactions, we will be required to pay InnoHold 80% of these tax benefits under the Tax Receivable Agreement.

InnoHold and other owners of Class B Units and shares of Class B Stock may, subject to certain conditions and transfer restrictions, exchange their Class B Units and shares of Class B Stock for shares of Class A Stock pursuant to the Exchange Agreement. The deemed exchanges in the Business Combination and any exchanges pursuant to the Exchange Agreement, are expected to result in increases in our allocable share of the tax basis of the tangible and intangible assets of Purple LLC. These increases in tax basis may increase (for tax purposes) depreciation and amortization deductions and therefore reduce the amount of income or franchise tax that we would otherwise be required to pay in the future, although the Internal Revenue Service (“IRS”) or any applicable foreign, state or local tax authority may challenge all or part of that tax basis increase, and a court could sustain such a challenge. In addition to the step up in basis in the initial merger transaction, there have been 26.6 million exchanges of Class B Units and shares of Class B Stock for shares of Class A Stock as of June 30, 2020.

In connection with the Business Combination, we entered into the Tax Receivable Agreement, which generally provides for the payment by us to InnoHold of 80% of certain tax benefits, if any, that we realize as a result of these increases in tax basis and of certain other tax benefits related to entering into the Tax Receivable Agreement, including income or franchise tax benefits attributable to payments under the Tax Receivable Agreement. These payment obligations pursuant to the Tax Receivable Agreement are the obligation of the Company and not of Purple LLC. The actual increase in our allocable share of the Company’s tax basis in its assets, as well as the amount and timing of any payments under the Tax Receivable Agreement, will vary depending upon a number of factors, including the timing of exchanges, the market price of shares of our Common Stock at the time of the exchange, the extent to which such exchanges are taxable and the amount and timing of our income. As of June 30, 2020, the Company’s preliminary estimate of the liability under the Tax Receivable Agreement resulting from the distribution of the cash consideration to InnoHold in connection with the Business Combination and tax basis increases as a result of the step up in basis in the initial merger transaction and exchanges of 26.6 million Paired Securities was approximately \$81.5 million. Due to the release of the Company’s valuation allowance on the deferred tax assets to which the Tax Receivable Agreement liability relates, only \$78.7 of the \$81.5 million has been recorded to date (\$0.5 million in 2019 and an incremental \$78.2 million through June 30, 2020). The additional \$2.8 million is expected to be recorded in the third and fourth quarters of the year ending December 31, 2020. To the extent the Company realizes tax benefits in future years, or in the event of a change in future tax rates, or if payments under the Tax Receivable Agreement are required to be accelerated, this liability may exceed the estimated liability.

Because not all of the relevant factors described above are known at this time with respect to the exchanges that have occurred, and none of the relevant factors are known with respect to future exchanges (whether this year or in subsequent years), except as estimated above, we cannot yet with certainty determine the amounts (if any) that would or will be payable under the Tax Receivable Agreement. However, we expect that as a result of the possible size and frequency of the exchanges and the resulting increases in the tax basis of the tangible and intangible assets of Purple LLC, the payments under the Tax Receivable Agreement will be substantial and could have a material adverse effect on our financial condition. The payments under the Tax Receivable Agreement are not conditioned upon continued ownership of the Company by the holders of units.

InnoHold will not be required to reimburse us for any excess payments that may previously have been made under the Tax Receivable Agreement, for example, due to adjustments resulting from examinations by taxing authorities. Rather, excess payments made to such holders will be netted against payments otherwise to be made, if any, after the determination of such excess. As a result, in certain circumstances we could make payments under the Tax Receivable Agreement in excess of our actual income or franchise tax savings, if any, and we may not be able to recoup such excess, which could materially impair our financial condition and adversely affect our liquidity.

For illustrative purposes, if all of the 17.5 million Paired Securities outstanding as of June 30, 2020 were exchanged for shares of Class A Stock pursuant to the Exchange Agreement, and the fair market value of the Class A Stock were equal to \$26.16 per share (the closing price of a share of our Class A Stock on August 3, 2020), our aggregate liability under the Tax Receivable Agreement would be, including the estimated \$81.5 million liability described above, approximately \$197.6 million payable in estimated amounts ranging from \$4 million to \$22 million over a 15-year period. Of the additional approximately \$116.1 million amount, approximately \$111.5 million relates to the exchange of Paired Securities for the 16.8 million shares of Class A Stock into which the Paired Securities currently held by InnoHold are exchangeable. The foregoing estimate of our aggregate liability is based on certain assumptions, including that there are no changes in relevant tax law, that we are able to fully depreciate or amortize our assets, and that we recognize taxable income sufficient to realize the full benefit of the increased depreciation and amortization of our assets in each of the next 15 tax years. These assumptions may not be accurate with respect to all or any exchanges of Paired Securities for Class A Stock. As a result, the amount and timing of our actual aggregate liability under the Tax Receivable Agreement may differ materially from our estimates depending on a number of factors, including those described above and elsewhere in this report.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Number	Description
10.1 ⁽¹⁾	Amendment to TNT Holdings Amended and Restated Lease Agreement dated April 23, 2020
10.2 ⁽²⁾	Second Amendment to Amended and Restated Credit Agreement dated May 15, 2020
10.3*	Lease Agreement between Purple Innovation, LLC and PNK S2, LLC dated July 21, 2020
31.1*	Certification by Joseph B. Megibow, Chief Executive Officer, pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification by Craig L. Phillips, Chief Financial Officer, pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification by Joseph B. Megibow, Chief Executive Officer, pursuant to Section 1350, Chapter 63 of Title 18, United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification by Craig L. Phillips, Chief Financial Officer, pursuant to Section 1350, Chapter 63 of Title 18, United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

* Filed herewith.

(1) Previously filed as an Exhibit to the Quarterly Report on Form 10-Q filed May 11, 2020

(2) Previously filed as an Exhibit to the Current Report on Form 8-K filed May 18, 2020

SIGNATURE

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

PURPLE INNOVATION, INC.

Date: August 13, 2020

By: /s/ Joseph B. Megibow
Joseph B. Megibow
Chief Executive Officer
(Principal Executive Officer)

Date: August 13, 2020

By: /s/ Craig L. Phillips
Craig L. Phillips
Chief Financial Officer
(Principal Financial and Accounting Officer)

LEASE

THIS LEASE (this “*Lease*”) is executed this 21st day of July, 2020 (the “*Effective Date*”), by and between PNK S2, LLC, a Georgia limited liability company (“*Landlord*”), and PURPLE INNOVATION, LLC, a Delaware limited liability company (“*Tenant*”).

ARTICLE 1 - LEASE OF PREMISES

Section 1.01. Basic Lease Provisions and Definitions. The following defined terms and other provisions are intended to have the meanings set forth as follows for all purposes under this Lease:

(a) “*Leased Premises*”: the space commonly known as Suite A, as more particularly shown on **Exhibit A-1** attached hereto and made a part hereof, within the building located at 1325 Hwy 42 S., Building B, McDonough Georgia, containing 1,104,320 rentable square feet (the “*Building*”), situated on the “*Land*” (as hereinafter defined) in the location shown on **Exhibit A-2** attached hereto and made a part hereof. Tenant shall also have certain rights with respect to the “*Oil Tank Area*” (as hereinafter defined) located outside of the Building on the Land, as set forth in and subject to the terms of Article 20 below. The “*Land*” is the real property comprising the “*Park*” (as hereinafter defined) as of the date of this Lease, as described in **Exhibit A-3** attached hereto and made a part hereof. The portion of the Land on which the Building is situated, and all improvements thereon (including, without limitation, the Building), are sometimes herein referred to collectively as the “*Building Project*.” As of the date of this Lease, the Building Project is located within and is a part of a multi-building business park commonly known as “*PNK Park Southern Gateway at Lambert Farms*.” The land and all improvements within such business park, as the same may be expanded, contracted or otherwise modified from time to time, are sometimes herein referred to collectively as the “*Park*.”

(b) “*Rentable Area*”: 519,680 rentable square feet.

(c) “*Tenant’s Proportionate Share*”: 47.0588%, which is a fraction, the numerator of which is the number of rentable square feet in the Leased Premises, and the denominator of which is the number of rentable square feet in the Building (1,104,320 rentable square feet). Should Landlord elect to expand the Building, this percentage shall be reduced based on the new and increased number of rentable square feet in the Building, and such reduction in Tenant’s Proportionate Share shall take effect upon substantial completion of such expansion.

(d) “*Minimum Annual Rent*” and “*Monthly Rental Installments*”: means the amounts set forth in the table below:

Lease Year	Rent / SF		Minimum Annual Rent		Monthly Rental Installments:
1*	\$	3.41	\$	1,772,108.80	\$ 147,675.73
2	\$	3.48	\$	1,808,486.40	\$ 150,707.20
3	\$	3.55	\$	1,844,864.00	\$ 153,738.67
4	\$	3.62	\$	1,881,241.60	\$ 156,770.13
5	\$	3.69	\$	1,917,619.20	\$ 159,801.60
6	\$	3.76	\$	1,953,996.80	\$ 162,833.07
7	\$	3.84	\$	1,995,571.20	\$ 166,297.60
8	\$	3.92	\$	2,037,145.60	\$ 169,762.13
9	\$	4.00	\$	2,078,720.00	\$ 173,226.67
10	\$	4.08	\$	2,120,294.40	\$ 176,691.20
11	\$	4.16	\$	2,161,868.80	\$ 180,155.73

* Subject to the “*Rental Concession*” (as hereinafter defined)

See Article 18 for Minimum Annual Rent and Monthly Rental Installments during each of the Renewal Terms.

(e) “**Rental Concession**” has the meaning set forth below.

(f) “**Lease Year**”: A Lease Year shall be each twelve (12) month period beginning on the Commencement Date; provided, however, if the Commencement Date is not the first day of the month, the first Lease Year shall commence on the Commencement Date and end on the last day of the twelfth (12th) full calendar month thereafter and the second and each succeeding Lease Year shall commence on the first day of the next calendar month.

(g) “**Target Commencement Date**”: The date that is four (4) months after Landlord obtains all permits and governmental approvals necessary for commencement of physical construction of the “Landlord’s Work” (as defined in the Work Letter) in the Leased Premises.

(h) “**Commencement Date**”: the date of “Substantial Completion” (as defined in the Work Letter) of the Landlord’s Work, as determined under the Work Letter. Prior to the Commencement Date, Tenant shall have the right to occupy and use the Leased Premises pursuant and subject to the terms of Section 4.02 of the Work Letter.

(i) “**Substantial Completion**”: Is defined in the Work Letter.

(j) “**Lease Term**”: The period commencing on the Commencement Date and continuing through the last day of the calendar month in which the day immediately preceding the date that is one hundred twenty-eight (128) months after the Commencement Date occurs, subject to extension under Article 18 hereof (the “**Expiration Date**”). The Lease Term shall include all references to any Renewal Options exercised by Tenant.

(k) “**Renewal Term**” or “**Renewal Terms**” has the meaning set forth in Article 18.

(l) “**Security Deposit**”: Not applicable.

(m) “**Broker(s)**”: Cushman & Wakefield, Inc., representing Landlord, and Jones Lang LaSalle Brokerage, Inc., representing Tenant. All commissions to such Brokers shall be paid pursuant to Section 16.05 of this Lease.

(n) “**Permitted Use**”: Subject to the terms of this Lease, manufacturing, warehousing, distribution, and office for comfort technology related products, and other uses related thereto, or any other use allowed by Laws (as defined herein) and approved by Landlord. Subject to the terms of this Lease, during the Lease Term, Tenant shall have access to the Leased Premises, the Building and the related parking facilities (including loading areas and truck ingress and egress) twenty-four (24) hours per day, seven (7) days per week, fifty-two (52) weeks per year.

(o) Intentionally Omitted.

(p) Intentionally Omitted.

(q) “**Landlord’s Work**”: Is defined in the Work Letter.

(r) “**Work Letter**”: means the Work Letter attached to this Lease as **Exhibit B**.

Addresses for notices are as follows:

Landlord:

PNK S2, LLC
1100 Peachtree Street
Suite 800
Atlanta, Georgia 30309
Attn: Stiles/Wheeler
Email: []

Tenant (prior to occupancy):

Purple Innovation, LLC
4100 N. Chapel Ridge Rd.
Suite 200
Lehi, Utah 84043
Attn: Chief Operating Officer
Email: john.l@purple.com

Tenant (following occupancy):

Purple Innovation, LLC
4100 N. Chapel Ridge Rd.
Suite 200
Lehi, Utah 84043
Attn: Chief Operating Officer
Email: john.l@purple.com

With a copy to:

Purple Innovation, LLC
4100 N. Chapel Ridge Rd.
Suite 200
Lehi, Utah 84043
Attn: Legal
Email: legal@purple.com

(s) Exhibits:

Exhibit A-1:	Leased Premises
Exhibit A-2:	Location of Building
Exhibit A-3:	Land
Exhibit B:	Work Letter
Exhibit C:	Form of Letter of Understanding
Exhibit D:	Rules and Regulations
Exhibit E:	Approved Tenant Signage
Exhibit F:	Parking Lot
Exhibit G:	Permitted Hazardous Substances
Exhibit H-1:	Oil Tank Area
Exhibit H-2:	Pre-Approved Plans for Oil Tanks

Section 1.02. Lease of the Leased Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises, under the terms and conditions herein, together with a non-exclusive right, in common with others, to use the following (collectively, the “**Common Areas**”): the areas of the Building and the Building Project, including, without limitation, all areas and facilities in and around the Building and the Building Project that are provided for the general, nonexclusive use and convenience of more than one tenant of the Building, including, without limitation, driveways, parking areas, walkways, delivery areas, trash removal areas, landscaped areas, entryways, hallways, stairways, restrooms, parking areas and sidewalks that are designed for use in common by all tenants of the Building and their respective employees, agents, contractors, representatives, customers, guests, invitees and others. So long as the Building Project is a part of the Park, Common Areas also include those portions of the Park lying outside the Building Project which are designated as “common areas” for the use, enjoyment and benefit of all owners or tenants of property located within the Park and their lessees, subtenants and invitees. Landlord and Tenant agree that, prior to the Effective Date, each of them has confirmed that the number of rentable square feet contained in the Building and in the Leased Premises are accurate for all purposes of this Lease, including, without limitation, for purposes of calculating the amount of Minimum Annual Rent and Monthly Rental Installments due under this Lease.

ARTICLE 2 - LEASE TERM AND POSSESSION

Section 2.01. Lease Term. The Lease Term shall commence as of the Commencement Date and shall expire on the Expiration Date, unless sooner terminated in accordance with the terms of this Lease. After the Commencement Date has been determined, Landlord shall send a “Letter of Understanding” in substantially the form attached hereto as **Exhibit C** to Tenant, and Tenant shall execute and return such Letter of Understanding to Landlord within fifteen (15) days after Tenant’s receipt thereof. If Tenant fails to execute and return such Letter of Understanding to Landlord within such fifteen (15) day period, the matters set forth in the Letter of Understanding shall be conclusively presumed to be true and correct. The parties hereto acknowledge and agree that they have previously measured the number of square footage in the Leased Premises and the Building and have mutually agreed on the square footage numbers for the Leased Premises and the Building appearing in Article 1 hereof.

Section 2.02. Construction of Landlord’s Work. Subject to reimbursement by Tenant of the Excess (as defined in the Work Letter), Landlord agrees to perform the Landlord’s Work with diligence, subject to events and delays due to causes beyond Landlord’s reasonable control. Other than as described in the Work Letter, Tenant shall accept the Leased Premises in its then-current, “as-is” condition as of the Commencement Date, and Landlord shall have no obligation to make any improvements or modifications to the Leased Premises. Taking of possession by Tenant shall be deemed conclusively to establish that the Landlord’s Work has been completed in accordance with the “Approved Construction Drawings” (as such term is defined in the Work Letter) and the Work Letter, and that the Leased Premises, the Building and the Common Areas are in good and satisfactory condition, as of the date possession was so taken. Subject only to any abatement to which Tenant is entitled under Section 2.05 below, if Landlord, for any reason whatsoever, fails to deliver possession of the Leased Premises to Tenant on any anticipated date, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom.

Section 2.03. Surrender of the Leased Premises. Upon the expiration or earlier termination of this Lease, Tenant shall, at its sole cost and expense, immediately (a) surrender the Leased Premises to Landlord in broom-clean condition and in good order, condition and repair, (b) remove from the Leased Premises or where located (i) Tenant’s Property (as defined in Section 8.01 below), (ii) all data and communications equipment, wiring and cabling (including above ceiling, below raised floors and behind walls), and (iii) any striping applied to the floors of the Leased Premises, and (iv) any improvements and alterations required to be removed pursuant to Section 7.03 below, and (c) repair any damage caused by any such removal and restore the Leased Premises to the condition existing upon the Commencement Date, excepting only reasonable wear and tear, and casualty and condemnation damage that Landlord is required to repair under the terms of this Lease. Upon the expiration or earlier termination of this Lease, all of Tenant’s Property that is not removed within ten (10) business days following Landlord’s written demand therefor shall be conclusively deemed to have been abandoned and Landlord shall be entitled to dispose of Tenant’s Property at Tenant’s cost, without incurring any liability to Tenant. This Section 2.03 shall survive the expiration or any earlier termination of this Lease.

Section 2.04. Holding Over. If Tenant retains possession of the Leased Premises after the expiration or earlier termination of this Lease, Tenant shall be a tenant at sufferance, and the Monthly Rental Installments payable during such holdover period shall be as follows: (a) during the first three (3) months, one hundred twenty-five percent (125%) of the Monthly Rental Installment amount in effect upon the date of such expiration or earlier termination; (b) thereafter, one hundred fifty percent (150%) of the Monthly Rental Installment amount in effect upon the date of such expiration or earlier termination. Such occupancy of the Leased Premises shall otherwise be upon and subject to all of the terms, covenants, and conditions herein specified, so far as applicable. Tenant shall have no right to notice under Official Code of Georgia Annotated §44-7-7 of the termination of its tenancy. Acceptance by Landlord of Rent (as defined in Section 3.03 below) after such expiration of the Lease Term or earlier termination shall not result in a renewal of this Lease, nor shall such acceptance create a month-to-month tenancy. In the event a month-to-month tenancy is created by operation of law, either party shall have the right to terminate such month-to-month tenancy upon thirty (30) days' prior written notice to the other, whether or not said notice is given on the date that any Rent is due. This Section 2.04 shall not be deemed a consent by Landlord to any holding over by Tenant upon the expiration or earlier termination of this Lease, nor shall it limit Landlord's remedies in such event. Tenant shall be liable to Landlord for all damage which Landlord suffers because of any holding over by Tenant, and Tenant shall indemnify Landlord against all claims made by any other tenant or prospective tenant against Landlord resulting from delay by Landlord in delivering possession of the Leased Premises to such other tenant or prospective tenant. The provisions of this Section 2.04 shall survive the expiration or earlier termination of this Lease.

Section 2.05. Late Delivery. If the Commencement Date has not occurred (or been deemed to have occurred) on or before the date that is one (1) month after the Target Commencement Date (the "Outside Delivery Date"), then Tenant shall receive a one (1) day abatement of Minimum Annual Rent for each day that the Commencement Date is delayed beyond the Outside Delivery Date for any reason other than Force Majeure or Tenant Delay. Notwithstanding anything contained herein to the contrary, the Outside Delivery Date shall be extended one (1) day for each day of delay in the Commencement Date caused by Force Majeure or Tenant Delay. The abatement set forth in this Section 2.05 is and shall be Tenant's sole and exclusive remedy for delay in the Commencement Date or failure of the Commencement Date to occur, Tenant hereby waiving and relinquishing any and all other rights and remedies at law and in equity against Landlord for any such failure (including, but not limited to, remedies for any consequential, indirect, speculative or punitive damages suffered by Tenant).

Section 2.06. Early Access. Subject to the terms of this Section 2.06, and to all other applicable provisions of this Lease (including, without limitation, Article 7 of this Lease), Landlord will permit Tenant and its agents to enter the Leased Premises prior to the Commencement Date: (a) in order to perform through its own contractors (to be first approved by Landlord) such other work and decorations as Tenant may desire at the same time that the Landlord Work is being performed in the Leased Premises (including, without limitation, the work contemplated by Section 7.04(a) of this Lease, the installation of racking and distribution-related equipment, and the installation of machinery and assembly lines); and (b) if, and only if, Tenant is able to obtain a temporary certificate of occupancy and any other necessary approvals from any applicable governmental authorities permitting such activities within the Leased Premises notwithstanding the fact that the Landlord's Work will not then be complete, to operate a distribution facility within the Leased Premises. Landlord will not unreasonably withhold, condition or delay its approval of Tenant's contractors. If Landlord fails to respond to any request by Tenant for approval of any contractors within five (5) business days after its receipt of such request, Landlord shall be deemed to have disapproved such contractors. However, if Landlord is deemed to have disapproved such contractors by reason of Landlord's failure to timely notify Tenant in writing of Landlord's approval or disapproval, Tenant may provide Landlord with written notice of such failure to respond (the "Second Notice"), which, in order to be effective, must clearly, conspicuously and in bold type face set forth the following statement at the top of the first page of the Second Notice: "SECOND NOTICE! THE FAILURE OF LANDLORD TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER THE RECEIPT OF THIS SECOND NOTICE BY LANDLORD SHALL BE DEEMED TO BE APPROVAL OF THE PROPOSED CONTRACTORS." If Landlord should fail to notify Tenant in writing of its election as to such proposed alterations within five (5) business days after receipt of such Second Notice, Landlord shall be deemed to have approved the applicable contractors. The foregoing license to enter and conduct such activities prior to the Commencement Date, however, is conditioned upon Tenant's workmen and contractors working in harmony with and not interfering with the labor employed by "Contractor" (as defined in the Work Letter), Landlord, Landlord's mechanics or contractors or by any other tenant(s) or their contractors, and not impeding or interfering with Landlord's Work, or the progress thereof. Such access shall at all times be subject to the control and reasonable restrictions of Landlord. If Landlord determines that any such interference, conflict or delay has been or may be caused, and if Tenant fails to cease such interference, conflict or delay within two (2) business days after notice to Tenant (which notice may be given by telephone to _____ or electronic mail to _____), Landlord shall have the right to withdraw permission to enter the Leased Premises upon twenty-four (24) hours' written notice to Tenant. Such entry shall be deemed to be under all of the terms, covenants, provisions and conditions of this Lease. However, Tenant agrees that any such entry into, and all activities conducted by Tenant within, the Leased Premises shall be at Tenant's own risk and Landlord shall not be liable in any way for any injury, loss or damage which may occur to Tenant, including, without limitation, to any of Tenant's property or installations made in the Leased Premises. Tenant further agrees to protect, defend, indemnify and save harmless Landlord and its beneficiaries and agents from all liabilities, costs, damages, fees and expenses arising out of or connected with the activities of Tenant or Tenant's contractors in or about the Leased Premises or Building during the performance of Landlord's Work, including, without limitation, the cost of any repairs to the Leased Premises or Building necessitated by the activities of Tenant's contractors. In addition, prior to the initial entry into the Building or the Leased Premises by Tenant and by each of Tenant's contractors, Tenant shall furnish Landlord, at Tenant's sole cost, with policies of insurance covering Landlord, its beneficiaries and agents, as insured parties, with such coverages and in such amounts as Landlord may then require in order to insure Landlord, its beneficiaries or agents against loss or liability for injury or death or damage to property arising out of or connected with any activities of Tenant or Tenant's contractors. If Tenant's contractors or anyone employed by Tenant shall cause a delay in completing Landlord's Work (regardless of whether or not Tenant ceases such delay within the time period set forth above), Tenant agrees that such delay will constitute a Tenant Delay.

Section 2.07. Tenant Improvement Allowance.

(a) Landlord shall provide the "Tenant Improvement Allowance" to be applied to "Tenant's Construction Costs" (both as defined in the Work Letter) pursuant and subject to the terms of the Work Letter.

(b) Subject to the terms of this Section 2.07(b), provided that there does not exist a Default under this Lease, after application of the Tenant Improvement Allowance to the Tenant's Construction Costs in accordance with the Work Letter, Tenant may, by written notice to Landlord (the "**Election Notice**"), elect to apply any unused portion of the Tenant Improvement Allowance to "FF&E Costs" (as hereinafter defined) pursuant and subject to the terms of Section 2.07(b)(i) below, to costs incurred by Tenant to perform the installation work contemplated by Section 7.04(a) of this Lease (the "**Pit Installation Work**") pursuant and subject to the terms of Section 2.07(b)(ii) below, and/or to amounts that Tenant is required to reimburse to Landlord under Article 21 of this Lease pursuant and subject to the terms of Section 2.07(b)(iii) below.

(i) As used herein, the term “**FF&E Costs**” means the actual, out-of-pocket expenses incurred by Tenant to purchase and install in the Leased Premises furniture, fixtures, and equipment (including, without limitation, racking, distribution-related equipment, machinery, and assembly line equipment). However, in no event shall FF&E Costs include any costs incurred by Tenant to perform the Pit Installation Work (Tenant may apply unused portion of the Tenant Improvement Allowance to costs incurred by Tenant to perform the Pit Installation Work pursuant and subject to Section 2.07(b)(ii) below, but such costs shall not be deemed to be FF&E Costs). If Tenant elects to apply any unused portion of the Tenant Improvement Allowance to FF&E Costs, Tenant shall specify the portion of the Tenant Improvement Allowance to be so applied in the Election Notice, and the Election Notice must be accompanied by invoices from Tenant evidencing expenditure of such sums by Tenant. To the extent that any of the FF&E Costs pertain to work which could create lien rights in favor of third parties as to any portion of the Leased Premises or Building (as opposed to any of Tenant’s personal property), the Election Notice must also be accompanied lien waivers and other documents in form and substance reasonably satisfactory to Landlord which are sufficient under the laws of the State of Georgia to extinguish all such lien rights. Landlord shall reimburse Tenant for such actual, out-of-pocket expenses promptly upon receipt of the Election Notice and such materials.

(ii) If Tenant elects to apply any unused portion of the Tenant Improvement Allowance to costs incurred by Tenant to perform the Pit Installation Work, Tenant shall submit to Landlord a written report, certified by Tenant (the “**Reimbursement Request**”), setting forth: (A) a computation of the total costs incurred by Tenant for such work; and (B) the amount payable by Landlord to Tenant, which amount shall not exceed the then-remaining unused portion of the Tenant Improvement Allowance. The Reimbursement Request shall be accompanied, to the extent applicable to the costs set forth on the Reimbursement Request, by: (1) an AIA Completion Certificate executed by Tenant’s contractor, and an AIA Document G702 form executed by Tenant’s architect, both in form and substance reasonably satisfactory to Landlord; (2) if, under applicable Laws, the performance of such work requires issuance of a new certificate of occupancy for the Leased Premises, a copy of the final certificate of occupancy for the Leased Premises; (3) an affidavit or certificate executed by the Tenant’s architect that all work is complete and is in accordance with the plans approved by Landlord and all Laws; (4) a Final Contractor’s Affidavit from Tenant’s contractor meeting the requirements of the laws of the State of Georgia to extinguish all lien rights in connection with such work; and (5) final lien waivers from Tenant’s architect and contractor, and all subcontractors, materialmen, and engineers. In addition, the Reimbursement Request shall be accompanied by a set of scaled and dimensioned, “as built” plans for the work, certified by Tenant’s architect, prepared on an Auto CAD Computer Assisted Drafting and Design System (or such other system as Landlord may accept), using naming conventions issued by the American Institute of Architects (or such other naming conventions as Landlord may accept), and a CD of such as built plans translated in DXF format (or any other format acceptable to Landlord). The Reimbursement Request and all other items described above must be in form and substance satisfactory to Landlord. Upon receipt of the Reimbursement Report and all other required materials, Landlord shall reimburse Tenant the amount due from Landlord under this Section 2.07(b)(ii) within thirty (30) days after Landlord’s receipt thereof. However, Landlord shall not be obligated to disburse the amount requested by Tenant until Tenant delivers to Landlord the Reimbursement Report accompanied by all required items listed above. The Reimbursement Report shall be subject to verification by Landlord (who shall have access to Tenant’s books and records in respect thereof for such purpose) and correction, if necessary, without either party being prejudiced by any payments made hereunder. For the avoidance of doubt, Tenant acknowledges that it must submit the Reimbursement Report, together with all documentation and materials set forth above, within thirty (30) days after the Pit Installation Work is substantially complete under all circumstances, and regardless of whether or not any portion of the Tenant Improvement Allowance remains available to be applied as set forth in this Section 2.07(b)(ii).

(iii) If Tenant is required to reimburse any amounts to Landlord under Article 21 of this Lease, and if the total reimbursement obligation of Tenant under Article 21 exceeds \$10,000.00, then Tenant may elect to apply any unused portion of the Tenant Improvement Allowance to the portion of such amount owed by Tenant in excess of \$10,000.00 by specifying the amount to be so applied in the Election Notice.

(c) Notwithstanding anything contained in this Lease (including, without limitation, the Work Letter) to the contrary, if Tenant has not satisfied the conditions set forth above for disbursement of the entire Tenant Improvement Allowance on or before the date that is nine (9) months after the Effective Date (the “***Allowance Expiration Date***”), Tenant shall have no further rights to any undisbursed portion of the Tenant Improvement Allowance. Any portion of the Tenant Improvement Allowance remaining undisbursed after such date shall belong to Landlord.

ARTICLE 3 - RENT

Section 3.01. Rent. Subject to the Rental Concession, Tenant shall pay to Landlord in U.S. dollars the Minimum Annual Rent in monthly installments of the Monthly Rental Installments set forth in Section 1.01(d) above, in advance, without demand, abatement, counterclaim, recoupment, deduction or offset (except as may be expressly set forth herein), beginning on the Commencement Date and on or before the first day of each and every calendar month thereafter during the Lease Term. The Monthly Rental Installments for partial calendar months shall be prorated on the basis of the total number of days in the applicable calendar month. All Rent and other payments to be made by Tenant to Landlord under this Lease shall be made by Swift as follows:

PNK S2, LLC
IBAN: CH02 0020 6206 4922 0360 L
BANK: UBS AG
ZURICH, SWISS
SWIFT: UBSWCHZH80A

or by such other method or to such other location as may be specified by Landlord to Tenant in writing, in accordance with this Section 3.01. Additionally, if applicable, Tenant shall pay to Landlord any and all sales, use, occupancy or similar taxes which may be levied or imposed upon any Rent payable by Tenant under this Lease, with the payment of each such tax and surtax due and payable at the same time as payment of the underlying amount is due and payable hereunder.

Section 3.02. Annual Rental Adjustment Definitions.

(a) “***Annual Rental Adjustment***”: the amount of Tenant’s Proportionate Share of Operating Expenses for a particular calendar year.

(b) “**Operating Expenses**”: the amount of all of Landlord’s costs and expenses paid or incurred in owning, managing, operating, repairing, replacing and maintaining the Building Project in good condition and repair for a particular calendar year, determined in accordance with generally accepted real estate accounting practices consistently applied, including by way of illustration and not limitation, the following: all Real Estate Taxes (as defined in Section 3.02(d) below), insurance premiums and deductibles; water, sewer, electrical and other utility charges other than the separately billed electrical and other utility charges paid by Tenant pursuant to this Lease (or paid by other tenants in the Building); painting; stormwater discharge fees; tools and supplies; repair costs; landscape maintenance costs; access patrols; license, permit and inspection fees; management fees (not to exceed two percent (2%) of the gross revenues for the Building Project with respect to the applicable period); supplies, costs, salaries, wages and related employee benefits and bonuses for all employees at or below the grade of property manager (regardless of the title of such employees), payable for the management, maintenance and operation of the Building Project (to the extent that persons are engaged with respect to the Building Project and other properties, wages and salaries relating to such persons shall be equitably apportioned between all such properties based upon Landlord’s reasonable estimate of the time spent by each such person on each property relative to their total time on all properties); maintenance, repair and replacement of the driveways, parking areas, curbs and sidewalk areas (including snow and ice removal), landscaped areas, drainage strips, sewer lines, exterior walls, foundation, structural frame, roof, gutters and lighting, subject to any obligation that Landlord may have to amortize such costs if they are deemed to be capital costs, as set forth below; payments under any easement, license, operating agreement, declaration, restrictive covenant or instrument pertaining to the sharing of costs by the Building Project (including, without limitation, any fees, costs or assessments imposed by any property owners association); the costs of any capital improvements made in or to the Building Project in order to comply with changes in any applicable Laws, ordinances, rules, regulations or orders of any governmental or quasi-governmental authority having jurisdiction over the Building Project (referred to herein as “Required Capital Improvements”), as well as the costs of any capital improvements intended to reduce Operating Expenses (referred to herein as “Cost Savings Improvements”), provided that the expenditures for Required Capital Improvements and Cost Savings Improvements shall be amortized over the expected useful life of such capital improvement (as reasonably determined by Landlord, without regard to the period over which such improvements may be depreciated or amortized for federal income tax purposes) and only the amortized portion of such costs for each applicable year shall be included in Operating Expenses for such year, and provided further that the amortized amount of any Cost Savings Improvement shall be limited in any year to the actual, or if not reasonably obtainable, the reasonably estimated, reduction in Operating Expenses resulting from the Cost Savings Improvement during the same calendar year; and any expenses relating generally to the Park which are allocated to the Building Project, including, without limitation, any allocation of expenses attributable to the repair and maintenance of the Common Areas of the Park. The following shall be excluded from Operating Expenses: (i) expenses for capital improvements made to the Building Project, other than (A) capital improvements that are expressly included in Operating Expenses as set forth above; and (B) items which, though capital for accounting purposes, are properly considered maintenance and repair items, such as, without limitation, painting of Common Areas [expenses for capital improvements of the type referenced in (A) and (B) of this clause (i) may be included in Operating Expenses]; (ii) expenses for repair, replacement, and general maintenance paid by proceeds of insurance (or which would have been paid by insurance proceeds if Landlord had maintained the insurance required to be maintained by Landlord under this Lease), or by Tenant or other third parties (except by payment of a pro rata share of Operating Expenses, or like reimbursement method); (iii) expenses for repairs or maintenance which are covered by warranties and service contracts, but only to the extent such maintenance and repairs are made at no cost to Landlord; (iv) costs for reserves of any kind; (v) costs and expenses attributable to the correction of any construction defects in the initial construction of the Building or the Leased Premises; (vi) expenses resulting from the negligence or willful misconduct of Landlord, its agents, contractors or employees; (vii) any fines, penalties or interest resulting from Landlord’s failure to pay Real Estate Taxes as and when due; (viii) principal and/or interest payments on, or closing costs relating to, any financing for the Building Project, or in respect of any debt of Landlord; (ix) deductions for depreciation or amortization (except as expressly included in Operating Expenses above); (x) net basic rental under any ground or underlying lease; (xi) costs attributable to obtaining or retaining tenants, including, without limitation, advertising expenses, improvement costs, costs of permits, licenses and inspections, brokerage commissions, moving expenses, architectural fees attorneys’ fees and costs, disbursements and other expenses incurred in negotiating, preparing or executing leases or other occupancy agreements, or modifications, amendments or terminations thereof; (xii) costs (including, without limitation, legal costs), expenses and damages of any kind arising out of or in connection with resolving disputes with other tenants or occupants; (xiii) costs associated with the operation of the business of the entity which constitutes “Landlord” (as distinguished from costs relating to owning, managing, operating, repairing, replacing and maintaining the Building Project), including, but not limited to, Landlord’s or Landlord’s managing agent’s general corporate overhead and general administrative expenses; (xiv) payments to subsidiaries or affiliates of Landlord, or to any party as a result of a non-competitive selection process, for management or other services to the Building Project or any portion thereof, or for supplies or other materials, to the extent the cost of such services, supplies, or materials exceed the cost that would have been paid had the services, supplies or materials been provided by parties unaffiliated with the Landlord on a competitive basis; (xv) charitable and political contributions of Landlord; (xvi) costs of renovating or otherwise improving, painting, decorating, or redecorating leasable space for tenants or other occupants, except in connection with general maintenance of the Building Project; (xvii) costs, penalties or fines arising from Landlord’s violation of any laws, except to the extent such costs reflect costs that would have been incurred by Landlord absent such violation; (xviii) the cost of any large-scale abatement of “Hazardous Substances” (as hereinafter defined), provided, however, Operating Expenses may include the costs attributable to those actions taken by Landlord in connection with the ordinary operation and maintenance of the Building Project, including, without limitation, costs incurred in removing limited amounts of Hazardous Materials from the Building Project when such removal is directly related to such ordinary maintenance and operation; (xix) expenses incurred in connection with services or other benefits of a type which are not made available to Tenant but which are provided to other tenants or occupants; (xx) costs associated with the acquisition of (as contrasted with the maintenance of) sculpture, paintings or other objects of art; (xxi) costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord’s interest in the Building; (xxii) unless any income generated from such concessions is used to reduce Operating Expenses, costs of installing, operating and maintaining any specialty service such as a dining club, cafeteria, health club, observatory, broadcasting facility, retail store, sundry shop, or newsstand, but Operating Expenses may include the costs of operating and maintaining any gym or fitness center for the general use of tenants in the Park (including Tenant); (xxiii) costs of “tap fees” and sewer and water connection fees for the exclusive benefit of any particular tenant in the Building or the Park; (xxiv) costs of traffic studies, transportation system management plans and reports, traffic mitigation measures and other similar matters; (xxv) expenses incurred for the repair, maintenance or operation of any parking facilities that do not provide parking for the Building (including, without limitation, expenses for salaries and benefits of attendants, utility costs, and insurance if relating only to such facilities); and (xxvi) costs and expenses due to the termination or under-funding of any plan under ERISA or any other Laws governing employee pension plans or other benefits. For purposes of determining the Annual Rental Adjustment for any year, if the Building is not fully rented during all or a portion of any year, Landlord may make appropriate adjustments to the Operating Expenses which vary based upon occupancy for such year employing sound accounting and management principles consistently applied, to determine the amount of Operating Expenses that would have been paid or incurred by Landlord had the Building been one hundred percent (100%) occupied, and the amount so determined shall be deemed to have been the amount of Operating Expenses for such year. In addition, in the event any other tenant in the Building provides itself with a service which Landlord would supply under this Lease without an additional or separate charge to Tenant, then Operating Expenses shall be deemed to include the cost Landlord would have incurred had Landlord provided such service to such other tenant.

(c) “*Tenant’s Proportionate Share of Operating Expenses*”: an amount equal to the product obtained by multiplying Tenant’s Proportionate Share by the Operating Expenses for the applicable calendar year.

(d) “*Real Estate Taxes*”: subject to Article 21 of this Lease, any form of real estate tax or assessment or service payments in lieu thereof (as the same may be reduced by any applicable tax abatement, reduction, refund, or rebate) or water or sewer tax or charges, any special assessments due to deed restrictions and/or owners’ associations, of every kind or nature, whether general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond, charges in connection with an improvement district or other similar charge or tax (other than inheritance, personal income, franchise, transfer, capital stock, or estate taxes) imposed upon the Building or Common Areas, or against Landlord’s business of leasing the Building, by any authority having the power to so charge or tax, together with costs and expenses of contesting the validity or amount of the Real Estate Taxes. In addition, if there is levied on Landlord a capital tax directly on the rents received by Landlord, or a franchise tax, assessment, or charge based, in whole or in part, upon such rents for the Project, then all such taxes, assessments or charges, or the part thereof so based, shall be deemed to be included within the term “Real Estate Taxes” for the purposes hereof.

Section 3.03. Payment of Additional Rent.

(a) Any amount required to be paid by Tenant hereunder (other than Minimum Annual Rent) and any charges or expenses incurred by Landlord on behalf of Tenant under the terms of this Lease shall be considered “Additional Rent” payable in the same manner and upon the same terms and conditions as the Minimum Annual Rent reserved hereunder, except as set forth herein to the contrary. Minimum Annual Rent and Additional Rent are sometimes referred to herein, collectively, as “Rent.”

(b) In addition to the Minimum Annual Rent specified in this Lease, commencing as of the Commencement Date, Tenant shall pay to Landlord as Additional Rent for the Leased Premises, in each calendar year or partial calendar year during the Lease Term, an amount equal to the Annual Rental Adjustment for such calendar year or partial calendar year, as the case may be. For the first calendar year of the Lease Term, or any portion thereof, Landlord shall provide Tenant with a written statement in reasonable detail, sufficient for Tenant verification, of the component breakdown of the estimated Operating Expenses for such first calendar year (or portion thereof), including Tenant’s Proportionate Share of Operating Expenses for such period of time. Such estimate shall be based on actual Operating Expenses incurred in the Building and the Park, if any, during the immediately preceding calendar year. Thereafter, Landlord shall estimate the Annual Rental Adjustment annually, and written notice thereof shall be given to Tenant prior to the beginning of each calendar year, or as soon thereafter as is reasonably practicable. If Landlord furnishes an Annual Rental Adjustment estimate for any year subsequent to the commencement thereof, then: (i) until the 1st day of the month following the month in which the Annual Rental Adjustment estimate for such year is furnished to Tenant, Tenant shall pay to Landlord, on the first (1st) day of each calendar month, an amount equal to the monthly estimated Annual Rental Adjustment for the immediately preceding year; (ii) promptly after the Annual Rental Adjustment estimate for such year is furnished to Tenant, or together therewith, Landlord shall give notice to Tenant stating whether the installments of the Annual Rental Adjustment previously made for the then-current year were greater or less than the installments of Annual Rental Adjustment to be made for such year in accordance with the estimate for such year, and: (A) if there shall be a deficiency, Tenant shall pay the amount thereof within ten (10) business days after demand therefor; or (B) if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rent due hereunder; and (iii) on the 1st day of the month following the month in which the Annual Rental Adjustment estimate for such year is furnished to Tenant, and on the first (1st) day of each month thereafter throughout the remainder of such year, Tenant shall pay to Landlord an amount equal to one-twelfth (1/12th) of the Annual Rental Adjustment estimate for such year. Tenant shall pay to Landlord each month, at the same time the Monthly Rental Installment is due, an amount equal to one-twelfth (1/12) of the estimated Annual Rental Adjustment. Tenant shall be responsible for delivering the Additional Rent to the payment address set forth in Section 3.01 above in accordance with this Section 3.03. If Operating Expenses increase during a calendar year, Landlord may increase the estimated Annual Rental Adjustment during such calendar year (but no more than once each calendar year) by giving Tenant written notice to that effect, and thereafter Tenant shall pay to Landlord, in each of the remaining months of such calendar year, an amount equal to the amount of such increase in the estimated Annual Rental Adjustment divided by the number of months remaining in such calendar year. Within ninety (90) days after the end of each calendar year, Landlord shall prepare and deliver to Tenant a statement showing the actual Annual Rental Adjustment for such calendar year; provided, however, that Landlord shall be entitled, if circumstances warrant, to issue one or more revised, corrected, or supplemental statements at any time and from time to time following the issuance of the initial statement. If the estimated Annual Rental Adjustment payments made by Tenant are less than the actual Annual Rental Adjustment, then Tenant shall pay to Landlord the difference between the actual Annual Rental Adjustment for the preceding calendar year and the estimated payments made by Tenant during such calendar year within thirty (30) days after receipt of the aforementioned statement. In the event that the estimated Annual Rental Adjustment payments made by Tenant are greater than the actual Annual Rental Adjustment, then Landlord shall credit the amount of such overpayment toward the next Monthly Rental Installment(s) and the next monthly estimated Annual Rental Adjustment payment(s) due under this Lease until such overpayment is recovered by Tenant in full (or remit such amount to Tenant in the event that this Lease shall have expired or terminated). This Section 3.03 shall survive the expiration or any earlier termination of this Lease.

(c) For the purpose of calculating the Annual Rental Adjustment, “Controllable Operating Expenses” (as hereinafter defined) for calendar year 2022, and each year thereafter, shall not increase by more than four percent (4%) per annum, on a compounded and cumulative basis, over the actual amount of such “Controllable Operating Expenses” for calendar year 2021. As used herein, the term “**Controllable Operating Expenses**” means all Operating Expenses, on a per square foot of Rentable Area basis (as “grossed up” pursuant to Section 3.02(b) of this Lease), other than taxes, insurance, utilities, costs of snow removal or storm cleanup, costs subject to government regulation, such as minimum wages, and all costs incurred to comply with new or revised federal or state laws, municipal or county ordinances or codes or regulations promulgated under any of the same. By way of illustration of the foregoing, in calendar year 2023, the Controllable Operating Expenses shall not exceed the amount determined by the following formula, when “X” equals the actual amount of the Controllable Operating Expenses for calendar year 2021:

$$X \text{ times } 1.04 \text{ times } 1.04 = \text{maximum amount of Controllable Operating Expenses for calendar year 2023.}$$

Thus, if Controllable Operating Expenses for 2021 are \$0.50 per square foot of Rentable Area on a “grossed up” basis, the maximum amount of Controllable Operating Expenses for calendar year 2023 would be $\$0.50 \times 1.04 \times 1.04 = \0.54 per square foot of Rentable Area.

(d) Within ninety (90) days after Tenant’s receipt of a statement of actual Operating Expenses for the preceding year (the “**Actual Operating Expenses Statement**”), Tenant shall have the right, by written request to Landlord, to request a detailed breakdown of Operating Expenses for the preceding year, which shall, in reasonable detail, demonstrate the calculation of actual Operating Expenses for the preceding year and of the amount by which Tenant’s Proportionate Share of Operating Expenses exceeds or is less than the amounts paid by Tenant during such year. Following receipt of such detailed breakdown, Tenant may request, and Landlord shall provide (to the extent in Landlord’s possession), such supporting documentation of individual line-item components of the actual Operating Expenses as Tenant may reasonably request. In addition, within ninety (90) days after Tenant receives the Actual Operating Expenses Statement for any particular year, and provided that there does not then exist a Default hereunder, Tenant may contest such annual Actual Operating Expenses Statement by providing written notice to Landlord, delivered within such ninety (90) day period. If no such contest is made by written notice to Landlord, delivered within such 90-day period, such annual Actual Operating Expenses Statement shall be binding upon Tenant in all respects. If Tenant timely contests such annual Actual Operating Expenses Statement, Tenant shall have the right to inspect and examine, at reasonable times during normal business hours, Landlord’s books of account and records pertaining to the annual Actual Operating Expenses Statement. Such audit shall be conducted at the offices of Landlord’s property manager where such records are kept, or in such other location in the United States where such records are then being kept, within forty-five (45) days after the date of Tenant’s notice, and shall not be conducted at a time or in a manner so as to interfere with Landlord’s operations. Such audit shall be conducted by a certified public accountant retained by Tenant, at its expense, whose compensation is not contingent upon the results of such accountant’s audit or the amount of any refund received by Tenant. Landlord agrees that if Tenant requests evidence or back-up information regarding a specific question (or questions), which Tenant has regarding Operating Expenses or Real Estate Taxes, then Landlord (or Landlord’s property manager) shall make copies thereof available to Tenant. Landlord and/or Landlord’s property manager shall cooperate with Tenant and/or Tenant’s representatives with respect to any such specific inquiries or questions and with respect to the conduct of such audit, so as to facilitate the prompt and efficient answer thereto and/or conduct of same, as applicable. Tenant shall notify Landlord of the results of such audit in writing. Landlord may have an agent or employee present during such inspection and audit. Landlord shall have the right to dispute the results of Tenant’s audit. If the audit by Tenant shall ultimately result in Landlord and Tenant agreeing that Tenant has overpaid Landlord for the Annual Rental Adjustment for the applicable year, such overpayment shall be applied to the next accruing installment(s) of Rent due from Tenant until such credit is depleted. If Landlord and Tenant agree that Tenant has overpaid Landlord for the Annual Rental Adjustment for the applicable year and such overpayment is more than five percent (5%) in excess of the actual amount due as Annual Rental Adjustment, then Landlord shall pay the reasonable out-of-pocket costs and expenses of Tenant in conducting such audit, not to exceed \$2,500.00. Otherwise, Tenant shall pay the cost of such audit. Tenant hereby agrees to keep the results of any such audit confidential, and to require Tenant’s auditor and its employees and each of their respective attorneys and advisors to likewise agree to keep the results of such audit in strictest confidence. In particular, but without limitation, Tenant agrees that: (i) Tenant shall not disclose the results of any such audit to any past, current or prospective tenant of the Building; and (ii) Tenant shall require that its auditors, attorneys, and anyone associated with such parties shall not disclose the results of such audit to any past, current or prospective tenant of Landlord in the Building; provided, however, that Landlord hereby agrees that nothing in items (i) or (ii) above shall preclude Tenant from disclosing the results of such audit in any judicial or quasi-judicial proceeding, or pursuant to court order or discovery request, or to any current or prospective assignee or subtenant of Tenant, or to any agent, representative or employee of Landlord who or which request the same. No subtenant shall have any right to conduct an audit and no assignee shall conduct an audit for any period during which such assignee was not in possession of the Leased Premises. The parties acknowledge that terms of this Section 3.03(d) shall also apply to the Actual Operating Expenses Statement pertaining to the final calendar year (or portion thereof) of the Lease Term, notwithstanding the fact that such Actual Operating Expenses Statement will be provided to Tenant after the end of the Lease Term.

Section 3.04. Late Charges. Tenant acknowledges that Landlord shall incur certain additional unanticipated administrative and legal costs and expenses if Tenant fails to pay timely any payment required hereunder. Therefore, in addition to the other remedies available to Landlord hereunder, if any payment required to be paid by Tenant to Landlord hereunder shall become overdue, such unpaid amount shall: (a) be subject to a late fee equal to the greater of (i) five percent (5%) of the amount past due, or (ii) \$50.00, which late fee represents an agreed upon charge for the administrative expense suffered by Landlord as a result of such late payment and not payment for the use of money or a penalty; and (b) bear interest from the due date thereof to the date of payment at the prime rate of interest, as reported in the Wall Street Journal (the “Prime Rate”) plus six percent (6%) per annum; provided, however, such interest rate shall not be less than twelve percent (12%) per annum.

Section 3.05. Rental Concession. Provided that there does not exist a Default under this Lease, Tenant shall be entitled to a conditional abatement of the Monthly Rental Installments which would otherwise be due with respect to the first (1st) eight (8) full calendar months of the initial year of the Lease Term (the “**Rental Concession**”) (although all such Monthly Rental Installments shall continue to accrue for such period). Notwithstanding the Rental Concession, Tenant shall be obligated to pay all other Rent (including, without limitation, any amounts payable as the Annual Rental Adjustment) due under this Lease for such period. Landlord and Tenant hereby acknowledge and agree that the Rental Concession is a concession in an amount equal to \$1,181,405.84 in total and, if any Default occurs and continues beyond any applicable notice and cure periods set forth in this Lease: (a) the Rental Concession shall be canceled, the portion of the Rental Concession which has not been used by Tenant as of the date of the occurrence of such Default shall automatically terminate and become null and void, Tenant shall no longer be entitled to any rent concession or abatement of rent described in this Section, and Tenant shall thereafter pay all Monthly Rental Installments when due under this Lease, without regard to the Rental Concession provisions of this Lease; and (b) the unamortized amount of the portion of the Rental Concession which has been used by Tenant as of the date of the occurrence of such Default shall become immediately due and payable. For the purposes of clause (ii) of the preceding sentence, the unamortized portion of the Rental Concession which is used by Tenant will be calculated as if the portion of the Rental Concession used by Tenant is being amortized over the “Rental Concession Amortization Period” (as defined below) in equal monthly installments of principal and interest, together with interest at the rate of twelve percent (12%) per annum (or the maximum rate permitted by applicable law, whichever is less). The “**Rental Concession Amortization Period**” means the period commencing on the first (1st) day of the ninth (9th) full calendar month of the initial year of the Lease Term and continuing through the Expiration Date (based on the foregoing, the Rental Concession Amortization Period will consist of one hundred twenty (120) months). Notwithstanding anything contained herein to the contrary, in no event shall the Rental Concession apply to or be deemed to forgive or excuse payment of any “Additional Monthly Payments” (as defined in the Work Letter).

ARTICLE 4 - SECURITY DEPOSIT

Tenant shall not be obligated to pay a security deposit to Landlord.

ARTICLE 5 - OCCUPANCY AND USE

Section 5.01. Use. Tenant shall use the Leased Premises for the Permitted Use and for no other purpose without the prior written consent of Landlord.

Section 5.02. Covenants of Tenant Regarding Use.

(a) Tenant shall: (i) use and maintain the Leased Premises and conduct its business thereon in a safe, careful, reputable and lawful manner; (ii) comply with all covenants and restrictions that encumber the Building and with all applicable laws, rules, regulations, orders, ordinances, codes, directions, and requirements of any governmental authority or agency with jurisdiction over the Building or the Park, now in force or which may hereafter be in force (collectively, the “**Laws**”), including, without limitation, those Laws which shall impose upon Landlord or Tenant any duty with respect to or triggered by a change in the use or occupation of, or any improvement or alteration to, the Leased Premises; and (iii) comply with and obey all reasonable directions, rules, and regulations of Landlord, including the Building rules and regulations attached hereto as **Exhibit D** and made a part hereof (the “**Rules and Regulations**”), as such Rules and Regulations may be modified from time to time by Landlord upon reasonable notice to Tenant. Notwithstanding any provision of this paragraph or any other provision of the Rules and Regulations to the contrary, Landlord hereby agrees that all such rules and regulations, and any changes thereto, shall be non-discriminatory in substance to the tenants of the Building. Landlord may, however, grant exceptions to the Rules and Regulations for particular tenants in particular instances without being deemed to be in violation of the immediately preceding sentence; provided, however, that: (A) if Landlord permanently excuses any other tenant of the Building from complying with any of the Rules and Regulations, then, until such time as such excuse ends, Tenant shall also not be obligated to comply with the applicable Rules and Regulations; and (B) Landlord shall not excuse any other tenant from complying with any Rule and Regulation if Landlord reasonably believes that such excuse will have a material adverse impact on Tenant’s use of the Leased Premises. In the event of a conflict between the Rules and Regulations and the provisions of this Lease, the provisions of this Lease shall govern and control.

(b) Tenant shall not do or permit anything to be done in or about the Leased Premises that will in any way cause a nuisance, obstruct or interfere with the rights of other tenants or occupants of the Building or injure or unreasonably disturb them. Landlord shall not be responsible to Tenant for the non-performance by any other tenant or occupant of the Building of any of the Rules and Regulations, but shall generally use commercially reasonable efforts to enforce the Rules and Regulations uniformly and consistently (provided, however, that Landlord may, in its sole discretion, elect to grant exceptions to one or more of the Rules and Regulations to a particular tenant or tenants, and such election shall not be deemed to be a violation of Landlord's obligations under this Section 5.02(b)). Tenant shall not overload the floors of the Leased Premises. All damage to the floor structure or foundation of the Building due to improper positioning or storage of items or materials shall be repaired by Landlord at the sole expense of Tenant, who shall reimburse Landlord immediately therefor upon demand. Landlord reserves the right to reasonably designate the position of all equipment which Tenant wishes to place within the Leased Premises, and to place limitations on the weight thereof (however, Tenant shall be permitted to place in the "pits" to be installed in the floor slab of the Leased Premises pursuant to Section 7.04 of this Lease the machinery for which such pits are intended, subject to all other applicable terms of this Lease). Tenant shall not use the Leased Premises, nor allow the Leased Premises to be used, for any purpose or in any manner that would (i) invalidate any policy of insurance now or hereafter carried by Landlord on the Building, or (ii) increase the rate of premiums payable on any such insurance policy unless Tenant reimburses Landlord for any such increase in premiums charged. Notwithstanding the foregoing, Tenant's installation of the "pits" in the floor slab of the Leased Premises pursuant to Section 7.04 of this Lease shall not, in and of itself, be deemed to be a breach of this Section 5.02(b).

Section 5.03. Landlord's Rights Regarding Use.

(a) In addition to Landlord's rights specified elsewhere in this Lease, (i) Landlord shall have the right at any time, without notice to Tenant, to control, change or otherwise alter the Common Areas in such manner as it deems necessary or proper, and (ii) Landlord, its agents, employees, representatives, consultants, contractors, and the holders of any Mortgages (each such holder, a "**Mortgagee**"), shall have the right (but not the obligation) to enter any part of the Leased Premises at reasonable times, and to enter upon the Building and Common Areas at any time without notice, for the purposes of examining or inspecting the same (including, without limitation, testing to confirm Tenant's compliance with this Lease), showing the same to prospective purchasers, Mortgagees or tenants, and making such repairs, alterations or improvements to the Leased Premises or the Building as Landlord may deem necessary or desirable. Landlord shall incur no liability to Tenant for such entry (subject to Section 8.03 of this Lease), nor shall such entry constitute an eviction of Tenant or a termination of this Lease, or entitle Tenant to any abatement of rent therefor.

(b) So long as no uncured Default exists, Landlord shall provide Tenant with not less than 24 hours' notice by telephone or email to the on-site office manager of Tenant (if Tenant has provided Landlord with the telephone number and email address for such person) prior to entering the Leased Premises for any reason other than for the provision of any routine services that Landlord is obligated to provide under this Lease, for security inspections, in the case of emergencies or to show the Leased Premises to prospective purchasers and Mortgagees and, during the last nine (9) months of the Lease Term, prospective tenants. Except in the case of emergencies, so long as no uncured Default exists, Tenant shall have the right to have a representative of Tenant accompany Landlord when Landlord enters the Leased Premises, provided that, so long as Landlord provides Tenant with the notice required under this Lease, it is Tenant's obligation to make sure that it has a representative available at the time of Landlord's entry into the Leased Premises, and Tenant's failure to have a representative available at such time shall not preclude Landlord from entering the Leased Premises. In addition, Tenant may designate one or more reasonably-sized areas in the Leased Premises as secure areas (provided that such secure areas shall not include areas containing mechanical, electrical, plumbing, or life-safety equipment that serves areas outside of the Leased Premises or the Building generally, to which Landlord shall have unrestricted access), and, so long as Tenant shall have provided prior written notice to Landlord of the same, and so long as no uncured Default exists, Landlord shall have no access to such secure areas during the Lease Term, except in the case of an emergency.

(c) So long as no uncured Default exists, except in the case of emergencies, Landlord shall comply with any reasonable security procedures established by Tenant for visitors to the Leased Premises which are communicated to Landlord, provided that such security procedures shall in no event prevent or unduly delay Landlord from exercising any right that it may have to enter into the Leased Premises. In addition, Tenant shall be permitted to prohibit Landlord from taking photographs of Tenant's fixtures, equipment, and processes, except to the extent that such photographs are reasonably necessary in connection with the enforcement of this Lease by Landlord.

(d) All limitations and restrictions on Landlord's access to the Leased Premises set forth in above in this Section 5.03 shall not apply to access by members of the police department, members of the fire department, first responders or other law enforcement or emergency response personnel, and shall automatically terminate upon the expiration or earlier termination of this Lease or of Tenant's right to possession of the Leased Premises.

(e) Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right to close or restrict access to all or any portion of the Park (including, without limitation, the Building or the Leased Premises, or both) in the event of an emergency.

(f) Except in the event of an emergency, Tenant shall have the right to prohibit third parties (excluding Landlord and its employees) from entering into the Leased Premises unless such third parties execute and deliver to Tenant a non-disclosure agreement on Tenant's then-standard, commercially reasonable form used by Tenant at all of its locations nationwide; provided, however, that: (i) at any time that an uncured Default exists, such prohibition shall not apply to any of Landlord's agents, representatives, or contractors; (ii) if any contractor or other party retained by Landlord to perform any of Landlord's obligations under this Lease refuses to sign such non-disclosure agreement, then, notwithstanding anything contained in this Lease to the contrary, Landlord shall be granted such additional time to perform its obligations as may be necessary to find a party to perform the applicable obligation that is acceptable to Landlord and that is willing to sign such non-disclosure agreement; and (iii) in no event shall Tenant enforce such prohibition in any manner that would be a violation of any applicable Laws.

Section 5.04. Signage.

(a) Except as set forth in Section 5.04(b) below, Tenant shall not paint, display, inscribe, maintain or affix any sign, placard, picture, advertisement, name, notice, lettering or direction outside of the Leased Premises, or on or in any part of the inside of the Leased Premises which can be seen from the outside of the Leased Premises, without first receiving Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion. Any Tenant signage shall comply with Laws. Landlord reserves the right to remove at Tenant's expense all unapproved sign matter.

(b) Subject to the terms of this Section 5.04(b), so long as no Default exists, Tenant shall have the right to: (i) install and maintain a sign on the façade of the Building (the "**Façade Sign**"); and (ii) place its name and logo on one (1) standard-size panel of the multi-tenant monument sign for the Building that exists as of the date of this Lease (the "**Existing Monument Sign**"). The exterior signs that Tenant is permitted to install and maintain under this Section 5.04(b) are sometimes herein referred to collectively as the "Exterior Signs" (each, an "**Exterior Sign**"). Tenant shall be solely responsible for the cost of the installation, design, manufacture, maintenance and removal of the Façade Sign and Tenant's name and logo for the Existing Monument Sign, and for obtaining all government approvals and permits, if any, required in connection with either such sign. The inability of Tenant to obtain approval and all necessary permits from the appropriate governmental authorities shall not constitute a default by Landlord under this Lease or entitle Tenant to cancel or otherwise terminate this Lease. The location, size, method of installation, design, color scheme and all other aspects of the Exterior Signs shall be subject to Landlord's prior written approval; provided, however, that the general aesthetic design shown on Exhibit E attached hereto and by this reference made a part hereof is hereby approved by Landlord for the Exterior Signs. Upon expiration or earlier termination of this Lease, or at any earlier date upon which a Default occurs, Tenant shall, at its sole cost and expense, remove the Exterior Signs and repair any damage caused by the installation, maintenance or removal thereof. Tenant acknowledges that its rights under this Section 5.04(b) are non-exclusive. Without limiting the generality of the foregoing, Landlord may grant other tenants or third parties rights to place their names and/or logos on the Existing Monument Sign or to have signage on the roof or other exterior portions of the Building or Park, or both. Landlord shall have the right to install one or more additional monument signs outside the Building for use by other tenants, and nothing contained in this Lease shall be deemed to grant Tenant any rights with respect thereto. Any changes that Tenant desires to make to any of its signage under this Section 5.04(b) (whether in connection with an assignment of this Lease or otherwise) shall be subject to the same Landlord approval requirements set forth above with respect to the initial signage, and all costs thereof shall be borne by Tenant.

Section 5.05. Parking. Subject to the terms of this Lease (including, without limitation, any Rules and Regulations pertaining thereto), Tenant shall be entitled to the exclusive use of, and to permit its employees, agents, representatives, contractors, and invitees to use, not more than four hundred eighteen (418) striped parking spaces located in the portion of the Building's parking facilities shown on Exhibit F attached hereto and made a part hereof (the "**Parking Lot**"). Tenant shall have the right to designate any of such parking spaces in the Parking Lot as reserved spaces with advance written notice to Landlord, and provided that Landlord shall have the right to approve the aesthetic appearance of any signage in connection therewith. Tenant shall have no right to use, and shall not use, and shall not allow its employees, agents, representatives, contractors, or invitees to use, any parking areas of the Park other than the Parking Lot. Without limiting the generality of the foregoing, Tenant agrees that its employees will not park in any spaces designated visitor parking. No vehicle may be repaired or serviced in any parking area and any vehicle brought into any parking area by Tenant, or any of Tenant's employees, agents, representatives, contractors, customers, guests or invitees, and deemed abandoned by Landlord will be towed and all costs thereof shall be borne by Tenant. There shall be no parking permitted on any of the streets or roadways located within the Park.

ARTICLE 6 - UTILITIES AND OTHER BUILDING SERVICES

Section 6.01. Services to be Provided. Landlord shall furnish to Tenant, except as noted below, the following utilities and other services:

- (a) Sewer service to the Leased Premises;
- (b) Trash dumpster services at a location to be determined by Landlord for Tenant's use in common with other Building occupants; and
- (c) Repair and maintenance to the extent expressly specified elsewhere in this Lease.

Landlord shall have no obligation to provide any services in addition to or different from the services that Landlord is expressly obligated to provide under this **Section 6.01**. However, if Tenant requests any such additional or different services, and if Landlord elects to provide such services, Tenant shall reimburse Landlord at rates reflecting Landlord's actual cost to provide such services, plus Landlord's then-current standard administrative charge therefor (which administrative charge shall be subject to change from time to time).

Section 6.02. Payment for Utilities and Services. Except as expressly set forth in **Section 6.01** above, Tenant shall arrange, directly with the providers thereof, for the provision of all utilities and other services to the Leased Premises (including, but not limited to, gas, electricity, water, fuel, telecom, and gas), and shall promptly pay all charges for utilities and other services furnished to the Leased Premises by the applicable utility company or service provider. Without limiting the generality of the foregoing, Tenant shall furnish, at Tenant's sole expense, regularly scheduled janitorial service for the Leased Premises five (5) days per week, exclusive of holidays, in a manner that is consistent with comparable buildings in the vicinity of the Building. All utilities furnished to the Leased Premises shall be separately metered, and Tenant shall contract directly with the applicable utility company for the provision of such utility services, and all charges therefor will be invoiced to and paid directly by Tenant. If Tenant does not pay any utility or service charges in a timely manner, Landlord may (but shall not be obligated to do so) pay and collect said charges from Tenant as Additional Rent. Tenant shall not conduct any operation or install any equipment which may exceed or overburden the capacity of any utility facilities serving the Leased Premises. However, to the extent that the Approved Construction Drawings specifically call for the installation of electrical or other utility infrastructure as part of the initial Landlord's Work, Landlord acknowledges that use of such infrastructure to its capacity (but not beyond such capacity) will not be deemed to overburden the capacity of such infrastructure. Should any of Tenant's operations or equipment require additional utility facilities, and if Landlord consents to the installation thereof, Tenant may install such facilities at Tenant's expense pursuant and subject to the terms of **Section 7.03** of this Lease, provided that such installations and facilities comply with all requirements of the insurance underwriters and any governmental authority having jurisdiction there over. Tenant acknowledges that Tenant will have the ability to control the HVAC equipment serving the Leased Premises through the use of one or more thermostats within the Leased Premises.

Section 6.03. Interruption of Services. Landlord does not represent or warrant that any of the services referred to above will be free from interruption and Tenant acknowledges that any one or more of such services may be suspended by reason of accident, repairs, inspections, alterations or improvements necessary to be made, or by strikes or lockouts, or by reason of operation of law, or causes beyond the reasonable control of Landlord. The rental herein reserved shall not be abated by reason of any interruption, reduction or discontinuance of service (except as expressly set forth below in this Section 6.03), nor will any such event or occurrence be deemed an eviction or disturbance of Tenant's use and possession of the Leased Premises, or any part thereof, by Landlord, nor, except as may otherwise be expressly set forth herein, will any such event or occurrence render Landlord liable to Tenant for damages or relieve Tenant from performance of Tenant's obligations under this Lease. Furthermore, Landlord shall be entitled to cooperate voluntarily in a reasonable manner with the efforts of national, state or local governmental agencies or utilities suppliers in reducing consumption of energy, water or any other resources, so long as the operation of Tenant's business in and from the Leased Premises is not materially, adversely affected thereby. In the event of any failure to furnish, or any stoppage of, any of the "Critical Services" (as hereinafter defined) for a period in excess of five (5) consecutive business days, and if: (a) such interruption is restricted to the Building and is not a neighborhood blackout; (b) such failure to furnish or stoppage is caused by the sole negligence or willful misconduct of Landlord or by the failure of Landlord to commence and diligently pursue repairs for which Landlord is responsible under this Lease; (c) such interruption results in the Leased Premises becoming untenantable; and (d) Tenant actually ceases to occupy the Leased Premises as a result thereof, Tenant shall be entitled to an abatement of Minimum Annual Rent and the Annual Rental Adjustment which shall commence on the sixth (6th) business day (and shall not be retroactive) and shall continue for the remainder of the period of such failure to furnish or stoppage of such specified services. As used in this Section 6.03, the "**Critical Services**" are: electricity, HVAC, and water service. If any Critical Services are interrupted, to the extent that Landlord is responsible for remedying the conditions that caused such interruption under the terms of this Lease, Landlord shall use commercially reasonable efforts to remedy such conditions as soon as reasonably practicable after notice from Tenant.

ARTICLE 7 - REPAIRS, MAINTENANCE AND ALTERATIONS

Section 7.01. Repair and Maintenance of Building. As used herein: (a) the term "**Building Systems**" means the mechanical, electrical, plumbing (including water, sanitary sewer, and storm sewer), sprinkler, security, life-safety, and other service systems or facilities of the Building (including pipes, wires, conduits, and utility lines), including portions thereof located outside of the Building, up to the point of connection of localized distribution to the Leased Premises (excluding, however, supplemental or other systems exclusively serving the Leased Premises, as well as sprinklers and the horizontal distribution systems within and servicing the Leased Premises and by which mechanical, electrical, plumbing, sanitary, heating, ventilating and air conditioning, security, life-safety and other service systems are distributed from the Building feeders, panelboards, etc. for provision of such services to the Leased Premises); and (b) the term "**Branch Systems**" means mechanical, electrical, plumbing, sanitary, sprinkler, HVAC, security, life safety and other service systems and facilities serving only the Leased Premises (and not any other tenant's premises), up to the point of connection with Building Systems. Landlord shall keep and maintain in good condition and repair (including any necessary replacements) the Common Areas located within the Building Project and the following portions of the Building: the foundations, the exterior paint, the Building Systems, and the structural systems of the base Building (both interior and exterior), including, without limitation, the roof, roof membrane, roof drains, roof covering, load bearing walls, columns, lintels, beams, footings, floor slabs, and masonry walls. However, Landlord shall have no obligation to repair, maintain, or replace any heating, ventilating and air conditioning ("**HVAC**") systems. As used in this Section 7.01, "exterior walls" shall exclude Building fronts, plate glass, window cases, or window frames, doors or door frames, security grilles, and similar enclosures. The cost of such repairs, replacements and maintenance shall be included in Operating Expenses to the extent provided in Section 3.02; provided however, that to the extent any such repairs, replacements or maintenance are required because of the negligence, misuse or default of Tenant, its employees, agents, contractors, customers, or invitees, Landlord shall make such repairs at Tenant's sole expense.

Section 7.02. Repair and Maintenance of Leased Premises. Excepting only Landlord's obligations under Section 7.01 above, Tenant shall, at its own cost and expense, maintain the Leased Premises in good condition, regularly servicing and promptly making all repairs and replacements, and providing all maintenance, thereto, including, without limitation, all HVAC systems and Branch Systems serving the Leased Premises, all supplemental or other systems serving the Leased Premises, and all plate glass, floors, windows, doors, dock doors, and dock equipment. Tenant shall obtain and maintain continuously throughout the Lease Term a preventive maintenance contract on the HVAC system with a licensed HVAC contractor and shall provide Landlord with a copy thereof. The preventive maintenance contract and such contractor shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. If, for any reason, within five (5) business days after Tenant's request, Landlord fails to object to or approve such contract or contractor, such contract and contractor shall be deemed disapproved by Landlord. Furthermore, the preventive maintenance contract shall meet or exceed Landlord's standard maintenance criteria, and shall provide for the inspection and maintenance of the HVAC system at least once per calendar quarter.

Section 7.03. Alterations.

(a) Tenant shall be entitled to make non-structural, cosmetic alterations to the Leased Premises costing in the aggregate not in excess of \$100,000.00 per calendar year without Landlord's consent, as long as such alterations: (i) do not involve structural portions of the Leased Premises or Building; (ii) do not involve Building systems (including, but not limited to, HVAC systems, life safety systems, electrical and plumbing systems); (iii) do not involve excess noise or fumes of any type; and (iv) are not visible from outside of the Leased Premises ("Cosmetic Alterations"). Tenant shall provide not less than ten (10) days' prior written notice to Landlord of Tenant's intention to perform any Cosmetic Alterations, which notice shall include a reasonable description of the nature of the Cosmetic Alterations to be performed and the plans and specifications therefor, if any, a list of contractors and subcontractors to perform the work (and certificates of insurance for each such party), the anticipated time of commencement and the anticipated time of completion. Except for Cosmetic Alterations, Tenant shall not permit alterations in or to the Leased Premises unless and until Landlord has approved the plans therefor in writing. Provided that the criteria set forth in clauses (i) through (iv) above in this paragraph are met, Landlord will not unreasonably withhold, condition or delay its approval. If Landlord fails to respond to any request by Tenant for approval of any alterations within five (5) business days after its receipt of such request, Landlord shall be deemed to have disapproved such alterations. However, if Landlord is deemed to have disapproved such alterations by reason of Landlord's failure to timely notify Tenant in writing of Landlord's approval or disapproval, Tenant may provide Landlord with written notice of such failure to respond (the "**Second Notice**"), which, in order to be effective, must clearly, conspicuously and in bold type face set forth the following statement at the top of the first page of the Second Notice: "SECOND NOTICE! THE FAILURE OF LANDLORD TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER THE RECEIPT OF THIS SECOND NOTICE BY LANDLORD SHALL BE DEEMED TO BE APPROVAL OF THE PROPOSED ALTERATIONS." If Landlord should fail to notify Tenant in writing of its election as to such proposed alterations within five (5) business days after receipt of such Second Notice, Landlord shall be deemed to have approved the applicable alterations. If Tenant undertakes any alterations without Landlord's consent that do, in fact, require such consent, without limiting any other remedy available to Landlord, Landlord shall have the right to cause Tenant to remove such alterations. Tenant shall ensure that all alterations shall be made in accordance with all applicable Laws, in a good and workmanlike manner and of a quality at least equal to the quality of the original construction of the Building. In the event that Tenant makes any alterations, prior to the commencement thereof, Tenant shall provide Landlord with evidence that Tenant's general contractor carries commercial general liability insurance (including property damage coverage), worker's compensation insurance, and "Builder's Risk" insurance in an amount reasonably approved by Landlord covering the construction of such alterations, and such other insurance as Landlord may reasonably require. In addition, Landlord may, in its discretion, require Tenant to obtain lien, payment, and performance bonds, or some alternate form of security reasonably satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such alterations and naming Landlord and any Mortgagee as co-obligees. No person shall be entitled to any lien derived through or under Tenant for any labor or material furnished to the Leased Premises, and nothing in this Lease shall be construed to constitute Landlord's consent to the creation of any lien. If any lien is filed against the Leased Premises for work claimed to have been done for or materials claimed to have been furnished to Tenant, Tenant shall cause such lien to be discharged of record or bonded over within thirty (30) days after filing. Tenant shall indemnify Landlord from all costs, losses, expenses and attorneys' fees in connection with any construction or alteration and any related lien. Tenant, at its expense, shall, as and when required, promptly obtain certificates of partial and final approval of such alterations required under any Laws and shall furnish Landlord with copies thereof, together with "as-built" plans and specifications for such alterations, using customary naming conventions and other features provided for by the American Institute of Architects (or such other naming conventions as Landlord may accept). The parties acknowledge that: (A) the mere placement of Tenant's machinery and other movable trade fixtures within the Leased Premises, and any changes specifically to such items, shall not be considered "alterations" for purposes of this Section 7.03(a); and (B) the performance of Landlord's Work shall be governed by the Work Letter, not this Section 7.03(a).

(b) Subject to Section 7.04 below, unless Tenant receives written approval from Landlord, at the time Landlord approves such alterations, to surrender such alterations with the Leased Premises (which Tenant may request at such time), Landlord may, by written notice to Tenant, require Tenant, at Tenant's expense, to remove the Landlord's Work and/or any alterations, and to repair any damage to the Leased Premises and/or the Building caused by such removal. However, notwithstanding the foregoing, Tenant shall not be required to remove any customary general office installations (as opposed to alterations, leasehold improvements or physical additions which are not standard office installations, such as, without limitation, kitchens, pantries, raised computer floors, computer rooms, data centers, safe deposit boxes, vaults, libraries or file rooms requiring reinforcement of floors, floor slab penetrations, and other alterations and/or leasehold improvements of a similar character, and as opposed to alterations, leasehold improvements or physical additions which relate to non-office uses).

Section 7.04. Pits.

(a) Tenant intends to create "pits" in the floor slab of the Leased Premises to house Tenant's equipment. Tenant shall be permitted to perform work related to the installation of such pits pursuant and subject to the terms of Section 7.03 above, except that, notwithstanding anything contained in Section 7.03 above to the contrary: (i) all plans and specifications for such work, as well as all architects, engineers, and contractors engaged by Tenant in connection therewith, shall be subject to Landlord's approval in its sole and absolute discretion; (ii) Landlord shall have the right to supervise and direct (or to retain a third party to supervise and direct on Landlord's behalf) all or any portion of such work, and Tenant shall fully cooperate with Landlord in connection therewith, including, without limitation, causing Tenant's architects, engineers, and contractors to comply with Landlord's instructions and directives; and (iii) Tenant shall reimburse Landlord for all reasonable costs actually incurred by Landlord in connection with such work. In addition, Landlord may, in its discretion, require Tenant to obtain lien, payment, and performance bonds, or some alternate form of security satisfactory to Landlord, in an amount sufficient to ensure the lien-free completion of such work, and naming Landlord and any Mortgagee as co-obligees. Notwithstanding anything contained in this Lease to the contrary, on or before the expiration or earlier termination of this Lease, Tenant shall remove Tenant's equipment from such pits, shall fill in such pits, and shall make all repairs to the floor slab of the Leased Premises that may be necessary to restore the floor slab to its condition prior to the installation of such pits. All such work shall be performed using methods and materials, and otherwise in a manner, reasonably acceptable to Landlord. If Tenant fails to timely perform its repair and restoration work under this Section 7.04(a), then, without limiting any other remedy available to Landlord, Landlord may perform such obligations, and, in such event, Tenant shall reimburse Landlord for all reasonable costs actually incurred by Landlord in connection therewith. Tenant's obligations under this Section 7.04(a) shall survive the expiration or earlier termination of this Lease.

(b) Tenant may perform the installation work contemplated by Section 7.04(a) above while Landlord is performing the Landlord Work pursuant and subject to the terms of Section 2.06 of this Lease.

ARTICLE 8 - INDEMNITY AND INSURANCE

Section 8.01. Release. All of Tenant's equipment, trade fixtures, merchandise, inventory, special fire protection equipment, telecommunication and computer equipment, supplemental air conditioning equipment, kitchen equipment and other personal property located in or about the Leased Premises, the Building or the Common Areas, which is deemed to include the trade fixtures, merchandise, inventory and personal property of others located in or about the Leased Premises or Common Areas at the invitation, direction or acquiescence (express or implied) of Tenant (all of which property shall be referred to herein, collectively, as "***Tenant's Property***"), shall be and remain at Tenant's sole risk. Landlord shall not be liable to Tenant or to any other person for, and Tenant hereby releases Landlord (and its affiliates, property managers, and Mortgagees) from: (a) any and all liability for theft of or damage to Tenant's Property; and (b) any and all liability for any injury to Tenant or its employees, agents, representatives, contractors, customers, guests and invitees in or about the Leased Premises, the Building, the Common Areas, or the Park, except to the extent that any of such loss or liability is caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors. Nothing contained in this Section 8.01 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.01, the provisions of Section 8.06 shall prevail. This Section 8.01 shall survive the expiration or earlier termination of this Lease.

Section 8.02. Indemnification by Tenant. Tenant shall protect, defend, indemnify, and hold harmless Landlord, its agents, and employees from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) to the extent arising out of or relating to: (a) the negligence, or willful misconduct of Tenant or Tenant's agents, representatives, guests, employees, contractors, customers, or invitees; (b) bodily injury or property damage result from risk or attributes specifically associated with Tenant's Property; (c) any other act or occurrence within the Leased Premises, (d) any transaction related to the tax incentives contemplated by Article 21 of this Lease; or (e) any breach of this Lease by Tenant, in all such cases except to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors. Nothing contained in this Section 8.02 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.02, the provisions of Section 8.06 shall prevail. This Section 8.02 shall survive the expiration or earlier termination of this Lease.

Section 8.03. Indemnification by Landlord. Landlord shall protect, defend, indemnify, and hold harmless Tenant, its agents, and employees from and against any and all claims, damages, demands, penalties, costs, liabilities, losses and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) to the extent arising out of or relating to: (a) any negligence or willful misconduct of Landlord or Landlord's agents, representatives, employees, or contractors; or (b) any breach of this Lease by Landlord, in all such cases except to the extent caused by the negligence or willful misconduct of Tenant, its agents, employees or contractors. Nothing contained in this Section 8.03 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.03, the provisions of Section 8.06 shall prevail. This Section 8.03 shall survive the expiration or earlier termination of this Lease.

Section 8.04. Tenant's Insurance.

(a) During the Lease Term (and any period of early entry or occupancy or holding over by Tenant, if applicable), Tenant shall maintain the following types of insurance, in the amounts specified below:

(i) Liability Insurance. Commercial General Liability Insurance, ISO Form CG 00 01, or its equivalent, covering Tenant's use of or occupancy at the Leased Premises against claims for bodily injury or death or property damage, which insurance shall be primary and non-contributory and shall provide coverage on an occurrence basis with a per occurrence limit of not less than \$5,000,000 for each policy year, which limit may be satisfied by any combination of primary and excess or umbrella per occurrence policies.

(ii) Property Insurance. Special Form Insurance in the amount of the full replacement cost of Tenant's Property, all alterations or additions performed by or for Tenant pursuant hereto, and all other leasehold improvements (but excluding the roof, life-safety system, exterior walls, foundation, and structural frame of the Building), which insurance shall waive coinsurance limitations. Any insurance provided for in this Section 8.04(a)(ii) may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insureds, provided, however, that: (A) such blanket insurance shall be written on an occurrence basis; and (B) the requirements set forth in this Section 8.04 are otherwise satisfied.

(iii) Worker's Compensation Insurance. Worker's Compensation insurance in amounts required by applicable Laws; provided, if there is no statutory requirement for Tenant, Tenant shall still obtain Worker's Compensation insurance coverage.

(iv) Business Interruption Insurance. Business Interruption Insurance with limits not less than an amount equal to twelve (12) months' rent hereunder.

(v) Automobile Insurance. Commercial Automobile Liability Insurance insuring bodily injury and property damage arising from all owned, non-owned and hired vehicles, if any, with minimum limits of liability of \$1,000,000 combined single limit, per accident.

(vi) Pollution Liability Insurance. Pollution Liability Insurance for bodily injury, property damage and environmental damage caused by pollution incidents arising from the Leased Premises. The policy will also cover emergency response expenses that are required to contain and remediate the contamination onsite where there is a legal obligation to do so. Minimum liability limits shall be \$1,000,000. Coverage shall include: First Party Onsite Cleanup, Third Party Bodily Injury/Property Damage, Offsite Cleanup for both new and pre-existing conditions, Sudden & Accidental and Gradual Pollution incidents, Emergency Response Expense coverage, coverage for business interruption, and Illicit Abandonment Coverage

(b) All insurance required to be carried by Tenant hereunder shall (i) be issued by one or more insurance companies reasonably acceptable to Landlord, authorized to do business in the State in which the Leased Premises is located and having an AM Best's rating of A- VII or better, and (ii) provide that said insurer shall endeavor to provide thirty (30) days prior notice if coverage is materially changed, canceled or permitted to lapse. In addition, Tenant shall name Landlord and any other parties in interest from time to time designated by Landlord to Tenant as loss payee under all property policies required to be maintained by Tenant under this Lease (except for any policies covering only Tenant's Property), and shall name Landlord, Landlord's managing agent, and any Mortgagee requested by Landlord as additional insureds under all liability, excess and umbrella policies required to be maintained by Tenant under this Lease (but only to the extent of the limits required hereunder). On or before the Commencement Date (or the date of any earlier entry or occupancy by Tenant), and thereafter, prior to the expiration of each such policy, Tenant shall furnish Landlord with certificates of insurance in the form of ACORD 25 (or other evidence of insurance reasonably acceptable to Landlord), evidencing all required coverages, and that with the exception of Workers' Compensation insurance, such insurance is primary and non-contributory. Upon Tenant's receipt of a request from Landlord, Tenant shall provide Landlord with all endorsements, as well as evidence reasonably acceptable to Landlord that Tenant is carrying the coverages required hereunder. If Tenant fails to carry such insurance and furnish Landlord with such evidence, Landlord may obtain such insurance on Tenant's behalf and Tenant shall reimburse Landlord upon demand for the cost thereof as Additional Rent. Landlord reserves the right from time to time to require Tenant to obtain higher minimum amounts or different types of insurance if it becomes customary for other landlords of similar buildings in the area to require similar sized tenants in similar industries to carry insurance of such higher minimum amounts or of such different types.

Section 8.05. Landlord's Insurance. During the Lease Term, Landlord shall maintain the following types of insurance, in the amounts specified below (the cost of which shall be included in Operating Expenses):

(a) Liability Insurance. Commercial General Liability Insurance, ISO Form CG 00 01, or its equivalent, covering the Common Areas against claims for bodily injury or death and property damage, which insurance shall provide coverage on an occurrence basis with a per occurrence limit of not less than \$5,000,000 for each policy year, which limit may be satisfied by any combination of primary and excess or umbrella per occurrence policies.

(b) Property Insurance. Special Form Insurance in the amount of the full replacement cost of the Building, including, without limitation, the roof, life-safety system, exterior walls, foundation, and structural frame of the Building, but excluding Tenant's Property and any other items required to be insured by Tenant pursuant to Section 8.04 above.

Section 8.06. Waiver of Subrogation. Notwithstanding anything contained in this Lease to the contrary: (a) Landlord and Tenant shall each have included in all policies of property insurance (including, without limitation, business interruption insurance) respectively obtained by them covering the Leased Premises, the Building or any contents therein (or any combination of the foregoing), and in all policies of liability insurance respectively obtained by them, a waiver by the insurer of all right of subrogation against the other in connection with any loss or damage thereby insured against; and (b) Tenant shall have included in its Worker's Compensation insurance policy a waiver by the insurer of all right of subrogation against Landlord. Any additional premium for such waiver shall be paid by the primary insured. To the full extent permitted by law, Landlord and Tenant each waives all right of recovery against the other, and agrees to release the other from liability, for loss or damage to the extent such loss or damage is covered by valid insurance, in effect covering the party seeking recovery at the time of such loss or damage, or would be covered by the insurance required to be maintained under this Lease by the party seeking recovery. If the release of either party, as set forth above, should contravene any law with respect to exculpatory agreements, the liability of the party in question shall be deemed not released but shall be secondary to the liability of the other's insurer.

ARTICLE 9 - CASUALTY

Section 9.01. Total Destruction. If the Building should be totally destroyed by fire, tornado or other casualty, either Landlord or Tenant may terminate this Lease by notice to the other party within thirty (30) days after the occurrence of such destruction, and this Lease shall expire on the thirtieth (30th) day after the date of such notice.

Section 9.02. Partial Destruction.

(a) If the Building should be damaged to the extent that, in Landlord's reasonable judgment, repair would not be economically feasible; or that rebuilding or repairs cannot, in Landlord's estimation, be completed within two hundred ten (210) days after the date of such damage; or if the insurance proceeds remaining after any required payments to Mortgagees are insufficient to repair such damage or destruction, Landlord shall have the right, at Landlord's option, to terminate this Lease by giving Tenant written notice of such termination within sixty (60) days after the date of such casualty, and the Rent shall be apportioned and paid to the date on which possession is relinquished or the date of such damage, whichever last occurs, and Tenant shall promptly vacate the Leased Premises according to such notice of termination.

(b) If the Building should be damaged by any peril covered by the insurance to be provided by Landlord under Section 8.05 above, but only to such extent that rebuilding or repairs are, in Landlord's estimation, economically feasible and can be completed within two hundred ten (210) days after the date of such damage and the proceeds of such insurance, after deducting any required payments to Mortgagees, are sufficient for such rebuilding or repairs, then, unless this Lease is terminated by either Landlord or Tenant pursuant to an express termination right under this Article 9, this Lease shall not terminate, and Landlord shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair the Building to substantially the condition in which it existed prior to such damage, except that Landlord shall not be required to rebuild, repair or replace any of the leasehold improvements, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Leased Premises. If Tenant does not occupy the Leased Premises during the period of such repairs, then during such period, Landlord shall regularly communicate with Tenant regarding the progress of such repairs so that Tenant can reasonably plan for the commencement of Tenant's occupancy of the Leased Premises. If the Leased Premises are untenable in whole or in part following such damage, the Rent payable hereunder during the period in which the Leased Premises are untenable shall be reduced to such extent as may be fair and reasonable under all of the circumstances.

Section 9.03. Tenant's Obligations. Tenant shall be obligated to repair and restore all leasehold improvements, alterations and additions situated in or about the Leased Premises in the event of any damage or destruction thereto by any peril covered by the provisions of this Article 9; provided, however, that, if this Lease is terminated under this Article 9, then, in lieu of repairing and restoring such items, Tenant shall promptly pay to Landlord all insurance proceeds received by Tenant for the damage or destruction pertaining to such items. Tenant shall use commercially reasonable efforts to obtain such proceeds from its insurer(s). Tenant's obligations under this Section 9.03 shall survive the expiration or earlier termination of this Lease.

Section 9.04. Termination.

(a) Notwithstanding anything herein to the contrary, in the event any Mortgagee requires that the insurance proceeds be applied to the indebtedness due such Mortgagee, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made by any such Mortgagee, whereupon all rights and obligations hereunder shall cease and terminate.

(b) If any damage under this Article 9 renders all or a “Substantial Portion” (as hereinafter defined) of the Leased Premises untenable, and if Landlord does not exercise any right that it may have to terminate this Lease, Landlord shall, not more than sixty (60) days after the occurrence of such damage, provide Tenant with a reasonable estimate from an independent architect or contractor of the length of time that will be required to substantially complete the repair and restoration of the Leased Premises to the extent such repair and restoration are the obligation of Landlord hereunder, and shall by notice advise Tenant of such estimate. If it is so estimated that the amount of time required to substantially complete such repair and restoration of the Leased Premises will exceed two hundred ten (210) days from the date such damage occurred, then Tenant shall have the right to terminate this Lease as of the date of notice of such election by giving notice to Landlord at any time within twenty (20) days after Landlord gives Tenant the notice containing said estimate. If this Lease is not terminated in connection with such damage, Landlord will fulfill its repair and restoration obligations under this Article 9. However, Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease (except as hereinafter provided), if such repairs and restoration are not in fact completed within the estimated time period provided by Landlord, as aforesaid, or within said two hundred ten (210) days. However, if such repairs and restoration are not completed by a date (the “**Outside Date**”) which is twelve (12) months after the date of such fire or other casualty [or ninety-five (95) days after the expiration of the time period estimated by Landlord as aforesaid, if longer than two hundred ten (210) days and neither party terminated the Lease as permitted], which Outside Date shall be extended (as to Tenant’s ability to terminate the Lease only) by all periods of delay attributable to Force Majeure and/or the acts or omissions of Tenant, or Tenant’s agents, employees or contractors, then either party may terminate this Lease effective as of the date of notice of such election, by giving written notice to the other party within the thirty (30) day period after such Outside Date, as extended as aforesaid, but prior to substantial completion of repair or restoration. As to Tenant’s right to terminate, a Force Majeure extension of the Outside Date (but not an extension due to the acts or omissions of Tenant, or Tenant’s agents, employees or contractors) shall be limited to a maximum of twelve (12) months. As used herein, the phrase “**Substantial Portion**” of the Leased Premises means more than fifty percent (50%) of the Rentable Area of the Leased Premises.

(c) Notwithstanding anything to the contrary in this Article 9, if any damage during the final twelve (12) months of the Lease Term renders the Leased Premises wholly untenable, 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 (30th) day after the date of such notice. For purposes of this Section 9.04(c), the Leased Premises shall be deemed wholly untenable if Tenant shall be precluded from using more than fifty percent (50%) of the Leased Premises for the conduct of its business and Tenant’s inability to so use the Leased Premises is reasonably expected to continue for more than ninety (90) days.

ARTICLE 10 - EMINENT DOMAIN

If the whole or any “Substantial Part” (as hereinafter defined) of the Leased Premises should be taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, either Landlord or Tenant may terminate this Lease effective as of the date on which the physical taking of the Leased Premises shall occur, in which event the Rent shall be apportioned and paid to such date. If part of the Leased Premises shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, and this Lease is not terminated as provided above, this Lease shall not terminate but the Rent payable hereunder during the unexpired portion of this Lease shall be reduced to such extent as may be fair and reasonable under all of the circumstances. If part of Tenant’s Parking Lot shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, and there are less than one hundred (100) parking spaces remaining in Tenant’s Parking Lot after such taking, then Tenant shall have the right to terminate this Lease as of the date the condemning authority takes title or possession, whichever occurs first, by giving written notice of such termination to Landlord not later than thirty (30) days after said date; provided, however, that if Landlord is able to provide alternative parking arrangements within the Park so that, when combined with any then-remaining parking within the Parking Lot, such alternative parking arrangements result in at least one hundred (100) parking spaces being made available to Tenant, then Tenant shall have no right to terminate this Lease. All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Leased Premises, the Building or other improvements, or any part thereof, shall be the property of Landlord and Tenant hereby assigns its interest in any such award to Landlord; provided, however Landlord shall have no interest in any award made to Tenant for loss of business, loss to Tenant’s Property, or relocation expenses if a separate award for such items is made to Tenant. In no event shall Landlord be required under this Lease to incur any expenses in excess of available proceeds from any taking contemplated hereby for the purposes of restoring the Building or the Leased Premises after any such taking. As used in this Article 10, the phrase “**Substantial Part**” of the Leased Premises means: (a) if the “Tenant” under this Lease is the original Tenant that executed this Lease or a party that succeeded to the interest of such original Tenant by a Permitted Transfer, more than twenty percent (20%) of the production area (i.e., the area where Tenant’s max machines are located) portion of the Leased Premises; and (b) if the “Tenant” under this Lease is any other party, such portion of the Premises as would prevent or materially interfere with the use of or access to the Leased Premises for the purpose for which they are being used.

ARTICLE 11 - ASSIGNMENT AND SUBLEASE

Section 11.01. Assignment and Sublease.

(a) Except for a Permitted Transfer, Tenant shall not, without the prior written consent of Landlord, which consent shall be granted or denied in accordance with Section 11.01(b) below, assign this Lease, permit any assignment of this Lease or any interest hereunder by operation of law or otherwise, sublet the Leased Premises or any part thereof, or enter into any license or concession agreements or otherwise permit the occupancy or use of the Leased Premises or any part thereof by any persons other than Tenant and its employees. In addition, Tenant shall not, without the prior written consent of Landlord, which may be withheld for any reason or for no reason, in the sole and absolute discretion of Landlord, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to this Lease or any interest hereunder. In the event of any permitted assignment or subletting: (i) Tenant shall remain primarily liable hereunder; and (b) unless such assignment or subletting is a Permitted Transfer, any extension, expansion, rights of first offer, rights of first refusal or other options granted to Tenant under this Lease shall be rendered void and of no further force or effect. The acceptance of rent by Landlord from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Lease or to be a consent to the assignment of this Lease or the subletting of the Leased Premises. No assignment or sublease shall relieve Tenant (or its assignee) from obtaining Landlord's consent to any subsequent assignment or sublease hereunder.

(b) Notwithstanding the provisions of Section 11.01(a) above, Landlord shall not unreasonably withhold, condition or delay its consent to an assignment of this Lease in its entirety or to any subletting of the Leased Premises. By way of example and not limitation, Landlord shall be deemed to have reasonably withheld consent to a proposed assignment or sublease if in Landlord's reasonable opinion (i) the Leased Premises are or may be in any way adversely affected thereby; (ii) the business reputation of the proposed assignee or subtenant is unacceptable; (iii) the financial worth of the proposed assignee or subtenant is insufficient to meet the obligations of Tenant under this Lease, (iv) the prospective assignee or subtenant is a current tenant at the Park or is a bona-fide third-party prospective tenant to which Landlord has made, or from which Landlord has received, a written offer or written request for proposal concerning the leasing or use of space at the Park, (v) any Default shall have occurred and shall then be continuing, (vi) the character of the business to be conducted or the proposed use of the Leased Premises by the proposed subtenant or assignee is likely to: (a) increase Operating Expenses beyond those which would be incurred for use by Tenant or for use in accordance with the standards of use of other tenancies in the Building and in parks and buildings that are similar to the Building and the Park located in the greater Atlanta, Georgia area, (b) violate any provision or restrictions herein or in any other leases in the Park, or (c) increase the demand for parking spaces beyond those required by Tenant under this Lease, (vi) such transfer will result in more than two (2) tenants or subtenants, including Tenant, occupying the Leased Premises, (vii) any guarantor of this Lease shall refuse to consent to such assignment or sublease, or refuse to agree in writing, in a manner satisfactory to Landlord, that such transaction shall not affect such guarantor's liability under its guaranty, (viii) the proposed subtenant or assignee is a federal, state or local government, or an agency or instrumentality thereof, or is entitled, directly or indirectly, to diplomatic or sovereign immunity, or (ix) the proposed subtenant or assignee is not subject to service of process in, and the jurisdiction of the courts of, the State of Georgia. Landlord further expressly reserves the right to refuse to give its consent to any subletting if the proposed rent is publicly advertised to be less than the rent publicly advertised for similar premises in comparable buildings in the vicinity of the Building. The foregoing shall in no way limit Landlord's ability to withhold or delay its consent for any other reason which is reasonable under the circumstances. If Landlord refuses to give its consent to any proposed assignment or subletting, unless such assignment or subletting is a Permitted Transfer, Landlord may, at its option, within thirty (30) days after receiving a request to consent, terminate this Lease by giving Tenant thirty (30) days' prior written notice of such termination, whereupon each party shall be released from all further obligations and liability hereunder, except those which expressly survive the termination of this Lease. If Landlord fails to approve or disapprove any assignment or sublease within fifteen (15) business days after Tenant's request for approval thereof, Landlord shall be deemed to have disapproved such assignment or sublease. However, if Landlord is deemed to have disapproved such assignment or sublease by reason of Landlord's failure to timely notify Tenant in writing of Landlord's election, Tenant may provide Landlord with written notice of such failure to respond (the "**Second Notice**"), which, in order to be effective, must clearly, conspicuously and in bold type face set forth the following statement at the top of the first page of the Second Notice: "SECOND NOTICE! THE FAILURE OF LANDLORD TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER THE RECEIPT OF THIS SECOND NOTICE BY LANDLORD SHALL BE DEEMED TO BE A CONSENT TO THE PROPOSED SUBLEASE OR ASSIGNMENT." If Landlord should fail to notify Tenant in writing of its election as to such sublease or assignment within five (5) business days after receipt of such Second Notice, Landlord shall be deemed to have approved such assignment or sublease.

(c) If Tenant shall make any assignment or sublease, with Landlord's consent, for a rental in excess of the rent payable under this Lease, Tenant shall pay to Landlord fifty percent (50%) of any "Transfer Premium" (as hereinafter defined) received by Tenant from the transferee. "Transfer Premium" shall mean all rent, including additional rent, and other consideration payable by such transferee, or any other entity or person related to, or affiliated with such transferee, in connection with the assignment or sublease or such party's occupancy of the Leased Premises or any part thereof in excess of the Rent payable by Tenant under this Lease, on a per square foot basis if less than all of the Leased Premises is transferred, after deducting the reasonable expenses incurred by Tenant for: (i) any changes, alterations and improvements to the transfer space in connection with the transfer; (ii) any commercially reasonable out-of-pocket concessions provided to the transferee; and (iii) any commercially reasonable brokerage commissions in connection with the transfer. The Transfer Premium shall also include, but not be limited to, key money, bonus money or other cash consideration paid by the transferee, or any other entity or person related to, or affiliated with such transferee, to Tenant in connection with the assignment or sublease, and any payment in excess of fair market value for services rendered by Tenant to the transferee, or for assets, fixtures, inventory, equipment or furniture transferred by Tenant to the transferee in connection with such assignment or sublease. Upon request by Landlord, Tenant shall provide to Landlord paid invoices and other documents and information satisfactory to Landlord evidencing any expenses incurred by Tenant pursuant to the foregoing terms of this Section 11.01(c). Whether or not Landlord consents to any proposed transfer, Tenant shall pay Landlord's review and processing fees, as well as any reasonable professional fees and expenses (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees and expenses) incurred by Landlord. If requested by Landlord, such fees shall be due and payable to Landlord prior to Landlord's execution of a consent to the proposed transfer.

Section 11.02. Permitted Transfer. Notwithstanding anything contained in this Article 11 to the contrary, but subject to compliance with all other provisions of this Lease, Tenant shall have the right, upon thirty (30) days' prior written notice to Landlord (the "**Permitted Transfer Notice**"), to assign this Lease or sublet the Leased Premises, without Landlord's consent, to a "Tenant Affiliate" or a "Permitted Successor" (both as hereinafter defined), provided that: (a) with respect to a transfer to a Permitted Successor, the tangible net worth (exclusive of goodwill) of the Permitted Successor is equal to or greater than Tenant's net worth on the date of Landlord's execution of this Lease; (b) in the case of an assignment, the Tenant Affiliate or Permitted Successor shall unconditionally assume in writing, and shall be deemed to have assumed, this Lease and shall be jointly and severally liable with Tenant for all payments and for the due performance of all terms, covenants and conditions herein contained which are required to be paid and performed by Tenant; (c) no assignment shall be binding upon Landlord unless such assignee shall deliver to Landlord an instrument containing a covenant of assumption by such assignee, but the failure or refusal of such assignee to execute the same shall not release either the assignor or such assignee from its liability as set forth herein effective upon the consummation of such assignment; (d) the Tenant Affiliate or Permitted Successor (as applicable) shall have a good business reputation, as determined in Landlord's reasonable judgment; (e) with respect to a transfer to a Tenant Affiliate, the Tenant Affiliate remains an affiliate meeting the definition of "Tenant Affiliate" for the duration of the subletting or the balance of the Lease Term in the event of an assignment, and neither Tenant nor any guarantor of this Lease, or of any of the obligations of Tenant hereunder, are dissolved as a matter of law as a consequence of the assignment or subletting or at any time thereafter; (f) no proposed assignment or sublease shall be effective unless any guarantor of this Lease, or of any of the obligations of Tenant hereunder, consents to such assignment or sublease and agrees in writing with Landlord that such transaction shall not affect such guarantor's liability under its guaranty; and (g) the primary purpose of such assignment or sublease is for legitimate business reasons unrelated to this Lease and such assignment or sublease is not, in whole or in part, a subterfuge to avoid the obligations or restrictions set forth in this Lease. Tenant shall provide, in the Permitted Transfer Notice, a financial statement and such other information for the Tenant Affiliate or Permitted Successor (as applicable), to establish that the proposed assignment or sublease meets the requirements of this Section 11.02, and such other information as Landlord may reasonably require to assess compliance with these terms. No assignment or subletting permitted by this paragraph shall relieve Tenant of its primary liability under this Lease. As used herein: (i) the term "**Tenant Affiliate**" means any partnership, corporation or other entity which controls, is controlled by, or is under common control with Tenant; (ii) the term "**Permitted Successor**" means any partnership, corporation or other entity resulting from a merger or consolidation with Tenant, or any person or entity which acquires substantially all the assets, ownership interests or stock of Tenant as a going concern; (iii) the term "**control**" means ownership of at least fifty percent (50%) of the equity interests in, or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of, the controlled entity; and (iv) the term "**Permitted Transfer**" shall refer to any assignment or sublease to a Tenant Affiliate or Permitted Successor that does not require Landlord's consent under this Section 11.02.

ARTICLE 12 - TRANSFERS BY LANDLORD

Section 12.01. Sale of the Building. Landlord shall have the right to sell the Building and Common Areas at any time during the Lease Term, subject only to the rights of Tenant hereunder; and such sale shall operate to release Landlord from liability accruing hereunder after the date of such conveyance.

Section 12.02. Estoppel Certificate. Within ten (10) business days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost to Landlord, an estoppel certificate in such form as Landlord may reasonably request certifying: (a) that this Lease is in full force and effect and unmodified or stating the nature of any modification; (b) the date to which rent has been paid; (c) that there are not, to Tenant's knowledge, any uncured defaults or specifying such defaults if any are claimed; and (d) any other matters or state of facts reasonably required respecting this Lease. Such estoppel may be relied upon by Landlord and by any purchaser or Mortgagee of the Building.

Section 12.03. Subordination.

(a) Tenant accepts this Lease as subject and subordinate to any recorded mortgages, deeds to secure debt, deeds of trust, ground leases and other similar security instruments (each, a "***Mortgage***") and encumbrances presently existing or hereafter created upon the Leased Premises or Building, and all other encumbrances and matters of public record applicable to the Building or Park or any part thereof presently existing or hereafter created upon the Leased Premises or Building, including without limitation, any reciprocal easement or operating agreements, ground or underlying leases, covenants, conditions and restrictions, and all amendments, modifications and restatements thereof, and all replacements and substitutions therefor. If any such Mortgage be foreclosed, upon request of the holder thereof, Tenant will attorn to the purchaser at the foreclosure sale. The foregoing provisions are declared to be self-operative and no further instruments shall be required to effect such subordination and/or attornment. Within ten (10) business days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost, any commercially reasonable instrument that Landlord deems reasonably necessary or desirable to confirm the subordination of this Lease.

(b) Without limiting the generality of Section 12.03(a) above, Tenant acknowledges that, in connection with the tax incentives contemplated by Article 21 of this Lease, Landlord may be required to transfer title to the Building or Building Project to an instrumentality of Henry County, which will then lease the Building or Building Project (as applicable) to Landlord (such lease being hereinafter referred to as the "***Development Authority Lease***"). In such event, upon the consummation of the Development Authority Lease: (i) this Lease shall become a sublease under the Development Authority Lease; and (ii) this Lease shall become subject and subordinate to the Development Authority Lease. The foregoing provisions are declared to be self-operative and no further instruments shall be required to effect the subordination of this Lease to the Development Authority Lease. However, within ten (10) business days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost, any commercially reasonable instrument that Landlord deems necessary or desirable to confirm the subordination of this Lease to the Development Authority Lease. Should the Development Authority Lease be terminated prior to the expiration or earlier termination of this Lease, then, upon the transfer of title to the Building Project back to Landlord, this Lease shall remain in effect as a direct lease between Landlord and Tenant, and shall no longer be subject and subordinate to the Development Authority Lease.

(c) After the full execution and delivery of this Lease, Landlord shall not voluntarily record as an encumbrance upon the Leased Premises, the Building, and/or the Park any covenants, conditions, and restrictions relating to Leased Premises, the Building, and/or the Park which have the effect of prohibiting Tenant's use of the Leased Premises for the Permitted Use, or of materially modifying any express rights granted to Tenant under this Lease with respect to use of the Leased Premises or the Parking Lot, or loading or unloading or truck access. However, the recording of any instrument that may be required to effect the tax incentives contemplated by Article 21 of this Lease shall in no event be deemed to be a breach of this Section 12.03(c).

ARTICLE 13 - DEFAULT AND REMEDY

Section 13.01. Default. The occurrence of any of the following shall be a “*Default*”:

(a) Tenant shall fail to pay any installment of the Rent herein reserved when due, or any other payment or reimbursement to Landlord required herein when due, and such failure shall continue for a period of five (5) business days after Landlord gives Tenant written notice of such past due Rent or other payment; or Tenant shall fail to pay Rent or any other payment required herein within five (5) business days after the date due, at any time during a twelve (12) month period in which Tenant has already received two (2) previous notices of its failure to pay Rent or other payments by the due date.

(b) Tenant fails to perform or observe any other term, condition, covenant or obligation required under this Lease (other than those governed by subsections (c) through (e) below) for a period of thirty (30) days after written notice thereof from Landlord; provided, however, that if the nature of Tenant’s default is such that more than thirty (30) days are reasonably required to cure, then such default shall be deemed to have been cured if Tenant commences such performance within said thirty (30) day period and actually completes such performance within ninety (90) days after Landlord’s notice of the applicable failure.

(c) Tenant shall fail to deliver any instrument or certificate required under Article 12 of this Lease within the applicable time period therefor specified in such Article 12.

(d) Tenant shall assign or sublet all or a portion of the Leased Premises in violation of the provisions of Article 11 of this Lease.

(e) All or substantially all of Tenant’s assets in the Leased Premises or Tenant’s interest in this Lease are attached or levied under execution (and Tenant does not discharge the same within sixty (60) days thereafter); a petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Tenant (and Tenant fails to secure a stay or discharge thereof within sixty (60) days thereafter); Tenant is insolvent and unable to pay its debts as they become due; Tenant makes a general assignment for the benefit of creditors; Tenant takes the benefit of any insolvency action or law; the appointment of a receiver or trustee in bankruptcy for Tenant or its assets if such receivership has not been vacated or set aside within sixty (60) days thereafter; or, dissolution or other termination of Tenant’s corporate charter if Tenant is a corporation.

(f) Failure of Tenant to comply with any of the terms and provisions of Article 15 of this Lease relating to Hazardous Substances, and such failure continues for more than two (2) business days after written notice from Landlord to Tenant requiring that Tenant correct such failure.

Notwithstanding anything contained in this Lease to the contrary, if Tenant breaches any non-monetary covenant, condition or agreement contained herein on Tenant’s part to be kept or performed three (3) or more times within any twelve (12) month period, the third, and each subsequent, breach during such twelve (12) month period shall constitute an immediate Default by Tenant under this Lease, without the necessity of providing any notice, or any grace or cure period, to Tenant, and Landlord shall be entitled to immediately exercise any remedy available under this Lease, at law or in equity. For the avoidance of doubt, any initial or second breach of any non-monetary covenant, condition or agreement contained herein on Tenant’s part to be kept or performed during any twelve (12) month period may ripen into a Default (which will entitle Landlord to exercise its remedies), but Landlord shall be obligated to first provide Tenant with any applicable notice, and any applicable grace or cure period, that may be set forth in this Lease; provided, however, that nothing contained in this paragraph shall be deemed to create any independent requirement to provide notices, or grace or cure periods, other than or in addition to any such requirements that may be set forth elsewhere in this Lease.

Section 13.02. Remedies. Upon the occurrence of any Default which continues beyond any applicable notice and cure period under this Lease, Landlord shall have the following rights and remedies, in addition to those stated elsewhere in this Lease and those allowed by law or in equity, any one or more of which may be exercised without further notice to Tenant (provided, however, that Landlord may not exercise any remedy in a manner that would violate any applicable Law):

(a) Landlord may re-enter the Leased Premises and cure any such Default of Tenant, and Tenant shall, within ten (10) days after demand therefor, reimburse Landlord, as Additional Rent, for any reasonable costs and expenses that Landlord thereby reasonably incurs; and Landlord shall not be liable to Tenant for any loss or damage that Tenant may sustain by reason of Landlord's action.

(b) Landlord may terminate this Lease by giving Tenant notice of termination, in which event this Lease shall expire and terminate on the date specified in such notice of termination and all rights of Tenant under this Lease and in and to the Leased Premises shall terminate, except with respect to any provisions thereunder that expressly survive such termination. Tenant shall remain liable for all obligations under this Lease arising up to the date of such termination, and Tenant shall surrender the Leased Premises to Landlord on the date specified in such notice and otherwise in accordance with the surrender requirements of this Lease. Furthermore, in the event that Landlord terminates this Lease, Tenant shall be liable to Landlord for the unamortized balance of the cost paid for Landlord's Work and of brokerage fees paid in connection with this Lease.

(c) Without terminating this Lease, Landlord may terminate Tenant's right to possession of the Leased Premises, and thereafter, neither Tenant nor any person claiming under or through Tenant shall be entitled to possession of the Leased Premises. In such event, Tenant shall immediately surrender the Leased Premises to Landlord, and Landlord may re-enter the Leased Premises and dispossess Tenant and any other occupants of the Leased Premises by any lawful means and may remove their effects, without prejudice to any other remedy that Landlord may have. Upon termination of possession, Landlord may re-let all or any part thereof as the agent of Tenant for a term different from that which would otherwise have constituted the balance of the Lease Term and for rent and on terms and conditions different from those contained herein, whereupon Tenant shall be immediately obligated to pay to Landlord an amount equal to: (i) the difference between the Rent provided for herein and the amount of any lesser amount of rent provided for in any lease covering a subsequent re-letting of the Leased Premises, for the period which would otherwise have constituted the balance of the Lease Term, had this Lease not been terminated (said period being referred to herein as the "**Remaining Term**"); (ii) the costs of recovering possession of the Leased Premises and all other expenses, loss or damage incurred by Landlord by reason of Tenant's Default ("**Default Damages**"), which shall include, without limitation, expenses of preparing the Leased Premises for re-letting, demolition, repairs, tenant finish improvements, brokers' commissions and attorneys' fees, (iii) the unamortized balance of the cost paid for Landlord's Work and of brokerage fees paid in connection with this Lease, and (iv) all unpaid Minimum Annual Rent and Additional Rent that accrued prior to the date of termination of possession, plus any interest and late fees due hereunder (collectively, the "**Prior Obligations**"). Neither the filing of any dispossessory proceeding nor an eviction of personalty in the Leased Premises shall be deemed to terminate this Lease.

(d) Landlord may at its option, declare the difference, if any, between: (a) the entire amount of Rent which would become due and payable during the remainder of the Term, discounted to present value using a discount rate equal to the Prime Rate in effect as of the date of such declaration; and (b) the fair rental value of the Leased Premises during the remainder of the Term (taking into account, among other factors, an assessment of future market conditions for the Leased Premises, the probability of reletting the Leased Premises for all or part of the remainder of the Term, the anticipated duration of the period the Leased Premises will be unoccupied prior to reletting and the anticipated cost of reletting the Leased Premises), also discounted to present value using a discount rate equal to the Prime Rate in effect as of the date of such declaration, to be due and payable immediately and Tenant agrees to pay the same at once, together with all Rent and other sums theretofore due; it being understood and agreed that such payment shall be and constitute Landlord's liquidated damages, Landlord and Tenant acknowledging and agreeing that it is difficult or impossible to determine the actual damages Landlord would suffer from Tenant's breach hereof and that the agreed upon liquidated damages are not punitive or penalties and are just, fair and reasonable, all in accordance with Official Code of Georgia Annotated §13-6-7. If Landlord exercises the election set out in this Section 13.02(d), Landlord hereby waives any right to assert that Landlord's actual damages are greater than the amount calculated hereunder.

(e) Unless prohibited by applicable Law, Landlord may sue for injunctive relief or to recover damages for any loss resulting from the Default. In no event, however, shall Landlord be liable to Tenant for any punitive damages.

Section 13.03. Landlord's Default and Tenant's Remedies. Landlord shall be in default if it fails to perform any term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Tenant to Landlord; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is such that it cannot reasonably be performed within thirty (30) days, such default shall be deemed to have been cured if Landlord commences such performance within said thirty-day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such default by Landlord, Tenant may sue for injunctive relief or to recover damages for any loss directly resulting from such default, but Tenant shall not be entitled to terminate this Lease or withhold, offset or abate any sums due hereunder. In no event, however, shall Landlord be liable to Tenant for any consequential or punitive damages.

Section 13.04. Nonwaiver of Defaults. Neither party's failure nor delay in exercising any of its rights or remedies or other provisions of this Lease shall constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision at that time or in the future. No waiver of any default shall be deemed to be a waiver of any other default. Landlord's receipt of less than the full Rent due shall not be construed to be other than a payment on account of rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance due or to pursue any other remedy available to Landlord. No act or omission by Landlord or its employees or agents during the Lease Term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept such a surrender shall be valid unless in writing and signed by Landlord.

Section 13.05. Attorneys' Fees. If either party defaults in the performance or observance of any of the terms, conditions, covenants, or obligations contained in this Lease, and if the non-defaulting party obtains a judgment against the defaulting party, then the defaulting party agrees to reimburse the non-defaulting party for reasonable attorneys' fees incurred in connection therewith.

Section 13.06. Mitigation of Damages. Subject to the terms of this **Section 13.06**, if a Default by Tenant under this Lease occurs and continues beyond any applicable notice and cure period under this Lease, and if Landlord terminates Tenant's right to possess the Leased Premises, Landlord shall use commercially reasonable efforts to mitigate its damages under this Lease; provided, however, that (a) Landlord shall have no obligations to solicit or entertain negotiations with any other prospective tenants for the Leased Premises unless and until Landlord obtains possession of the Leased Premises and Tenant has acknowledged no further possessory rights therein; (b) Landlord shall not be obligated to lease or show the Leased Premises on a priority basis, it being the intent hereof that any such space shall be treated by Landlord as a part of Landlord's general supply of unleased, previously built-out space in the Building, and Landlord shall be obligated merely to use reasonable efforts to respond in the ordinary course of Landlord's business to inquiries concerning the Leased Premises, and shall not be required to exceed such efforts as Landlord generally uses to lease other space in the Building; (c) Landlord will not be deemed to have failed to mitigate if Landlord or its affiliates lease any other portions of the Building or other properties owned by Landlord or its affiliates in the same geographic area, before reletting all or any portion of the Leased Premises; and (d) any failure to mitigate as described herein with respect to any period of time shall only reduce the Rent and other amounts to which Landlord is entitled hereunder by the reasonable rental value of the Leased Premises during such period. In recognition that the value of the Building depends on the rental rates and terms of leases therein, Landlord's rejection of a prospective replacement tenant based on an offer of rents below Landlord's published rates for new leases of comparable space at the Building at the time in question, or at Landlord's option, below the rates provided in this Lease, or containing terms less favorable than those contained herein, shall not give rise to a claim by Tenant that Landlord failed to mitigate Landlord's damages. Furthermore, Landlord shall not be obligated to enter into a lease with a prospective replacement tenant which does not have, in Landlord's reasonable opinion, sufficient financial resources to fulfill all of financial obligations in connection with the lease thereof as and when the same become due, or whose use would: (i) violate any restriction, covenant, or requirement contained in the lease of another tenant of the Park; (ii) adversely affect the reputation of the Building or the Park; or (iii) in Landlord's reasonable judgment, be incompatible with the operation of the Building.

ARTICLE 14 - NO RIGHT TO RELOCATE TENANT

Without Tenant' prior written consent, which Tenant may grant or withhold, in its sole discretion, Landlord shall not have the right to relocate Tenant from the Leased Premises to other space in the Building during the Lease Term. However, nothing contained in this Article 14 shall limit Landlord's rights and remedies in the event of a Default by Tenant.

ARTICLE 15 – LANDLORD'S AND TENANT'S RESPONSIBILITIES REGARDING ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES

Section 15.01. Environmental Definitions.

(a) “**Environmental Laws**” shall mean all present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Leased Premises, the Building and the Common Areas, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or entity having jurisdiction over the environmental and ecological condition of the Leased Premises, the Building and the Common Areas.

(b) “**Hazardous Substances**” shall mean asbestos, polychlorinated biphenyls, oil, gasoline or other petroleum based liquids, any and all materials or substances deemed hazardous, toxic, pollutant, infectious or radioactive, or regulated by Environmental Laws, including, but not limited to, substances defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq. (or any state counterpart to the foregoing statutes) or determined to present the unreasonable risk of injury to health or the environment under the Toxic Substances Control Act, as amended, 15 U.S.C. §2601 et seq. However, the following shall not be deemed to be Hazardous Substances for purposes of this Lease: (i) components incorporated in photocopying equipment; word processors; printers; telephone systems; computers; scanners; facsimile machines; binders; televisions; refrigerators; microwave ovens; or any similar or related equipment or systems now or hereafter routinely employed in connection with general office use, and (ii) small quantities of fluids, powders, toner and similar materials routinely used in the operation thereof which are properly used, handled, stored in appropriate containers and disposed of in accordance with any and all applicable Laws.

Section 15.02. Restrictions on Tenant.

(a) Subject to the terms of this Lease (including, without limitation, this Article 15), Tenant shall be permitted to make use and storage of the substances listed on Exhibit G attached hereto and incorporated herein by reference, as well as commercially reasonable amounts of materials customarily and commonly used by similar businesses for the purposes of cleaning which are properly used, handled, and stored in appropriate containers (all of the materials described above in this sentence being sometimes herein referred to collectively as “**Permitted Hazardous Substances**”), for purposes of its normal business operations in the Leased Premises, but only to the extent that: (i) such materials are in quantities normally used in Tenant’s business operations; (ii) such materials are handled, stored and disposed of in accordance with all applicable Laws (including, without limitation, all applicable Environmental Laws); and (iii) a copy of the current safety data sheet (“**SDS**”) or material safety data sheet (“**MSDS**”) is available for each of the Permitted Hazardous Substances and for each product containing any Permitted Hazardous Substances. Subject only to the terms of Section 15.02(c) and Article 20 of this Lease, but notwithstanding anything else contained in this Lease to the contrary, in no event shall Permitted Hazardous Substances include any materials or substances if and to the extent that the use or presence thereof would (A) require a physical change to the Leased Premises to comply with NFPA 30 Flammable and Combustible Liquids Code or any other Environmental Laws; or (B) result in the United States Environmental Protection Agency classifying the Leased Premises or any portion of the Park as “Small or Large Quantity Generators.” As required by Environmental Laws and fire regulations, Tenant shall keep an inventory of the Permitted Hazardous Substances used and/or stored in or on the Leased Premises and agrees to provide an updated inventory of such Permitted Hazardous Substances upon request from Landlord. Notwithstanding the foregoing, all such Permitted Hazardous Substances must be used, handled, stored in appropriate containers and disposed of in accordance with all applicable Laws (including, without limitation, all Environmental Laws) and all applicable safety standards and practices prevailing in the industry in which Tenant is engaged.

(b) Except as expressly set forth in Section 15.02(a) above, Tenant shall not cause or permit the presence, use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Leased Premises, the Building, the Common Areas or the Park, or the transportation to or from the Leased Premises of any Hazardous Substances.

(c) Landlord reserves the right to inspect, take samples for testing, and otherwise investigate the Leased Premises to verify Tenant's compliance with the terms of Section 15.02 ("**Testing**"), and may enter the Leased Premises for such purposes, subject to Section 5.03 of this Lease, and provided that Landlord shall give Tenant reasonable prior notice of any such Testing that would reasonably be expected to impact Tenant's business operations. So long as no Default exists, Landlord shall use commercially reasonable efforts to minimize any interference with Tenant's business operations within the Leased Premises in connection with any such entry into the Leased Premises and to comply, and cause its employees, agents and subcontractors to comply, with all commercially reasonable contractor and vendor guidelines relating to safety as reasonably established by Tenant. If Tenant or its employees, agents or contractors violate the provisions of this Article 15, or if Hazardous Substances brought onto the Leased Premises are released by Tenant, then Tenant must, at its sole cost and expense, undertake such corrective action and/or remediation activities, including but not limited to the clean-up, removal, and/or disposal of such Hazardous Substances, or undertake such other appropriate measures (e.g., install protective measures) with respect to any such Hazardous Substances on the Leased Premises or the Park, as are reasonably deemed necessary by Landlord to restore the Leased Premises to a condition substantially similar to that prior to such violation or release of Hazardous Substances ("**Corrective Action**"). Such Corrective Action must be performed in compliance with all applicable governmental standards, laws, and rules, and regulations within such period of time as may be prescribed thereby, or if there is no such prescribed time period, within such period of time as may be reasonable under the circumstances. If Tenant fails to promptly commence the required Corrective Action, or fails to pursue such Corrective Action to completion, with diligence, or if such Corrective Action is not actually completed within any time period that may be prescribed therefor by any applicable governmental authority, or, if there is no such prescribed time period, within such period of time as may be reasonable under the circumstances, then Landlord shall have the right, but not the obligation, to undertake the required Corrective Action after thirty (30) days' written notice to Tenant (or sooner if Landlord, in good faith, believes that faster action is required to avoid or minimize legal liability to Landlord or unreasonable risk to any tenant or occupant of the Park; provided that, in such event, Landlord shall provide to Tenant as much advance notice as may be reasonably practicable under the circumstances), and, in such event, Tenant shall reimburse Landlord for all reasonable costs incurred by Landlord in connection therewith within thirty (30) days after Landlord provides an invoice to Tenant therefor.

(d) Notwithstanding anything herein to the contrary, on or before the expiration or earlier termination of this Lease, Tenant must, at its sole cost and expense, remove from the Leased Premises all Hazardous Substances brought to the Property by or on behalf of Tenant, and all equipment and fixtures that have been in contact with any such Hazardous Substances, and repair any and all damage to the Leased Premises or Park caused by such removal. Within thirty (30) days after any request by Landlord therefor, Tenant must deliver to Landlord a written report from a registered professional engineer licensed in the State of Georgia stating that he or she has inspected the Leased Premises, and confirmed that all known Hazardous Substances used or released by Tenant, and Tenant's equipment, fixtures, and containers of any type containing Hazardous Substances, have been removed from the Leased Premises. Tenant's obligations under this Section 15.02(d) shall survive the expiration or earlier termination of this Lease.

Section 15.03. Notices, Representations, Etc. Tenant shall promptly: (a) notify Landlord of: (i) any violation by Tenant, its employees, agents, representatives, guests, customers, invitees or contractors of which Tenant is aware of any Environmental Laws on, under or about the Leased Premises, the Building, the Common Areas or the Park, or (ii) the presence or suspected presence of any Hazardous Substances other than Permitted Hazardous Substances of which Tenant is aware on, under or about the Leased Premises; and (b) deliver to Landlord any notice received by Tenant relating to (a)(i) and (a)(ii) above from any source. Tenant shall provide a written representation within five (5) days of Landlord's request therefor concerning Tenant's best knowledge and belief regarding the presence of any Hazardous Substances on, under or about the Leased Premises.

Section 15.04. Tenant's Indemnification. Tenant shall indemnify, defend and hold harmless Landlord and Landlord's managing agent from and against any and all claims (including but not limited to claims by third parties and governmental entities), losses, liabilities, costs, expenses, penalties and damages, including, without limitation, attorneys' fees, costs of testing and remediation costs, to the extent arising from, relating to, in connection with, or caused in whole or in part, directly or indirectly, by: (a) the discharge or release in or from the Leased Premises or any portion thereof of Hazardous Substances by any party other than Landlord or its employees, agents, or contractors; (b) the use, generation, transportation, handling, presence, disposal, storage, release or discharge of Hazardous Substances to, in, on, under, about or from the Building Project or Park by Tenant, its directors, officers, agents, contractors, employees or invitees (even if the use of such Hazardous Substances is permissible under all applicable Environmental Laws and the provisions of this Lease); (c) the failure by Tenant, its directors, officers, agents, contractors, employees or invitees to comply with any Laws relating to Hazardous Substances (including, without limitation, any Environmental Laws); or (d) by reason of any failure of Tenant to keep, observe, or perform any provision of this Article 15. Tenant further agrees to pay any and all fines, charges, assessments, fees, damages, losses, claims, liabilities or response costs to the extent arising out of or any way connected with the violation of any applicable Environmental Laws by Tenant, its directors, officers, agents, contractors, employees or invitees. The indemnifications set forth in this paragraph are in addition to any and all other indemnification obligations of Tenant set forth in this Lease.

Section 15.05. Existing Conditions. Notwithstanding anything contained in this Article 15 to the contrary, Tenant shall not have any liability to Landlord under this Article 15 resulting from any conditions existing, or events occurring, or any Hazardous Substances existing or released, at, in, on, under, to, from, or in connection with the Leased Premises prior to the Commencement Date of this Lease (or any earlier occupancy of the Leased Premises by Tenant) (“**Existing Environmental Conditions**”), except to the extent that Tenant or any assignee or subtenant of Tenant, or any of their respective employees, agents, contractors, representatives, guests, customers or invitees exacerbates the same. Landlord represents to Tenant that, as of the date of execution of this Lease by Landlord: (a) to its actual knowledge, the Leased Premises do not contain any Hazardous Substances, the presence of which violates any Environmental Laws currently applicable to the Project; and (b) except as may be set forth in that certain Phase I Environmental Site Assessment, Lambert Farms Phase II, dated March 28, 2017 by Contour Engineering provided by Landlord to Tenant prior to the execution of this Lease (which Tenant acknowledges having received and reviewed), Landlord has not received any notice from any governmental body or third party regarding violations of, or noncompliance with, any Environmental Laws with respect to the Building.

Section 15.06. Landlord’s Indemnification. Landlord shall indemnify, defend and hold Tenant harmless from and against any and all claims (including but not limited to claims by third parties and governmental entities), losses, liabilities, costs, penalties and damages, including without limitation, consultants’ fees, experts’ fees, attorneys’ fees, costs of testing and remediation costs, to the extent arising from or caused in whole or in part, directly or indirectly by the storage, handling, treatment, release, disposal, presence or use of Hazardous Substances in, on or about the Leased Premises, the Building or Park in violation of Environmental Laws by Landlord, its agents, employees or contractors. The indemnifications set forth in this paragraph are in addition to any and all other indemnification obligations of Landlord set forth in this Lease.

Section 15.07. Interpretation. The obligations imposed upon Tenant under this Article 15 are in addition to and are not intended to limit, but to expand upon, the obligations imposed upon Tenant under Article 5 above.

Section 15.08. Survival. The covenants and obligations under this Article 15 shall survive the expiration or earlier termination of this Lease.

ARTICLE 16 - MISCELLANEOUS

Section 16.01. Benefit of Landlord and Tenant. Subject to Article 11 of this Lease, this Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns.

Section 16.02. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the jurisdiction where the Building is located.

Section 16.03. Force Majeure. Each of Landlord and Tenant shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control, including, but not limited to, work stoppages, boycotts, slowdowns or strikes; epidemics or pandemics; shortages of materials, equipment, labor or energy; unusual weather conditions; or acts, omissions or delays of actions of governmental or political bodies (any such occurrence herein referred to as “**Force Majeure**”); provided nothing in this Lease (including, without limitation, this Section 16.03) shall be deemed to excuse, delay, or extend the time for performance of any of Tenant’s obligations to pay Rent or any other sums to be paid by Tenant hereunder.

Section 16.04. Examination of Lease. Submission of this instrument by Landlord to Tenant for examination or signature does not constitute an offer by Landlord to lease the Leased Premises. This Lease shall become effective, if at all, only upon the execution by and delivery to both Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord constitutes an offer to lease the Leased Premises on the terms contained herein.

Section 16.05. Indemnification for Leasing Commissions. Each of Landlord and Tenant hereby represents and warrants that the only real estate brokers involved in the negotiation and execution of this Lease are the Brokers and that no other party is entitled, as a result of its actions, to a commission or other fee resulting from the execution of this Lease. Each of Landlord and Tenant shall indemnify the other from any and all liability for the breach of this representation and warranty on its part and shall pay any compensation to any other broker or person who may be entitled thereto. Landlord shall pay any commissions due the Brokers based on this Lease pursuant to separate agreements between Landlord and Brokers.

Section 16.06. Notices. Except for legal process, which may also be served in accordance with Laws, any notice or communication required or permitted hereunder shall be in writing and shall be sent by: (a) personal delivery service with charges therefor billed to shipper; (b) nationally recognized overnight delivery service (such as Federal Express, United Parcel Service, Airborne, etc.) with charges therefor billed to shipper; or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested. Any notice or communication sent as above provided shall be deemed given or delivered: (i) upon receipt, if personally delivered (provided delivery is confirmed by the courier delivery service); (ii) on the date of delivery by any nationally recognized overnight delivery service; or (iii) if sent by United States Mail, on the date appearing on the return receipt therefor, or if there is no date on such return receipt, the receipt date shall be presumed to be the postmark date appearing on such return receipt. Notice shall be considered given and received on the latest original delivery or attempted delivery date to all persons and addresses to which notice is to be given, as indicated on the return receipt(s) of the United States Mail or delivery receipts of the personal delivery service or nationally recognized overnight delivery service. Any notice or communication which cannot be delivered because of failure to provide notice of a change of address as herein provided or for which delivery is refused shall be deemed to have been given and received on the date of attempted delivery. Any notice or communication required or permitted hereunder shall be addressed to Landlord or Tenant (as applicable) at the address(es) for such party set forth in Article 1 of this Lease, or at such other addresses as Landlord or Tenant may have designated by notice to the other given as provided above. Tenant shall not designate an address for notices which is outside the Continental United States. Any notice address designated by Tenant shall contain a street address, city, state and ZIP code.

Section 16.07. Partial Invalidity; Complete Agreement. If any provision of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect. This Lease represents the entire agreement between Landlord and Tenant covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Lease except by a written agreement executed by Landlord and Tenant.

Section 16.08. Financial Statements. During the Lease Term and any extensions thereof, Tenant shall provide to Landlord on an annual basis, within ninety (90) days following the end of Tenant's fiscal year, a copy of Tenant's most recent financial statements prepared as of the end of Tenant's fiscal year. Such financial statements shall be signed by Tenant or an officer of Tenant, if applicable, who shall attest to the truth and accuracy of the information set forth in such statements, or if the Minimum Annual Rent hereunder exceeds \$100,000.00, said statements shall be either be certified by Tenant's chief financial officer or audited. All financial statements provided by Tenant to Landlord hereunder shall be prepared in conformity with generally accepted accounting principles, consistently applied. Notwithstanding anything contained in this Section 16.08 to the contrary, Landlord shall have no right to require Tenant to provide any information that is then publicly available.

Section 16.09. Representations and Warranties.

(a) Tenant hereby represents and warrants that: (i) Tenant is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the jurisdiction under which it was organized; (ii) Tenant is authorized to do business in the jurisdiction where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Tenant has been properly authorized to do so, and such execution and delivery shall bind Tenant to its terms.

(b) Landlord hereby represents and warrants that: (i) Landlord is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the jurisdiction under which it was organized; (ii) Landlord is authorized to do business in the jurisdiction where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Landlord has been properly authorized to do so, and such execution and delivery shall bind Landlord to its terms.

Section 16.10. Rights Reserved by Landlord. Landlord shall also have the following rights, exercisable without notice and without liability to Tenant for damage or injury to property, person or business and without effecting any eviction, constructive or actual, or disturbance of Tenant's use or possession of the Leased Premises or giving rise to any claim for setoff or abatement of Rent:

(a) To designate and approve, prior to installation, all window shades, blinds, drapes, awnings, window ventilators, lighting and other similar equipment to be installed by Tenant that may be visible from the exterior of the Leased Premises or the Building.

(b) To decorate or make repairs, alterations, additions or improvements, whether structural or otherwise, in and about the Building, or any part thereof, including, but not limited to, the installation of a sprinkler system and sprinkler heads, and for such purposes to enter the Leased Premises (subject to Section 5.03 of this Lease) and, during the continuance of any such work, to temporarily close doors, entry ways, common or public spaces and corridors in the Building and interrupt or temporarily suspend Building services and facilities, all without affecting any of Tenant's obligations hereunder, so long as the Leased Premises are reasonably accessible. So long as no Default exists, Landlord shall use commercially reasonable efforts to minimize any interference with Tenant's business operations within the Leased Premises in connection with any entry into the Leased Premises hereunder.

(c) To grant to anyone the exclusive right to conduct any business or render any service in the Building, provided Tenant is not thereby excluded from uses expressly permitted herein.

(d) To alter, relocate, reconfigure and reduce and withdraw the Common Areas, as long as the Leased Premises remain reasonably accessible.

(e) To erect, use and maintain pipes and conduits in and through the Leased Premises.

(f) To operate and maintain, or cause to be operated and maintained, the Common Areas in a manner deemed by Landlord to be reasonable and appropriate and in the best interest of the Building, but all Common Areas shall be subject to the exclusive control and management of Landlord.

Section 16.11. Time. Time is of the essence of each term and provision of this Lease.

Section 16.12. Anti-Corruption Laws and Sanctions. For purposes hereof, (a) “**Anti-Corruption Laws**” shall mean all Laws applicable to a pertinent party from time to time concerning or relating to bribery or anti-corruption; (b) “**Sanctions**” shall mean all applicable economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (i) the U.S. federal government, including those administered by the Office of Foreign Assets Control, the United States Department of Treasury (“**OFAC**”) or the U.S. Department of State, or (ii) the United Nations Security Council, the European Union, any European Union member state in which a pertinent party or any of its subsidiaries conduct operations or Her Majesty’s Treasury of the United Kingdom; and (c) “Sanctioned Person” shall mean, at any time, (i) any person or entity listed in any Sanctions-related list of designated persons or entities maintained by OFAC, the U.S. Department of State, or by the United Nations Security Council, the European Union or any European Union member state in which the pertinent party or any of its subsidiaries conducts operations, (ii) unless otherwise authorized by OFAC, any person or entity operating, organized or resident in any country or territory which is itself the subject or target of any full-scope (non-list based) Sanctions, or (iii) any ownership of fifty percent (50%) or more of an entity by persons or entities described in the foregoing clauses (i) or (ii). Each of Landlord and Tenant represents and warrants that neither it nor any of its subsidiaries, nor to its knowledge, their respective directors, officers, employees or agents, is a Sanctioned Person. Each party further represents that it and its subsidiaries, and to its knowledge, their respective directors, officers, employees and agents, complies and shall continue to comply in all material respects with all Sanctions and with all Anti-Corruption Laws. Each party will use reasonable efforts to notify the other in writing if any of the foregoing representations and warranties are no longer true or have been breached or if such party has a reasonable basis to believe that they may no longer be true or have been breached. In the event of any violation of this Section by Tenant, Landlord will be entitled to immediately terminate this Lease and take such other actions as are permitted or required to be taken under law or in equity.

Section 16.13. Cooperation. Tenant shall use reasonable efforts to cooperate with Landlord, without cost to Tenant, in connection with the completion of any written surveys or evaluations relating to the Building, the Park or Landlord.

Section 16.14. Usufruct. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant; no estate shall pass out of Landlord. Tenant’s interest in the Leased Premises is a usufruct, not subject to levy and sale, and not assignable by Tenant except as expressly set forth herein.

Section 16.15. Terminology. Words of any gender used in this Lease shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section 16.16. Captions. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

Section 16.17. Survival. All obligations of Tenant hereunder not fully performed as of the expiration of the Lease Term or earlier termination thereof shall survive the expiration or earlier termination of the Lease Term, including, without limitation, all payment obligations with respect to Rent and all obligations concerning the condition of the Leased Premises.

Section 16.18. Restrictions of Record. Tenant agrees to comply with subdivision regulations, protective covenants or other restrictions of record that are applicable to the Building or Park.

Section 16.19. No Representations. Neither Landlord nor Landlord's agents or brokers have made any representations, warranties or promises with respect to the Premises, the Building, or any other portions of the Park except as herein expressly set forth and all reliance with respect to any representations, warranties or promises is based solely on those contained herein. No rights, easements or licenses are acquired by Tenant under this Lease by implication or otherwise except as, and unless, expressly set forth in this Lease.

Section 16.20. No Easement for Light, Air or View. Any elimination or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building shall in no way affect this Lease and Landlord shall have no liability to Tenant with respect thereto.

Section 16.21. Electronic Signatures. The parties hereby acknowledge and agree that electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Lease had been delivered. Landlord and Tenant (a) intend to be bound by the signatures (whether original, faxed or electronic) on any document sent by facsimile or electronic mail, (b) are aware that the other party will rely on such signatures, and (c) hereby waive any defenses to the enforcement of the terms of this Lease based on the foregoing forms of signature.

Section 16.22. Indemnity Limitation. Notwithstanding anything contained in this Lease (including, without limitation, any exhibit or rider attached hereto) to the contrary, in no event shall any indemnity or hold harmless obligation of Tenant set forth in this Lease apply to any damage, injury, loss, claim, cause of action, liability, cost or expense caused by or resulting from the sole negligence of Landlord.

ARTICLE 17 – RIGHT OF FIRST REFUSAL

Subject to the terms of this Article 17, Tenant shall have a one-time right of first refusal ("***First Refusal Right***") to lease any space in the Building contiguous to the Leased Premises (subject to Section 17.06 below, the "***First Refusal Space***").

Section 17.01. First Refusal Notice.

(a) If, at any time after the date that is twelve (12) months after the Effective Date (the "***First Refusal Right Effective Date***"), the First Refusal Space, or a portion thereof, becomes available, and Landlord has an offer or proposal to lease all or part of such First Refusal Space from a "bona fide" prospect that is not affiliated with or controlled by or under common control with Landlord (the "***Prospect***") which Landlord is willing to accept, Landlord shall deliver written notice to Tenant (the "***First Refusal Notice***") of the availability of such portion of the First Refusal Space. The First Refusal Notice shall specify the approximate location and square footage of the portion of the First Refusal Space which has or will become available, the proposed Lease Term and the proposed Minimum Annual Rent and Monthly Rental Installments and other economic terms for the lease of such space, which proposed Lease Term, Base Rent and other economic terms shall be the Lease Term, Minimum Annual Rent and Monthly Rental Installments and other economic terms agreed upon with the Prospect. If the Prospect is interested in combining all or part of the First Refusal Space with other space in the Building, Landlord shall also specify such additional space in its First Refusal Notice to Tenant. The portion of the First Refusal Space, plus such additional space, if any, is hereinafter referred to as the "***Offered Space***."

(b) Tenant shall have seven (7) business days from its receipt of the First Refusal Notice to notify Landlord in writing that Tenant desires to lease the Offered Space. If Tenant does so exercise its First Refusal Right by notifying Landlord within such seven (7) business day period, the Offered Space shall be added to the Leased Premises in accordance with the provisions of this Article 17. If Tenant does not exercise such First Refusal Right or fails to notify Landlord within such seven (7) business day period of its election, Landlord shall thereafter have the right to lease that portion of the First Refusal Space to any prospective tenant on any terms and conditions not “materially less favorable” to Landlord (as defined below). However, if Landlord desires to enter into a lease for such portion of the First Refusal Space on terms and conditions which are “materially less favorable” to Landlord than those set forth in the First Refusal Notice, then Landlord may not enter into such lease without again complying with the provisions of this First Refusal Right. If Landlord leases such portion of the First Refusal Space on terms and conditions which are not “materially less favorable to Landlord” than those set forth in the First Refusal Notice, this First Refusal Right shall expire and be of no further force and effect as to such portion of the First Refusal Space. For purposes of this Section 17.01(a), the phrase “*materially less favorable*” shall mean a proposed lease in which the proposed effective rental rate is less than ninety percent (90%) of the effective rental rate set forth in the First Refusal Notice.

Section 17.02. Terms. If Tenant exercises any First Refusal Right, the Commencement Date, Lease Term, Minimum Annual Rent and Monthly Rental Installments and other economic terms of the Lease for the Offered Space shall be the Commencement Date, Lease Term, Minimum Annual Rent and Monthly Rental Installments and economic terms specified by Landlord in the First Refusal Notice. All other terms and conditions for the lease of such Offered Space shall be those terms, covenants, agreements, provisions and conditions then in effect under the Lease at the Commencement Date for such Offered Space (exclusive of tenant improvement allowances, space planning allowances, refurbishment allowances, other allowances, rent abatements, and other concessions granted in connection with the lease by Tenant of any space other than the Offered Space).

Section 17.03. Addition to Leased Premises. After the Commencement Date for any Offered Space leased pursuant to this First Refusal Right, such Offered Space shall be added to and form a part of the Leased Premises with the same force and effect as if originally demised under this Lease, and the term “Leased Premises,” as used in this Lease, shall include such Offered Space.

Section 17.04. Tenant’s Proportionate Share. The term “Tenant’s Proportionate Share,” as such term is used and defined in the Lease, and as such term is used to determine the Annual Rental Adjustment, shall be increased after the Commencement Date for any Offered Space to reflect the additional rentable square footage of such Offered Space and Tenant’s payment obligations under Article 3 of this Lease shall be adjusted accordingly.

Section 17.05. Lease Amendment. Upon exercise of the First Refusal Right by Tenant, and the determination of the Minimum Annual Rent and Monthly Rental Installments and other economic terms with respect thereto, Landlord and Tenant, upon demand of either of them, shall enter into an amendment to this Lease adding such Offered Space to the Leased Premises, setting forth such Minimum Annual Rent and Monthly Rental Installments, and setting forth Tenant’s Proportionate Share after the addition of such Offered Space to the Leased Premises, provided that failure to enter into any such amendment shall not affect Tenant’s obligation to pay Base Rent and the Annual Rental Adjustment for such Offered Space. If Tenant properly exercises a First Refusal Right but thereafter, for any reason (except for delays caused by Landlord), does not enter into an amendment to this Lease adding such Offered Space to the Leased Premises within ten (10) days after Tenant notifies Landlord in writing that Tenant desires to lease the Offered Space, Landlord shall have the option, by written notice to Tenant, to elect to cancel Tenant’s exercise of its First Refusal Right, and, if Landlord so elects, Landlord will be free to rent such Offered Space to any other prospective tenant and the First Refusal Right granted to Tenant under this Article 17 shall immediately expire and be of no further force or effect and Tenant shall have no further rights, and Landlord shall have no further obligations, under this Article 17.

Section 17.06. Limitations. Notwithstanding anything contained herein to the contrary: (a) the termination, cancellation or surrender of this Lease shall terminate any rights of Tenant pursuant to this Article 17; (b) this First Refusal Right is provided to Tenant for the exclusive benefit of Tenant and shall terminate upon the sublease of all or any portion of the Leased Premises or upon any assignment of this Lease; (c) Tenant's rights under this Article 17 shall expire upon expiration of the original Lease Term unless Tenant exercise its option to renew the Lease Term under Article 18 below, in which event this First Refusal Right shall remain in effect during the applicable Renewal Term (subject to all other limitations set forth in this Article 17); and (d) Tenant shall not be entitled to exercise a First Refusal Right if, at the time of the exercise of the First Refusal Right, there exists a Default under this Lease, or a situation which, with the giving of notice or the passage of time, or both, would constitute a Default. In addition, and notwithstanding anything contained herein to the contrary: (i) Landlord shall be permitted to lease space in the Building to any party at any time prior to the First Refusal Right Effective Date without triggering this First Refusal Right or being required to notify Tenant thereof or to offer the applicable space to Tenant under this First Refusal Right; and (ii) any space leased by Landlord prior to the First Refusal Right Effective Date shall be excluded from the First Refusal Space.

Section 17.07. Existing Tenants. Notwithstanding any other term or provision of this Lease or this Article 17, express or implied, it is understood and agreed by Tenant that: (a) Tenant's rights under this Article 17 may be subject and subordinate to existing third party leases in effect with one or more tenants for the First Refusal Space or a portion thereof as of the Commencement Date of this Lease, and Landlord reserves the right to extend the lease expiration date of, or renew, any such third party lease, whether pursuant to the exercise of any extension or renewal option, or otherwise; (b) other tenants do have and may have certain rights of first offer, rights of refusal or other expansion rights or options with respect to space in the Building, including the First Refusal Space [the tenants referred to in clauses (a) and (b) of this Section 17.07, together with their respective successors, assigns and subtenants, are herein referred to as "Existing Tenants"]; (c) the rights and interests in and to the First Refusal Space and all portions thereof granted by Landlord to Tenant in this Article 17 are, in all respects, subject and subordinate to all such options and rights of Existing Tenants, and to the rights Landlord has reserved with respect to Existing Tenants and may be wholly or partially rendered void and of no effect by such options, rights of and reservations with respect to Existing Tenants; (d) Landlord shall not be liable for the failure or inability of Tenant to exercise or benefit from any or all rights granted in this Article 17 with respect to the First Refusal Space or any portion thereof by reason of the rights Landlord has reserved with respect to the Existing Tenants or such rights and options of Existing Tenants; and (e) Tenant shall not be entitled to compensation, consolation, consideration, replacement of such space or any remedy from or against Landlord by reason of such failure or inability. Landlord shall not be liable for any failure to give possession of any portion of the First Refusal Space by reason of the unlawful holding over or retention of possession of any previous tenant, tenants or occupants of same, nor shall such failure impair the validity of this Lease or extend the Lease Term. However, Landlord does agree to use reasonable diligence to deliver possession of the applicable First Refusal Space to Tenant upon the dates described herein.

ARTICLE 18 – RENEWAL OPTIONS

Subject to the terms of this Article 18, Tenant shall have the option to renew the Lease Term for two (2) additional terms of five (5) years each (each a “**Renewal Term**”), provided that in each instance, Tenant gives Landlord written notice of the exercise thereof for each Renewal Term no less than nine (9) months and no more than eighteen (18) months prior to the end of the Lease Term then in effect. The Minimum Annual Rent and Monthly Rental Installments payable during the Renewal Terms shall be as follows:

(a) The Minimum Annual Rent and Monthly Rental Installments payable during the first Renewal Term shall be calculated based on the applicable per square foot per annum rates set forth in the following schedule:

Renewal Term Year	Per Square Foot Per Annum
First	\$ 4.24
Second	\$ 4.32
Third	\$ 4.41
Fourth	\$ 4.50
Fifth	\$ 4.59

(b) The Minimum Annual Rent and Monthly Rental Installments payable during the second Renewal Term shall be calculated based on the applicable per square foot per annum rates set forth in the following schedule:

Renewal Term Year	Per Square Foot Per Annum
First	\$ 4.75
Second	\$ 4.92
Third	\$ 5.09
Fourth	\$ 5.27
Fifth	\$ 5.45

Each Renewal Term shall commence at 12:01 a.m. Atlanta, Georgia, time on the first day following the expiration of the immediately preceding original Lease Term or first Renewal Term, as applicable. During the Renewal Terms, all provisions of this Lease shall apply, except that the Minimum Annual Rent and Monthly Rental Installments shall be as set forth above, and except that any provision relating to the Landlord’s Work shall not apply. Notwithstanding anything contained herein to the contrary, Tenant shall have no right to extend the Lease Term unless this Lease shall, at that time, be in full force and effect, and no Default shall then exist.

ARTICLE 19 – CONFIDENTIALITY

Each of the parties to this Lease shall maintain and keep this Lease and each of its terms in the strictest confidence and shall not disclose any aspect of this Lease to any third person, except as required by law (including, without limitation, as may be required of either party by the U.S. Securities and Exchange Commission) or as reasonably required by either party’s officers, managing agent, asset manager, attorneys, consultants, brokers, lenders, prospective lenders, and prospective purchasers, and to those persons employed by such parties who reasonably have a need to know such information for purposes relating to this Lease (and to each such person’s assistants and secretaries). The parties possess confidential and proprietary information, including, but not limited to, corporate and financial information pertaining to or concerning the Leased Premises, the Building, and the Park and the business of each party and agree to keep such information confidential, except as set forth above.

ARTICLE 20 – OIL TANKS

Subject to the terms of this Lease, Tenant shall be permitted to install oil tanks within the area outside of the Building shown on **Exhibit H-1** attached hereto and made a part hereof (the “***Oil Tank Area***”). Landlord has approved the plans for such oil tanks set forth on **Exhibit H-2** attached hereto and made a part hereof. Except as set forth in **Exhibit H-2**, all aspects of such oil tanks, and of all associated installations and improvements, including, without limitation, the method of connection of such tanks to the Leased Premises, shall be subject to Landlord’s prior written approval, not to be unreasonably withheld (except as to aesthetic matters, in which case Landlord’s approval may be granted or withheld in its sole and absolute discretion). All such installations shall be performed in accordance with and subject to the terms of Section 7.03 of this Lease. In no event shall any Hazardous Substance other than Permitted Hazardous Substances ever be stored in such oil tanks. Landlord shall have the right to prescribe rules and regulations relating to the access and use of such tanks, and Tenant shall comply therewith. The Oil Tank Area shall be treated as part of the Leased Premises for all purposes of this Lease, except that: (a) no Minimum Annual Rent shall be assessed against such space and the area of such space will not be considered when calculating the Rentable Area of the Leased Premises or Tenant’s Proportionate Share; and (b) the Oil Tank Area shall not be treated as part of the Leased Premises for purposes of determining the location of the First Refusal Space (i.e., space outside the Building that is contiguous to the Oil Tank Area shall not be deemed to be First Refusal Space). Without limiting the generality of the foregoing, Tenant shall be solely responsible, at its sole cost and expense, for maintaining the Oil Tank Area, and the oil tanks and all installations and improvements therein, in good order and condition, including, without limitation, performing all repairs and replacements that may be necessary for such purpose. Notwithstanding anything contained in this Lease to the contrary, on or before the expiration or earlier termination of this Lease, Tenant shall remove the oil tanks and all associated installations and improvements, and shall repair all damage to the Building Project resulting from the installation or removal of such oil tanks. If Tenant fails to timely complete its removal and repair obligations, Landlord may perform such work, and, in such event, Tenant shall reimburse Landlord for all costs incurred by Landlord in connection therewith within ten (10) days after receipt of an invoice therefor. Tenant’s obligations under this Article 20 shall survive the expiration or earlier termination of this Lease.

ARTICLE 21 – TAX INCENTIVES

(a) In connection with this Lease, Tenant is attempting to achieve certain tax incentives from Henry County (the “***Purple Incentives***”), which incentives, if achieved, will reduce the Real Estate Taxes assessed against the Building Project. Landlord is cooperating with such efforts by Tenant. In order to obtain the Purple Incentives, Landlord may be required to enter into a so-called “bonds for title” or other transaction with Henry County or an instrumentality of Henry County. Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in connection with such transaction or otherwise in connection with Landlord’s cooperation with Tenant to achieve the Purple Incentives (including, without limitation, attorneys’ fees incurred by Landlord in connection therewith) within ten (10) days after receipt of an invoice from Landlord therefor. Tenant’s reimbursement obligations under this **Article 21** shall survive the expiration or any earlier termination of this Lease.

(b) If the Purple Incentives are achieved, Tenant will be entitled to receive the entire benefit of the Purple Incentives (meaning that, for every dollar that Real Estate Taxes assessed against the Building Project are reduced below the amount that would have been payable in the absence of the Purple Incentives, the amount payable by Tenant as Tenant's Proportionate Share of Operating Expenses for the relevant period will be reduced by \$1.00), and Landlord agrees to take no action to prevent Tenant from receiving the entire benefit of the Purple Incentives, as described above. However, the parties acknowledge that such reduction in Real Estate Taxes under this subparagraph (b) shall be granted only with respect to the Purple Incentives and not to any other incentives or other tax reductions or abatements that may now or hereafter be granted in connection with other tenant, or any other lease or leases, at the Park (collectively, "*Unrelated Incentives*"). If any such Unrelated Incentives are granted, then, notwithstanding anything contained in this Lease to the contrary, for purposes of calculating amounts due as Tenant's Proportionate Share of Operating Expenses, Real Estate Taxes shall be calculated as if such Unrelated Incentives did not exist.

(c) The parties acknowledge that, in connection with the Purple Incentives, Tenant may be required to file annual reports with Henry County or an instrumentality thereof and pay annual fees. Tenant shall provide Landlord with a copy of each annual report at the time Tenant submits such report to Henry County or an instrumentality of Henry County. Notwithstanding anything contained in this Lease to the contrary, if Tenant fails to timely pay any fees or timely provide or submit any information or a report called for under the documents governing the Purple Incentives, or fails to provide any information concerning the tax incentives (or relevant to Landlord's calculation of Tenant's Proportionate Share of Real Estate Taxes) requested by Landlord, and if such failure continues for more than five (5) business days after notice of such failure from Landlord, then such failure shall be deemed to be a Default under this Lease.

ARTICLE 22 – LIMITATION OF LANDLORD’S LIABILITY

ANYTHING CONTAINED IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, TENANT SHALL LOOK SOLELY TO THE ESTATE AND PROPERTY OF LANDLORD IN THE BUILDING FOR THE COLLECTION OF ANY JUDGMENT OR OTHER JUDICIAL PROCESS REQUIRING THE PAYMENT OF MONEY BY LANDLORD FOR ANY DEFAULT OR BREACH BY LANDLORD UNDER THIS LEASE, SUBJECT, HOWEVER, TO THE PRIOR RIGHTS OF ANY MORTGAGEE OR LESSOR OF THE BUILDING. NO OTHER ASSETS OF LANDLORD OR ANY PARTNERS, SHAREHOLDERS, MEMBERS OR OTHER PRINCIPALS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER JUDICIAL PROCESS FOR THE SATISFACTION OF TENANT’S CLAIM.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:

PNK S2, LLC., a Georgia limited liability company

By: /s/ Park Mun Sgong
Name: Park Mun Sgong
Title: Manager

TENANT:

PURPLE INNOVATION, LLC, a Delaware limited liability
company

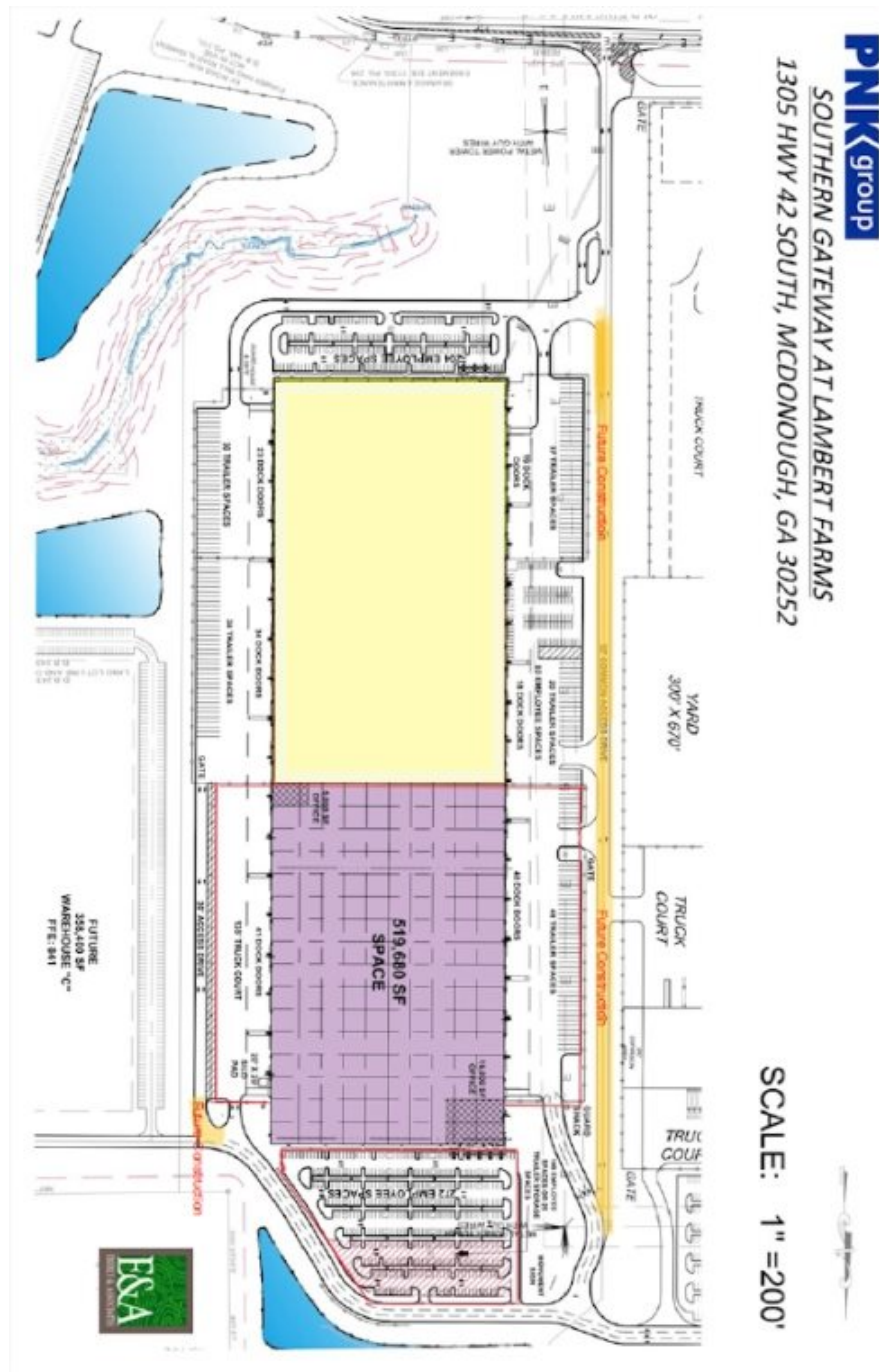
By: /s/ John Legg

Name: John Legg

Title: COO

EXHIBIT A-1

SITE PLAN OF LEASED PREMISES



LOCATION OF BUILDING

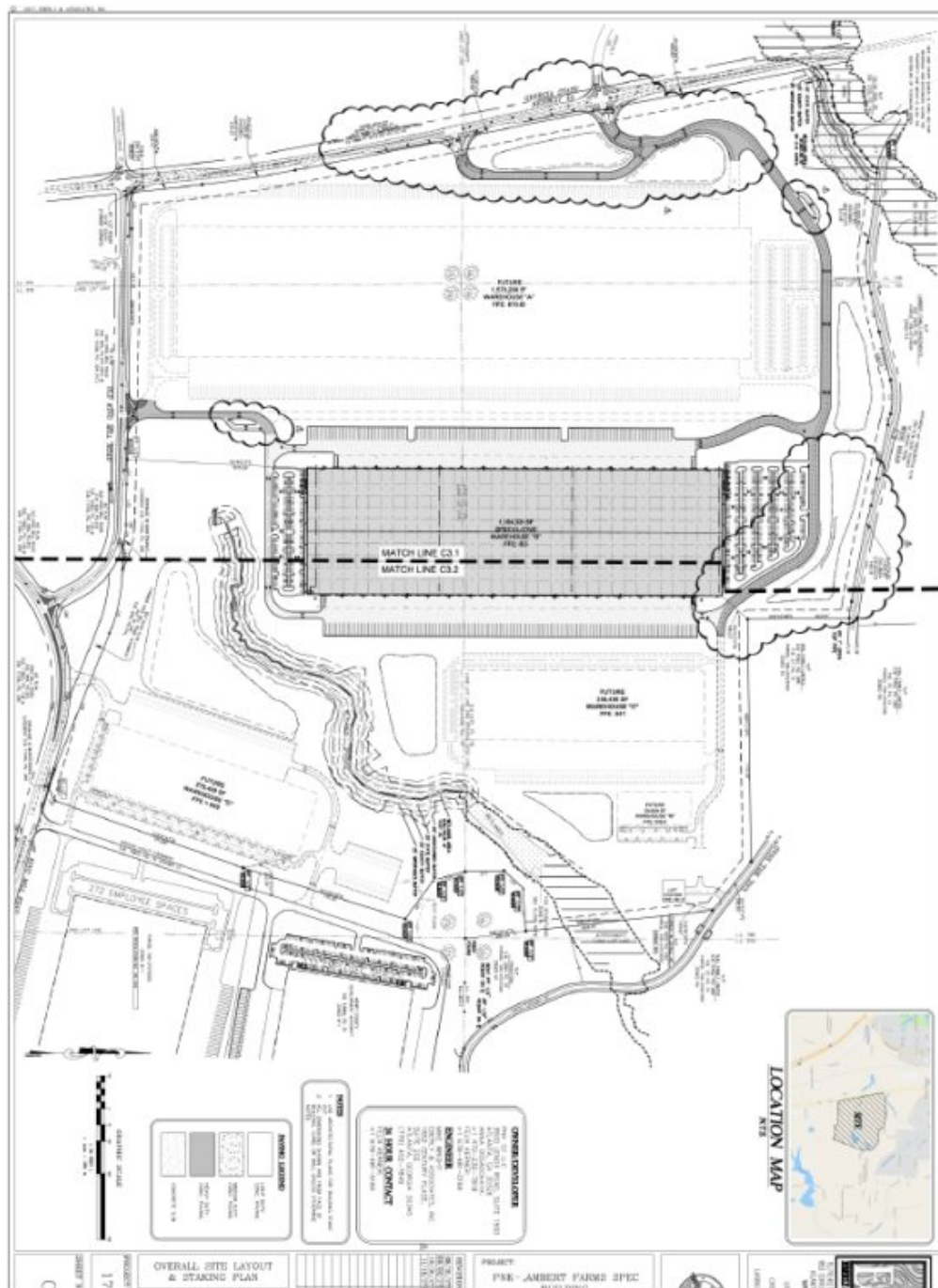


EXHIBIT A-3

LAND

TRACT DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND LYING OR BEING IN LAND LOTS 198, 199, 218 AND 219 OF THE 7TH LAND DISTRICT, HENRY COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN SET (ONE HALF INCH REBAR) AT THE INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE GEORGIA STATE HIGHWAY NUMBER 42 (ALSO KNOWN AS UNITED STATES HIGHWAY NUMBER 23 AND HAVING A VARIABLE WIDTH RIGHT OF WAY) AND THE NORTHERLY RIGHT OF WAY LINE OF OLD KING MILL ROAD (HAVING A 70 FOOT WIDE RIGHT OF WAY AT THIS POINT); THENCE FROM THE POINT OF BEGINNING AS THUS ESTABLISHED AND ALONG THE SAID EASTERLY RIGHT OF WAY LINE OF GEORGIA STATE HIGHWAY NUMBER 42 THE FOLLOWING FOUR COURSES AND DISTANCES: NORTH 08 DEGREES 19 MINUTES 43 SECONDS WEST A DISTANCE OF 324.15 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 5,237.25 FEET, AN ARC LENGTH OF 430.36 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 08 DEGREES 53 MINUTES 50 SECONDS WEST AND A CHORD DISTANCE OF 430.24 FEET TO A POINT; THENCE NORTH 11 DEGREES 08 MINUTES 14 SECONDS WEST A DISTANCE OF 1,462.64 FEET TO A POINT; THENCE NORTH 11 DEGREES 09 MINUTES 48 SECONDS WEST A DISTANCE OF 994.83 FEET TO AN IRON PIN FOUND (ONE HALF INCH REBAR) IN THE CENTER OF TUSSAHAW CREEK; THENCE DEPARTING THE SAID EASTERLY RIGHT OF WAY LINE OF GEORGIA STATE HIGHWAY NUMBER 42 AND ALONG THE CENTERLINE OF SAID TUSSAHAW CREEK THE FOLLOWING 17 COURSES AND DISTANCES: NORTH 48 DEGREES 34 MINUTES 22 SECONDS EAST A DISTANCE OF 41.56 FEET TO A POINT; THENCE NORTH 78 DEGREES 18 MINUTES 50 SECONDS EAST A DISTANCE OF 32.18 FEET TO A POINT; THENCE NORTH 53 DEGREES 27 MINUTES 20 SECONDS EAST A DISTANCE OF 26.15 FEET TO A POINT; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 56.86 FEET TO A POINT; THENCE NORTH 78 DEGREES 53 MINUTES 25 SECONDS EAST A DISTANCE OF 41.34 FEET TO A POINT; THENCE NORTH 71 DEGREES 39 MINUTES 45 SECONDS EAST A DISTANCE OF 42.54 FEET TO A POINT; THENCE NORTH 62 DEGREES 39 MINUTES 25 SECONDS EAST A DISTANCE OF 13.88 FEET TO A POINT; THENCE NORTH 51 DEGREES 46 MINUTES 28 SECONDS EAST A DISTANCE OF 17.85 FEET TO A POINT; THENCE NORTH 23 DEGREES 50 MINUTES 42 SECONDS EAST A DISTANCE OF 13.32 FEET TO A POINT; THENCE NORTH 35 DEGREES 45 MINUTES 54 SECONDS EAST A DISTANCE OF 26.20 FEET TO A POINT; THENCE NORTH 54 DEGREES 00 MINUTES 10 SECONDS EAST A DISTANCE OF 28.33 FEET TO A POINT; THENCE NORTH 80 DEGREES 10 MINUTES 29 SECONDS EAST A DISTANCE OF 34.49 FEET TO A POINT; THENCE NORTH 74 DEGREES 03 MINUTES 33 SECONDS EAST A DISTANCE OF 25.68 FEET TO A POINT; THENCE NORTH 51 DEGREES 10 MINUTES 04 SECONDS

EAST A DISTANCE OF 47.01 FEET TO A POINT; THENCE NORTH 53 DEGREES 10 MINUTES 53 SECONDS EAST A DISTANCE OF 45.05 FEET TO A POINT; THENCE NORTH 50 DEGREES 08 MINUTES 25 SECONDS EAST A DISTANCE OF 41.92 FEET TO A POINT; THENCE NORTH 26 DEGREES 04 MINUTES 04 SECONDS EAST A DISTANCE OF 24.31 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF WISE ROAD (HAVING AN APPARENT 40 FOOT WIDE RIGHT OF WAY); THENCE DEPARTING THE SAID CENTERLINE OF TUSSAHAW CREEK AND ALONG THE SAID SOUTHERLY RIGHT OF WAY LINE OF WISE ROAD THE FOLLOWING TWELVE COURSES AND DISTANCES: ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 287.16 FEET, AN ARC LENGTH OF 21.85 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 84 DEGREES 47 MINUTES 55 SECONDS EAST AND A CHORD DISTANCE OF 21.84 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 3,410.03 FEET, AN ARC LENGTH OF 321.80 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 82 DEGREES 35 MINUTES 10 SECONDS EAST AND A CHORD DISTANCE OF 321.68 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 463.01 FEET, AN ARC LENGTH OF 182.74 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 89 DEGREES 30 MINUTES 43 SECONDS EAST AND A CHORD DISTANCE OF 181.56 FEET TO A POINT; THENCE NORTH 76 DEGREES 31 MINUTES 57 SECONDS EAST A DISTANCE OF 52.16 FEET TO A POINT; THENCE NORTH 78 DEGREES 04 MINUTES 00 SECONDS EAST A DISTANCE OF 182.36 FEET TO A POINT; THENCE NORTH 76 DEGREES 49 MINUTES 31 SECONDS EAST A DISTANCE OF 226.63 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 373.20 FEET, AN ARC LENGTH OF 155.54 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 89 DEGREES 52 MINUTES 15 SECONDS EAST AND A CHORD DISTANCE OF 154.42 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 3,018.93 FEET, AN ARC LENGTH OF 52.17 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 76 DEGREES 51 MINUTES 05 SECONDS EAST AND A CHORD DISTANCE OF 52.17 FEET TO A POINT; THENCE SOUTH 78 DEGREES 25 MINUTES 13 SECONDS EAST A DISTANCE OF 251.69 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1,895.22 FEET, AN ARC LENGTH OF 126.42 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 77 DEGREES 26 MINUTES 43 SECONDS EAST AND A CHORD DISTANCE OF 126.40 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 4774.52, AN ARC LENGTH OF 448.55 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 78 DEGREES 39 MINUTES 05 SECONDS EAST A DISTANCE OF 448.39 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 852.70 FEET, AN ARC LENGTH OF 77.94 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 82 DEGREES 14 MINUTES 57 SECONDS EAST AND A CHORD DISTANCE OF 77.91 FEET TO AN IRON PIN FOUND (ONE INCH OPEN TOP PIPE); THENCE DEPARTING THE SAID SOUTHERLY RIGHT OF WAY LINE OF WISE ROAD SOUTH 00 DEGREES 33 MINUTES 08 SECONDS EAST A DISTANCE OF 463.81 FEET TO A ROCK FOUND; THENCE NORTH 89 DEGREES 12 MINUTES

39 SECONDS EAST A DISTANCE OF 1,112.25 FEET TO AN IRON PIN FOUND (ONE HALF INCH REBAR) ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF NAIL MILL ROAD; THENCE ALONG THE SAID SOUTHWEST RIGHT OF WAY LINE OF NAIL MILL ROAD SOUTH 51 DEGREES 43 MINUTES 14 SECONDS EAST A DISTANCE OF 282.83 FEET TO AN IRON PIN FOUND (ONE INCH OPEN TOP PIPE); THENCE DEPARTING THE SAID SOUTHWESTERLY RIGHT OF WAY LINE OF NAIL MILL ROAD SOUTH 06 DEGREES 24 MINUTES 14 SECONDS EAST A DISTANCE OF 859.25 FEET TO AN IRON PIN FOUND (ONE HALF INCH REBAR); THENCE SOUTH 85 DEGREES 25 MINUTES 25 SECONDS WEST A DISTANCE OF 194.01 FEET TO A POINT; THENCE SOUTH 42 DEGREES 35 MINUTES 09 SECONDS WEST A DISTANCE OF 123.68 FEET TO AN IRON PIN FOUND (ONE HALF INCH REBAR); THENCE SOUTH 01 DEGREES 21 MINUTES 14 SECONDS EAST A DISTANCE OF 179.36 FEET TO AN IRON PIN FOUND (ONE HALF INCH REBAR); THENCE SOUTH 15 DEGREES 06 MINUTES 59 SECONDS EAST A DISTANCE OF 149.54 FEET TO AN IRON PIN FOUND (ONE HALF INCH REBAR); THENCE SOUTH 54 DEGREES 06 MINUTES 40 SECONDS EAST A DISTANCE OF 219.96 FEET TO AN IRON PIN FOUND (ONE HALF INCH REBAR); THENCE SOUTH 17 DEGREES 35 MINUTES 18 SECONDS WEST A DISTANCE OF 776.35 FEET TO AN IRON PIN FOUND (ONE HALF INCH REBAR); THENCE SOUTH 19 DEGREES 41 MINUTES 47 SECONDS WEST A DISTANCE OF 913.85 FEET TO AN IRON PIN FOUND (ONE HALF INCH REBAR); THENCE SOUTH 64 DEGREES 30 MINUTES 21 SECONDS WEST A DISTANCE OF 70.43 FEET TO AN IRON PIN FOUND (ONE HALF INCH REBAR) ON THE NORTHERLY RIGHT OF WAY LINE OF KING MILL ROAD; THENCE ALONG THE SAID NORTHERLY RIGHT OF WAY LINE OF KING MILL ROAD THE FOLLOWING TWO COURSES AND DISTANCES: NORTH 74 DEGREES 12 MINUTES 47 SECONDS WEST A DISTANCE OF 12.71 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2,970.00 FEET, AN ARC LENGTH OF 70.19 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 68 DEGREES 47 MINUTES 58 SECONDS WEST AND A CHORD DISTANCE OF 70.19 FEET TO A POINT; THENCE DEPARTING THE SAID NORTHERLY RIGHT OF WAY LINE OF KING MILL ROAD AND ALONG THE NORTHERLY RIGHT OF WAY OF THE FORMER KING MILL ROAD (NO LONGER IN USE) THE FOLLOWING THREE COURSES AND DISTANCES: NORTH 68 DEGREES 07 MINUTES 22 SECONDS WEST A DISTANCE OF 674.04 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 830.02 FEET, AN ARC LENGTH OF 302.01 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 78 DEGREES 24 MINUTES 07 SECONDS WEST AND A CHORD DISTANCE OF 300.35 FEET TO A POINT; THENCE NORTH 88 DEGREES 49 MINUTES 33 SECONDS WEST A DISTANCE OF 118.27 FEET TO A CONCRETE MONUMENT FOUND ON THE NORTH RIGHT OF WAY LINE OF OLD KING MILL ROAD; THENCE DEPARTING THE SAID NORTHERLY RIGHT OF WAY LINE FORMER KING MILL ROAD AND ALONG THE NORTHERLY RIGHT OF WAY OF OLD KING MILL ROAD THE FOLLOWING FIVE COURSES AND DISTANCES: ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 390.00 FEET, AN ARC LENGTH OF 86.89 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 82 DEGREES 27

MINUTES 49 SECONDS WEST AND A CHORD DISTANCE OF 86.71 FEET TO A POINT; THENCE NORTH 88 DEGREES 50 MINUTES 44 SECONDS WEST A DISTANCE OF 186.23 FEET TO A POINT; THENCE NORTH 88 DEGREES 47 MINUTES 13 SECONDS WEST A DISTANCE OF 113.47 FEET TO A POINT; THENCE NORTH 88 DEGREES 49 MINUTES 59 SECONDS WEST A DISTANCE OF 1,057.78 FEET TO A POINT; THENCE SOUTH 89 DEGREES 47 MINUTES 14 SECONDS WEST A DISTANCE OF 166.23 FEET TO THE POINT OF BEGINNING.

SAID TRACT OR PARCEL OF LAND CONTAINS 260.644 ACRES (BEING 11,353,679 SQUARE FEET), INCLUDING ALL EASEMENTS.

Together with Grant of Easement by and between Majestic King Mill, LLC, a Delaware limited liability company, and Lambert Family Investments, LLP, a Georgia limited liability limited partnership, dated as of September 13, 2007, filed for record September 17, 2007 at 3:56 p.m., recorded in Deed Book 10479, Page 258, Records of Henry County, Georgia.

As shown on ALTA/ACSM Land Title Survey for PNK S2, LLC, a Georgia limited liability company, and Specialized Title Services, Inc., and First American Title Insurance Company, prepared by Hayes James Engineers, bearing the seal and certification of Thomas M. Hipp, Georgia Registered Land Surveyor No. 3082, Project No. 17-025-C, dated March 30, 2017.

EXHIBIT B

WORK LETTER

(Landlord Construction; Tenant Improvement Allowance)

This Work Letter (the “**Work Letter**”) sets forth the terms and conditions relating to the construction of the Landlord Work by Landlord in the Leased Premises, as set forth in the attached Lease, dated _____ (the “**Lease**”), between PNK S2, LLC, a Georgia limited liability company (“**Landlord**”), and Purple Innovation, LLC, a Delaware limited liability company (“**Tenant**”). This Work Letter shall become effective and binding on Landlord and Tenant upon the execution and delivery of the Lease.

ARTICLE 1

DEFINITIONS

Except as otherwise set forth herein, each of the capitalized terms appearing in this Work Letter shall have the meaning ascribed to it in the Lease., and the following definitions shall have the meanings set forth below with respect to this Work Letter:

1.01 “**Approved Construction Drawings**” means the Construction Drawings approved or deemed approved by Landlord pursuant to the process set forth in Article 2 below.

1.02 “**Approved Space Plan**” means the Space Plan approved by Landlord pursuant to the process set forth in Article 2 below.

1.03 “**Base Building**” consists of those portions of the Leased Premises which were in existence prior to the execution of the Lease.

1.04 “**Building Standard**” means the quantity and quality of materials, finishes, and workmanship from time to time specified as such by Landlord for the Building, in its discretion.

1.05 “**Change Order**” means any change, modification or addition to the Approved Construction Drawings.

1.06 “**Construction Drawings**” means: (a) detailed architectural drawings and specifications for Tenant’s partition plan, demolition plan, reflected ceiling plan, power, communication and telephone plan (location of data and telephone outlets with pull boxes only), electrical outlets, finish plan, elevations, details and sections; and (b) mechanical, electrical, plumbing and lighting plans and specifications where necessary for installation to Building systems.

1.07 “**Contractor**” means the contractor selected under Section 2.02 below and approved by Landlord and Tenant.

1.08 “**Landlord’s Representative**” means any representative of PNK S2, LLC, or of any third part retained by Landlord, who Landlord designates as its representative with respect to the matters set forth in this Work Letter. Such individual shall, until further notice to Tenant, have full authority and responsibility to act on behalf of Landlord as required in this Work Letter.

1.09 “**Landlord’s Work**” means all work required by the Approved Construction Drawings.

1.10 “**Non-Building Standard**” means all materials, finishes, and workmanship used in connection with the construction and installation of the Landlord’s Work which deviate from Building Standard in terms of quantity or quality (or both).

1.11 “**Punch List**” shall refer to that list determined by Landlord’s Construction Coordinator and Tenant of those matters remaining to be accomplished or corrected to complete construction of Landlord’s Work once Substantial Completion of Landlord’s Work has been accomplished. 1.12 “**Space Plan**” means a preliminary architectural drawing showing all demising walls, corridors, entrances, exits, doors and interior partitions.

1.13 “**Space Planner**” means the space planner selected by Landlord.

1.14 “**Substantial Completion**” shall occur when the Landlord’s Work has been substantially completed in accordance with the Approved Construction Drawings (other than minor Punch List items and any work which cannot be completed on such date, provided such incompleteness will not substantially interfere with Tenant’s use of the Leased Premises) and, if required for occupancy, a Certificate of Occupancy (temporary or final) has been issued by the appropriate governmental authority. Substantial Completion shall occur in accordance with the preceding sentence, notwithstanding the fact that: (a) the matters on the Punch List remain to be completed; (b) telephone, data and other equipment and finish work to be installed by or for Tenant has not been completed; and (c) there are other items which have not been completed as of such date, provided the incompleteness of such other items will not substantially interfere with Tenant’s use of the Leased Premises. In the event of any dispute as to Substantial Completion of the Landlord’s Work, the Certificate of Occupancy (temporary or final) issued by the appropriate governmental authority shall be conclusive.

1.15 “**Tenant Expenditure Authorization**” or “**T.E.A.**” means an authorization by Tenant to Landlord, prior to the commencement of Landlord’s Work by Landlord, to expend funds on behalf of Tenant for Landlord’s Work, to be given in a written form reasonably acceptable to Landlord.

1.16 “**Tenant Improvement Allowance**” means, subject to Section 3.01(b) below, the allowance of \$12.50 per square foot of Rentable Area of the Leased Premises (set forth in Article 1 of the Lease) and a total of \$6,496,000.00, to be provided by Landlord as set forth in Section 3.01 below.

1.17 “**Tenant’s Representative**” means John Legg, who Tenant has designated as its sole representative with respect to the matters set forth in this Work Letter, and who, until further notice to Landlord, has full authority and responsibility to act on behalf of Tenant as required in this Work Letter. Tenant’s Representative is authorized to execute and deliver on behalf of Tenant any and all documents required by this Work Letter and the Commencement Notice required by the Lease.

ARTICLE 2

SCHEDULE

Landlord and Tenant hereby agree that time is of the essence and that the sequence and schedule specified below shall be strictly adhered to with respect to the design and development of the Space Plan, the Construction Drawings and the construction of Landlord’s Work.

2.01 Space Plan. Tenant shall cause the Space Planner to submit the Space Plan to Landlord for Landlord’s review and approval within thirty (30) days after the Effective Date of the Lease. After Landlord receives the Space Plan, Landlord shall approve or disapprove the Space Plan. If Landlord disapproves the Space Plan, Landlord shall return the Space Plan to Tenant within five (5) business days after its receipt thereof, along with a statement setting forth the grounds for the disapproval. In such event, Tenant shall make such changes as are necessary in order to make the Space Plan acceptable to Landlord and shall then re-submit the revised Space Plan to Landlord. This procedure shall be repeated until Landlord has delivered to Tenant written approval of the Space Plan. When approved by Landlord, the Space Plan shall be deemed to be the Approved Space Plan. If Landlord fails to disapprove or provide comments to the Space Plan within such five-business-day period at any time during the approval process, the Space Plan shall be deemed to have been disapproved by Landlord.

2.02 Construction Drawings; Bids; Selection of Contractor; T.E.A.

(a) Upon receipt of the Approved Space Plan, Tenant shall direct the Space Planner to begin preparation of Construction Drawings. Tenant shall submit Construction Drawings to Landlord for Landlord's approval or disapproval. After its receipt of such documents, Landlord shall notify Tenant in writing of its approval or disapproval within five (5) business days after its receipt thereof, stating in reasonable detail the reasons for any disapproval. If Landlord disapproves the Construction Drawings, Tenant shall then resubmit revised Construction Drawings to Landlord, and Landlord shall approve or disapprove the revised Construction Drawings within five (5) business days after its receipt thereof, stating in reasonable detail the reasons for any disapproval. The foregoing process shall be repeated as many times as are necessary in order to obtain Construction Drawings which are approved by Landlord. When approved by Landlord, the Construction Drawings shall be deemed to be the Approved Construction Drawings. If Landlord fails to disapprove or provide comments to the Construction Drawings within such five-business-day period at any time during the approval process, Landlord shall be deemed to have disapproved the Construction Drawings.

(b) After Landlord's receipt of the Approved Construction Drawings, Landlord shall within five (5) business days thereafter submit the Approved Construction Drawings to three (3) contractors on Landlord's approved list and shall use commercially reasonable efforts to obtain bids as soon as reasonably possible thereafter for constructing Landlord's Work in accordance with the Approved Construction Drawings. The parties shall mutually select the Contractor from among the companies submitting such bids. If Tenant requests in writing that Landlord approve any particular party to serve as the Contractor, and if Landlord fails to respond within five (5) business days, Landlord shall be deemed to have disapproved Tenant's request. When the Contractor has been mutually approved, upon request of Landlord, Tenant shall execute and deliver to Landlord the T.E.A. and such other documents as Landlord may request to confirm the selection of the Contractor and the bid of the Contractor.

(c) If, for any reason (including, without limitation, changes which Tenant desires to effectuate in the Space Plan or the Construction Drawings prior to their approval, revisions which must be made to the Space Plan or Construction Drawings, or any renegotiation of bids Tenant wishes to pursue) other than unreasonable delays attributable to Landlord, Landlord and Tenant have not mutually approved the Space Plan, the Construction Drawings, the selection of the Contractor and the bid, or if Tenant has not executed and delivered to Landlord the T.E.A., on or before the date that is sixty (60) days after the Effective Date of the Lease, then each day beyond such date until the parties have mutually approved all such items and Tenant has executed and delivered to Landlord the T.E.A. shall be deemed a day of "Tenant Delay" pursuant to Article 5 below.

2.03 Change Orders. All changes requested by Tenant shall require Landlord's prior written consent, not to be unreasonably withheld. All Change Orders must be reviewed and approved by Landlord and Tenant, which review and approval will not be unreasonably withheld (subject to Section 2.07 below with respect to Landlord). Landlord shall use commercially reasonable efforts to review and approve or disapprove each Change Order within five (5) business days after receiving a Change Order. If Landlord fails to approve or disapprove a Change Order within such five-business-day period, Landlord shall be deemed to have disapproved the Change Order. If Landlord approves any Change Order, and if such Change Order increases or decreases the cost of constructing Landlord's Work, Landlord shall prepare and deliver to Tenant a revised bid evidencing the total costs of such Change Order, which will include any amounts incurred by Landlord in reviewing the requested changes and revising the Approved Construction Drawings and the fee provided below; provided, however, that Landlord shall not execute or otherwise authorize any Change Order with Contractor unless and until Tenant has approved such revised bid in writing, which approval shall not be unreasonably withheld, conditioned, or delayed. Tenant shall review, comment on, or approve such Change Order within three (3) calendar days after receiving the same from Landlord. If Tenant fails to comment on or approve such Change Order within such 3-day period, such Change Order shall be deemed approved by Tenant for all purposes hereunder. Should any Change Order approved by Tenant modify the Approved Construction Drawings, Tenant shall pay all additional costs thereby incurred by Landlord, plus a fee of three percent (3%) of the additional cost for Landlord's cost of coordination, supervision and overhead resulting from the revision to the Approved Construction Drawings, excluding any additional architectural and/or engineering fees. All revised or additional Construction Drawings are subject to Landlord's prior review and written approval. Landlord shall use commercially reasonable efforts to review and approve or disapprove any revised or additional Construction Drawings within five (5) business days after receipt thereof. If Landlord fails to approve or disapprove any revised or additional Construction Drawings within such five-business-day period, Landlord shall be deemed to have disapproved the applicable revised or additional Construction Drawings. If and when approved or deemed to have been approved by Landlord, such revised or additional Construction Drawings shall constitute part of the Approved Construction Drawings. Prior to commencement of construction or installation of any of Landlord's Work provided in any Tenant approved Change Order, Tenant shall execute and deliver to Landlord a revised T.E.A. reflecting any increases or decreases in the cost to Landlord of constructing Landlord's Work. Notwithstanding anything contained herein, if Tenant fails to approve any Change Order, and if Landlord, in its reasonable judgment, believes that it would be unwise or inefficient to continue with the Landlord's Work until the issues relating to such Change Order have been resolved, then Landlord may halt the performance of the Landlord's Work until such time as the Change Order is either mutually approved by Landlord and Tenant or Landlord and Tenant mutually agree to proceed with the Landlord's Work without such Change Order, and any resulting delay in achieving Substantial Completion of the Landlord's Work shall be deemed to be a Tenant Delay.

2.04 Legal Requirements. All design, construction and installation shall conform to the requirements of the Lease and all applicable legal requirements. Tenant agrees that any review or approval by Landlord of the Space Plan or the Construction Drawings is solely for Landlord's benefit, and without any representation, warranty or liability whatsoever to Tenant or any other person with respect to the adequacy, correctness or sufficiency thereof, or otherwise. The approval by Landlord of the Approved Space Plan and the Approved Construction Drawings shall not in any way be deemed to be an agreement or certification by Landlord that the work contemplated thereby complies with legal requirements or that the Approved Space Plan or the Approved Construction Drawings will be approved by governmental agencies having jurisdiction there over. Tenant and the Space Planner shall be solely responsible for the compliance of the design shown on the Approved Space Plan and the Approved Construction Drawings with legal requirements.

2.05 Materials and Workmanship. All work and materials required under the Approved Construction Drawings, including all materials, finishes and workmanship shall be equal to, or of a quality superior to, Building Standard. Except as may be approved by Landlord and Tenant, all materials incorporated in Landlord's Work shall be new.

2.06 Field Verification. Space Planner shall verify at the job site all dimensions, locations and structural members and any physical conditions affecting the Construction Drawings.

2.07 Landlord's Approval. Landlord shall not be unreasonably withhold, condition or delay its consent to the Space Plan, the Construction Drawings, or any Change Order so long as the applicable plans, drawings, and specifications, and the work contemplated thereby: (a) do not involve structural portions of the Leased Premises or Building or Building systems (including, but not limited to, HVAC systems, life safety systems, electrical and plumbing systems); (b) affect only the Leased Premises, and not other tenants or their premises, and are not visible from outside of the Leased Premises; (c) do not affect the certificate of occupancy issued for the Building or the Leased Premises; (d) do not involve excess noise or fumes of any type; and (e) do not violate any legal requirements. If, under the terms of this Work Letter, Landlord is deemed to have disapproved the Space Plan, the Construction Drawings, the Contractor, the bid, or any Change Order by reason of Landlord's failure to timely notify Tenant of Landlord's approval or disapproval, then Tenant may provide Landlord with written notice of such failure to respond (the "**Second Notice**"), which, in order to be effective, must clearly, conspicuously and in bold type face set forth the following statement at the top of the first page of the Second Notice: "SECOND NOTICE! THE FAILURE OF LANDLORD TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER THE RECEIPT OF THIS SECOND NOTICE BY LANDLORD SHALL BE DEEMED TO BE LANDLORD'S APPROVAL." If Landlord should fail to notify Tenant in writing of its approval or disapproval within five (5) business days after receipt of such Second Notice, Landlord shall be deemed to have approved the applicable item.

ARTICLE 3

LANDLORD'S OBLIGATIONS

3.01 Tenant Improvement Allowance.

(a) Landlord shall contribute the Tenant Improvement Allowance towards Tenant's Construction Costs (to the extent of the Tenant Improvement Allowance). The Tenant Improvement Allowance must be used only for Tenant's actual out-of-pocket costs (hard and soft) of constructing Landlord's Work. The cost of all improvements required by the Approved Construction Drawings shall be paid from such Tenant Improvement Allowance. Landlord will apply the Tenant Improvement Allowance to pay Tenant's Construction Costs, pursuant to Section 4.01 below, as such costs are incurred. After the Tenant Improvement Allowance has been exhausted, Landlord will apply Tenant's Construction Costs Deposit to pay Tenant's Construction Costs as such costs are incurred. Except as set forth in Section 2.07 of the Lease, any unused portion of the Tenant Improvement Allowance shall be retained by Landlord, and Tenant shall have no further rights with respect thereto. Any unused portion of Tenant's Construction Costs Deposit shall be refunded to Tenant.

(b) As set forth in this Work Letter, Landlord shall construct the Landlord's Work, and pay the cost thereof up to the amount of the Tenant Improvement Allowance, but, in the event that the costs of the Landlord's Work exceed the total of the Tenant Improvement Allowance, then the entire amount of such excess (hereinafter referred to as the "**Excess**") shall be Tenant's sole liability and responsibility. However, within ten (10) days after the approval of the bid for the Landlord's Work, as set forth above, Tenant may notify Landlord in writing as to whether or not Tenant elects to have Landlord pay up to \$5.00 per rentable square foot of the Leased Premises (\$2,598,400.00 total) of the Excess (the "**Potentially Amortized Costs**"). If Tenant elects to have Landlord provide the Potentially Amortized Costs as set forth in this Section 3.01(b), the Potentially Amortized Costs shall be added to and for all purposes of the Lease and this Work Letter treated as part of the Tenant Improvement Allowance, and shall be repaid by Tenant as set forth below in this Section 3.01(b). If Tenant elects not to have the Potentially Amortized Costs added to the Tenant Improvement Allowance and amortized as set forth in this Section 3.01(b), or fails to provide notice of its election within such ten (10) day period, Tenant shall be deemed to have waived its right to have such Potentially Amortized Costs added to the Tenant Improvement Allowance and amortized as set forth in this Section 3.01(b). In such event, the amount of the Potentially Amortized Costs shall not be added to the Tenant Improvement Allowance. If Tenant elects to have the Potentially Amortized Costs added to the Tenant Improvement Allowance and amortized by Landlord, the Potentially Amortized Costs shall be amortized over the initial Lease Term, as follows: The outstanding balance of the Potentially Amortized Costs shall bear interest at the rate of seven percent (7%) simple interest per annum from the date Tenant notifies Landlord of its election to have the Potentially Amortized Costs added to the Tenant Improvement Allowance and amortized until such amount is paid in full, and a sum equal to the amount of principal and interest necessary to fully amortize the Potentially Amortized Costs over the Lease Term in equal monthly installments shall be added to Tenant's liability for the payment of Rent due under the Lease (hereinafter referred to as "**Additional Monthly Payments**"). The Additional Monthly Payments shall constitute Additional Rent due under the Lease, and shall be paid monthly at the same time and in the same manner that Monthly Rental Installments are paid under the Lease (except that in no event shall the Rental Concession apply to or be deemed to forgive or excuse payment of the Additional Monthly Payments). After completion of the Landlord's Work, Landlord shall calculate the amount of the Potentially Amortized Costs and the amount of Tenant's Additional Monthly Payments and shall provide Tenant written notice of the results of such calculations. Tenant agrees, if requested by Landlord, to execute an amendment to the Lease setting forth the amount of the Additional Monthly Payments. Failure to execute such amendment upon request of Landlord or to pay the Additional Monthly Payments when due shall constitute a Default under the Lease.

3.02 Coordination. Unless otherwise agreed in writing by Landlord and Tenant, all work involved in the construction and installation of Landlord's Work shall be carried out by Contractor under a contract with Landlord and under the sole direction of Landlord. Tenant shall cooperate with Landlord, Contractor and the Space Planner to promote the efficient and expeditious completion of such work. All work not within the scope of the normal construction trades employed for the Building, such as the furnishing and installation of draperies, furniture, telephone equipment, voice and data cabling, and office equipment, shall be furnished and installed by Tenant at Tenant's expense.

3.03 Commencement of Construction. Landlord shall have no obligation to commence or to allow commencement of construction or installation of Landlord's Work in the Leased Premises until: (a) Tenant has delivered to Landlord the Approved Construction Drawings, initialed by Tenant's Representative and Landlord's Representative, and the executed T.E.A., and Tenant has approved the selection of the Contractor and the bid in writing, all as required pursuant to Section 2.02 above; (b) Landlord has received from Tenant payment of all Rent then due under the Lease and the Security Deposit, if any, required under the Lease; and (c) Landlord has received from Tenant payment of Tenant's Construction Costs Deposit, if any.

3.04 Commencement of Change Orders. Landlord shall have no obligation to commence or to allow commencement of construction or installation of any of work provided in any Change Order until Landlord has received from Tenant payment of the required addition to Tenant's Construction Costs Deposit, if any, and the executed revised T.E.A., as provided in Section 2.03 above, with respect to such Change Order.

3.05 Substitutions. Landlord, upon prior notice to Tenant, reserves the right to make reasonable substitutions of equal or better quality and value in the event of unavailability of materials or due to field conditions.

ARTICLE 4

TENANT'S OBLIGATIONS

4.01 Payments.

(a) Tenant shall be responsible for payment of the following to the extent such costs exceed the Tenant Improvement Allowance: (i) the costs of preparation of the Space Plan and the Construction Drawings (including, without limitation, design fees, fees for architectural work and drawings, engineering fees, and permit costs) and all costs to complete the construction of the Landlord's Work, including but not limited to the cost of all labor and materials supplied by the Contractor and Landlord and their respective material suppliers, independent contractors and subcontractors to construct and complete the Landlord's Work, including but not limited to the cost of any Change Orders, Contractor's profit and overhead expenses, and costs associated with sustainability practices, documentation, registration and certification; and (ii) a fee equal to three percent (3%) of the total of the costs set forth in this Section 4.01(a) (including Change Orders) as a construction management fee. The costs set forth in this Section 4.01(a) are collectively referred to herein as "***Tenant's Construction Costs***."

(b) Tenant shall pay Tenant's Construction Costs, plus any other costs owing by Tenant to Landlord in connection with the construction of the Landlord's Work, as follows: (i) on the date of execution of the T.E.A., Tenant shall pay to Landlord one hundred percent (100%) of the amount by which the amount indicated on the T.E.A. exceeds the Tenant Improvement Allowance ("Tenant's Construction Costs Deposit"); (ii) on the date of approval by Landlord of any Change Order which increases or decreases the cost of the Landlord's Work, Tenant shall execute a revised T.E.A., as provided in Section 2.03 above, evidencing such increased or decreased cost and shall deposit with Landlord, as an addition to Tenant's Construction Costs Deposit, one hundred percent (100%) of the amount of the increased or decreased costs represented by such Change Order; and (iii) Tenant shall pay to Landlord, upon Substantial Completion of the Landlord's Work, the remainder, if any, of Tenant's Construction Costs, plus any other costs owing by Tenant to Landlord in connection with the construction of the Landlord's Work, such amount to be indicated on a statement delivered by Landlord to Tenant and paid by Tenant. The amount shown on such statement shall be paid by Tenant within ten (10) days after receipt of such statement. Tenant agrees that in the event it fails to make any payment required in this Work Letter in a timely manner, Landlord, in addition to any and all other remedies allowed to Landlord by law or in equity, shall have the same rights and remedies against Tenant as if a Default in payment of Rent had occurred under the Lease.

4.02 Early Access. Tenant shall have the right to access the Leased Premises while the Landlord Work is being performed pursuant and subject to the terms of Section 2.06 of the Lease.

4.03 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease, if a Default (beyond any applicable notice and cure period) under the Lease, or a default by Tenant under this Work Letter, has occurred at any time on or before the Substantial Completion of Landlord's Work, then: (a) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to cause Contractor to cease the construction of the Leased Premises (in which case, Tenant shall be responsible for any delay in the Substantial Completion of Landlord's Work caused by such work stoppage as set forth in Section 5.01 of this Work Letter); and (b) all other obligations of Landlord under the terms of this Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of the Lease.

4.04 General Provisions. This Work Letter shall not be deemed applicable to: (a) any space which is subsequently added to the original Leased Premises under the Lease, whether by any option or right under the Lease, including expansion options, rights of first offer and rights of first opportunity, or otherwise; or (b) any portion of the Leased Premises or any additions thereto in the event of a renewal or extension of the Lease Term, whether by any option or right under the Lease, including extension or renewal options, or otherwise, unless expressly provided in the Lease or any amendment thereto. Any changes to the Approved Space Plan or the Approved Construction Drawings, or any additional work required by any governmental agencies having jurisdiction over the Building or any aspect of Landlord's Work shall be complied with by Landlord and/or Contractor. Such required changes and/or additional work shall not be deemed to be a violation of the Approved Space Plan, the Approved Construction Drawings or any other provision of this Work Letter and shall be accepted by Tenant. If such required changes and/or additional work increase or decrease the cost to Landlord of constructing Landlord's Work, Landlord shall prepare and deliver to Tenant a revised T.E.A. and a Change Order evidencing the total cost of such changes and/or additional work. If Tenant notifies Landlord of a defect in material or workmanship pertaining to the Landlord's Work within one (1) year after the Commencement Date, then Landlord will cause such defect to be repaired as soon as reasonably practicable. Tenant's sole and exclusive remedy against Landlord for any defects in material or workmanship shall be for the repair and replacement of such defects of material and workmanship. However, for the avoidance of doubt, Landlord shall have no obligation to repair or replace such defects of material or workmanship unless Tenant submits written notice of such defects to Landlord within one (1) year after the Commencement Date. LANDLORD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THE LANDLORD'S WORK EXCEPT THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 4.04. TENANT'S SOLE REMEDY FOR THE BREACH OF ANY APPLICABLE WARRANTY SHALL BE THE REMEDY SET FORTH IN THIS SECTION 4.04. Tenant agrees that no other remedy, including, without limitation, incidental or consequential damages for lost profits, injury to person or property or any other incidental or consequential loss shall be available to Tenant.

ARTICLE 5

DELAY

5.01 Tenant Delay. The term "**Tenant Delay**" shall mean each day that Substantial Completion of Landlord's Work is delayed by any of the following: (a) Tenant's failure to respond, within the time periods prescribed by Landlord (or, if no time period is so prescribed, within five (5) days), to a request for information necessary for the completion of the Space Plan or the Construction Drawings; or (b) failure for any reason, other than unreasonable delays attributable to Landlord, to develop the Approved Space Plan or the Approved Construction Drawings by the dates prescribed herein; or (c) Tenant's failure to execute and deliver the T.E.A. by the date required in Section 2.02(b) above; or (d) Tenant's failure to pay the Rent as required in the Lease; or (e) Tenant's failure to pay Tenant's Construction Costs Deposit by the date required in Section 4.01(b)(i) above; or (f) changes by Tenant in the Approved Construction Drawings or Change Orders which actually cause delays in the completion of Landlord's Work; or (g) requirements by Tenant for materials, finishes or installations which are not Building Standard, including but not limited to any delays caused by failure to obtain or to receive delivery or installation of any such Non-Building Standard materials in a timely manner, but only to the extent that Landlord informed Tenant that such requirements were likely to result in a delay; or (h) any interference by Tenant with the performance of Landlord's Work; or (i) delay by Tenant in delivering to Landlord an executed, revised T.E.A. and paying to Landlord any addition to Tenant's Construction Costs Deposit required by a Change Order; or (j) any other cause which is defined as a Tenant Delay under this Work Letter or the Lease; or (k) intentionally omitted; or (l) changes to the base, shell and core of the Building required by the Approved Construction Drawings, but only to the extent that Landlord informed Tenant that such changes were likely to result in a delay; or (m) if a Certificate of Occupancy (temporary or final), is required in order to achieve Substantial Completion of Landlord's Work, any refusal by the appropriate governmental authority to issue such Certificate of Occupancy due to Tenant's failure to install, or delay in installing, any furniture or equipment that Landlord is not required to install as part of Landlord's Work; or (n) any other acts or omissions of Tenant, or its agents, or employees. The date that Substantial Completion actually occurs will be accelerated for all purposes of this Lease (including, without limitation, for determination of the Commencement Date and the obligation to pay Rent (subject to the Rental Concession)), by the number of days of any Tenant Delay that causes Landlord to be delayed in achieving Substantial Completion. If Landlord is unable to achieve Substantial Completion because of Tenant Delay, Landlord may, by written notice to Tenant, establish the Commencement Date as the date on which Substantial Completion could have been achieved, but for such Tenant Delay.

EXHIBIT C

FORM OF LETTER OF UNDERSTANDING

Attn: _____, Property Manager

RE: Lease between _____ (“Landlord”) and _____
 (“Tenant”) for the Leased Premises located at _____, _____, _____ (the “Leased
 Premises”), within _____, dated _____ (the “Lease”).

Dear _____:

The undersigned, on behalf of Tenant, certifies to Landlord as follows:

1. The Commencement Date under the Lease is _____.
3. The Expiration Date of the Lease is _____.
4. The Lease (including amendments or guaranty, if any) is the entire agreement between Landlord and Tenant as to the leasing of the Leased Premises and is in full force and effect.
5. Landlord has completed the improvements designated as Landlord’s obligation under the Lease (excluding punchlist items as agreed upon by Landlord and Tenant), if any, and Tenant has accepted the Leased Premises as of the Commencement Date.
6. To the best of the undersigned’s knowledge, there are no uncured events of default by either Tenant or Landlord under the Lease.

IN WITNESS WHEREOF, the undersigned has caused this Letter of Understanding to be executed this ____ day of _____, 20____.

EXHIBIT ONLY – NOT TO BE EXECUTED

EXHIBIT D

RULES AND REGULATIONS

1. The sidewalks, entrances, driveways and roadways serving and adjacent to the Leased Premises shall not be obstructed or used for any purpose other than ingress and egress. Landlord shall control the Common Areas.
2. No awnings or other projections shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Leased Premises other than Landlord standard window coverings without Landlord's prior written approval. All electric ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent, of a quality, type, design and tube color approved by Landlord. Neither the interior nor the exterior of any windows shall be coated or otherwise sunscreened without written consent of Landlord.
3. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by any tenant on, about or from any part of the Leased Premises, the Building or in the Common Areas including the parking area without the prior written consent of Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove or stop same without any liability, and may charge the expense incurred in such removal or stopping to such tenant.
4. The sinks and toilets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose subtenants, assignees or any of their servants, employees, agents, visitors or licensees shall have caused the same.
5. Except for Landlord's Work and improvements made by Tenant in accordance with attached Lease, no boring, cutting or stringing of wires or laying of any floor coverings shall be permitted, except with the prior written consent of Landlord and as Landlord may direct. Landlord shall direct electricians as to where and how telephone or data cabling are to be introduced. The location of telephones, call boxes and other office equipment affixed to the Leased Premises shall be subject to the approval of Landlord, which shall not be unreasonably withheld, conditioned, or delayed.
6. No birds or animals of any kind (except service animals) shall be brought into or kept in or about the Leased Premises, and no cooking shall be done or permitted by any tenant on the Leased Premises, except microwave cooking, and the preparation of coffee, tea, hot chocolate and similar items for tenants and their employees. No tenant shall cause or permit any unusual or objectionable odors to be produced in or permeate from the Leased Premises.
7. No tenant shall occupy or permit any portion of the Leased Premises to be occupied as an office for the manufacture or sale of liquor, narcotics, or tobacco in any form, or as a medical office, or as a barber or manicure shop, or a dance, exercise or music studio, or any type of school or daycare or copy, photographic or print shop or an employment bureau without the express written consent of Landlord. The Leased Premises shall not be used for lodging or sleeping or for any immoral or illegal purpose.
8. No tenant shall make, or permit to be made any unseemly, excessive or disturbing noises or disturb or interfere with occupants of the Building, neighboring buildings in the Park or neighboring premises, whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. No tenant shall throw anything out of doors, windows or down the passageways.

9. No tenant, subtenant or assignee nor any of its servants, employees, agents, visitors or licensees, shall at any time bring or keep upon the Leased Premises any flammable, combustible or explosive fluid, chemical or substance or firearm in violation of any Laws.

10. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made to existing locks or the mechanism thereof. Each tenant must upon the termination of his tenancy, restore to Landlord all keys of doors, offices, and toilet rooms, either furnished to, or otherwise procured by, such tenant and in the event of the loss of keys so furnished, such tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes.

11. Each tenant shall be responsible for all persons entering the Building at tenant's invitation, express or implied. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of an invasion, mob riot, public excitement or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right without any abatement of rent to require all persons to vacate the Building and to prevent access to the Building during the continuance of the same for the safety of the tenants and the protection of the Building and the property in the Building.

12. Canvassing, soliciting and peddling in the Building are prohibited, and each tenant shall report and otherwise cooperate to prevent the same.

13. All equipment of any electrical or mechanical nature shall be placed by tenant in the Leased Premises in settings that will, to the maximum extent possible, absorb or prevent any vibration, noise and annoyance.

14. The scheduling of tenant move-ins shall be before or after normal business hours and on weekends, subject to the reasonable discretion of Landlord.

15. The Building is a smoke-free Building. Smoking is strictly prohibited within the Building. Smoking shall only be allowed in areas designated as a smoking area by Landlord. Tenant and its employees, representatives, contractors or invitees shall not smoke within the Building or throw cigar or cigarette butts or other substances or litter of any kind in or about the Building, except in receptacles for that purpose. Landlord may, at its sole discretion, impose a charge against monthly rent of \$50.00 per violation by tenant or any of its employees, representatives, contractors or invitees, of this smoking policy.

16. Tenants will insure that all doors are securely locked, and water faucets, electric lights and electric machinery are turned off before leaving the Leased Premises.

17. Tenant, its employees, customers, invitees and guests shall, when using the parking facilities in and around the Building, observe and obey all signs regarding fire lanes and no-parking and driving speed zones and designated handicapped and visitor spaces, and when parking always park between the designated lines. Landlord reserves the right to tow away, at the expense of the owner, any vehicle which is improperly parked or parked in a no-parking zone or in a designated handicapped area, and any vehicle which is left in any parking lot in violation of the foregoing regulation. All vehicles shall be parked at the sole risk of the owner, and Landlord assumes no responsibility for any damage to or loss of vehicles.

18. Tenant shall be responsible for and cause the proper disposal of medical waste, including hypodermic needles, created by its employees.

19. Tenant shall not store any non-containerized, loose substances or materials on the floor of the Leased Premises.

20. No outside storage is permitted including without limitation the storage of trucks and other vehicles.

21. No tenant shall be allowed to conduct an auction from the Leased Premises without the prior written consent of Landlord.

It is Landlord's desire to maintain in the Building and Common Areas the highest standard of dignity and good taste consistent with comfort and convenience for tenants. Any action or condition not meeting this high standard should be reported directly to Landlord. Landlord reserves the right to make such other and further rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Building and Common Areas, and for the preservation of good order therein. In the event of any conflict between these Rules and Regulations and the terms of the Lease, the terms of the Lease shall control in every instance.

EXHIBIT E

APPROVED TENANT SIGNAGE



EXHIBIT F

PARKING LOT

[The Parking Lot consists of the areas marked with diagonal lines on the below drawing]

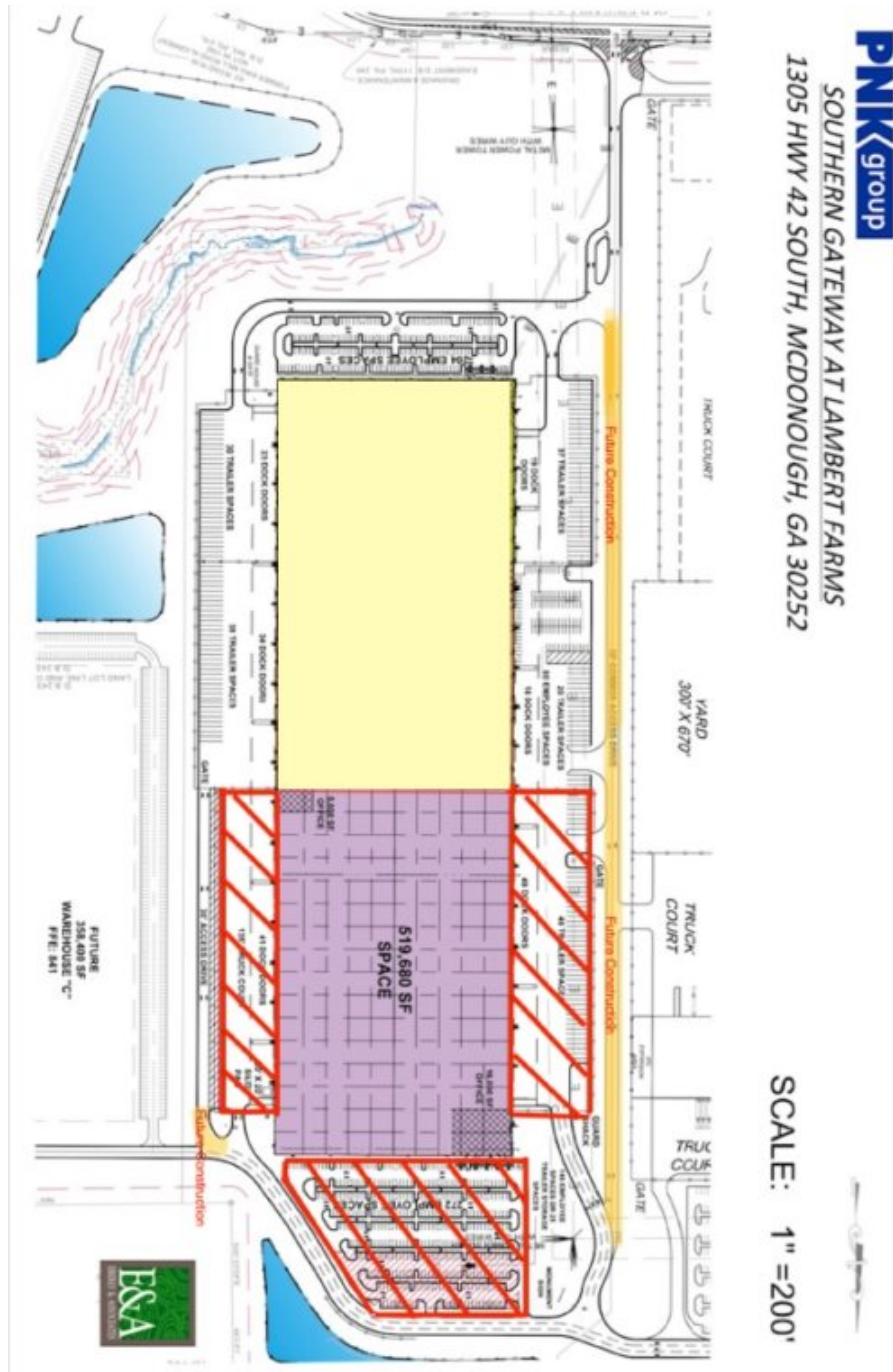


EXHIBIT G**PERMITTED HAZARDOUS SUBSTANCES**

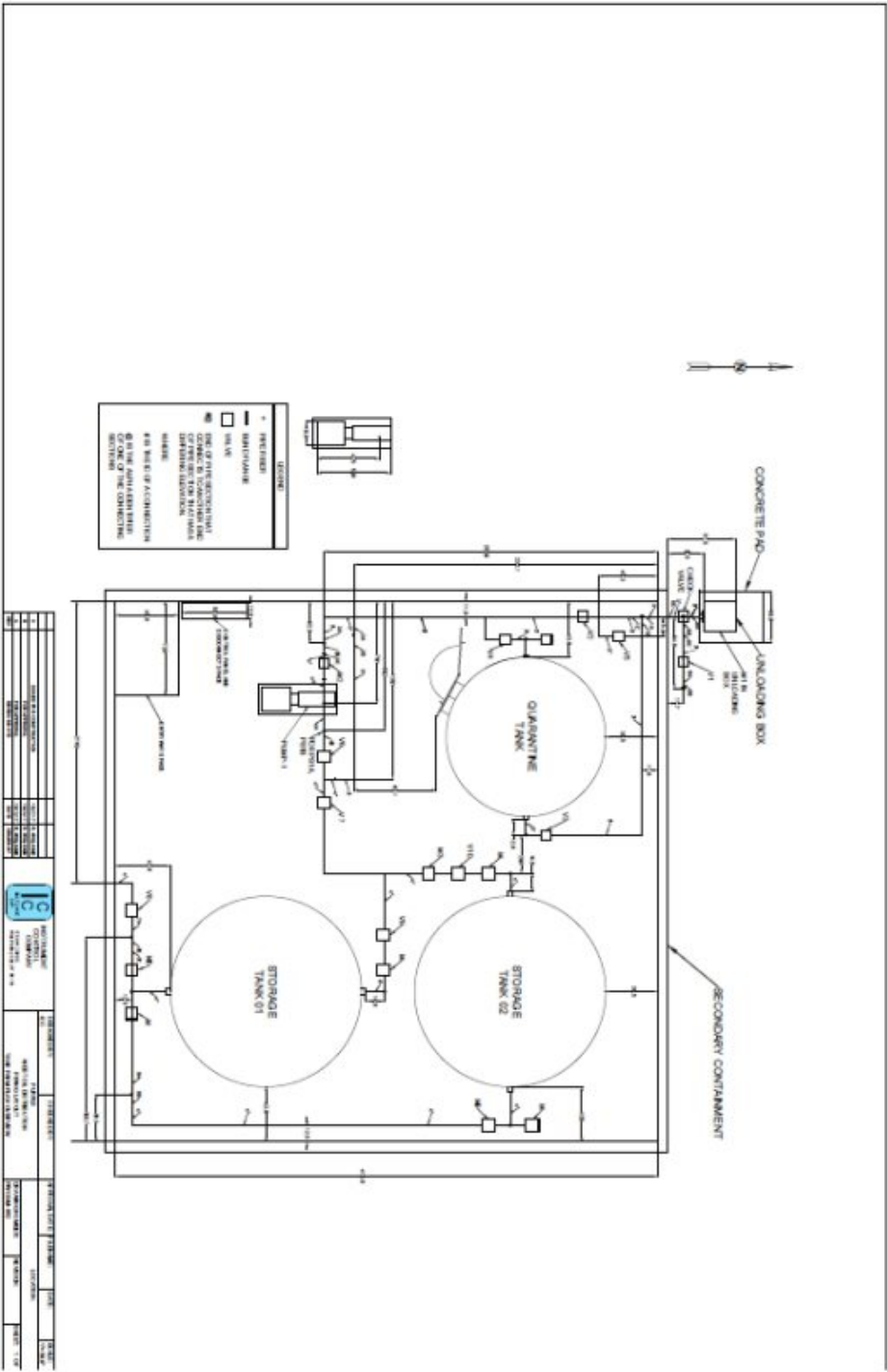
Description	Typical / Sample Grade information	Average On Hand	UOM
POLYETHYLENE	polyethylene, powder	12,000	Pound
EVERNOX 10	antioxidant, powder	10,000	Kilo
EVERFOS 168	antioxidant, powder	100,000	Kilo
KRATON - E1830HF POLYMER	rubber, powder	190,000	Pound
3M K37 - MICROSPHERES	glass beads, powder	80,000	Pound
2460505 INDOFAST VIOLET 23	purple pigment, powder	90	pound
POLY FILM 63" 160CM .004MIL	polyethylene plastic film	128	roll
POLY FILM 78.75" 200CM OR 78.75" SWS .004 MIL	polyethylene plastic film	128	roll
POLY FILM CLEAR 110"	polyethylene plastic film	90	roll
STRETCH WRAP-50"-HIGH SLIP	polyethylene plastic film	180	roll
STRETCH WRAP-100"-HIGH SLIP	polyethylene plastic film	80	roll
FIRE SOCK - TWINXL - GEN2.1	flame resistant fabric	2,400	Each
FIRE SOCK - FULL / QUEEN - GEN2.1	flame resistant fabric	24,000	Each
FIRE SOCK - KING / CAL KING - GEN2.1	flame resistant fabric	18,000	Each
MATTRESS - SCRIM 90% COTTON - 10% SPANDEX	cloth	70,000	kilos
MINERAL OIL	liquid	40,000	gallons
MATTRESS - ENGLISH/FRENCH VINYL BAG TWIN/TWINXL	PVC bag	16,000	Each
MATTRESS - ENGLISH/FRENCH VINYL BAG FULL/QUEEN	PVC bag	50,000	Each
MATTRESS - ENGLISH/FRENCH VINYL BAG CAL KING/KING	PVC bag	30,000	Each
PET BED - POLY BAG - SMALL	polyethylene plastic film	2,000	Each
PET BED - POLY BAG - MEDIUM	polyethylene plastic film	2,000	Each
PET BED - POLY BAG - LARGE	polyethylene plastic film	2,000	Each
GLUE 1000 KILOS PER TOTE	Water based Adhesive	15	tote
SOAP 5 GALLON BUCKET	e.g. Dawn, or another dish soap	4	bucket
COMPOUNDED HYPER ELASTIC POLYMER	The Purple Grid, folded and boxed in plastic totes	varies on demand	Each
HYDRAULIC FLUID	oil, totes	2200	pound
WASTE / USED OIL	oil, totes	6000	pound
VARIOUS OILS: GEAR, LUBE, PNEUMATIC, GREASE	oil, drums, small containers	500	pound

OIL TANK AREA

[illegible]

EXHIBIT H-2

PRE-APPROVED PLANS FOR OIL TANKS



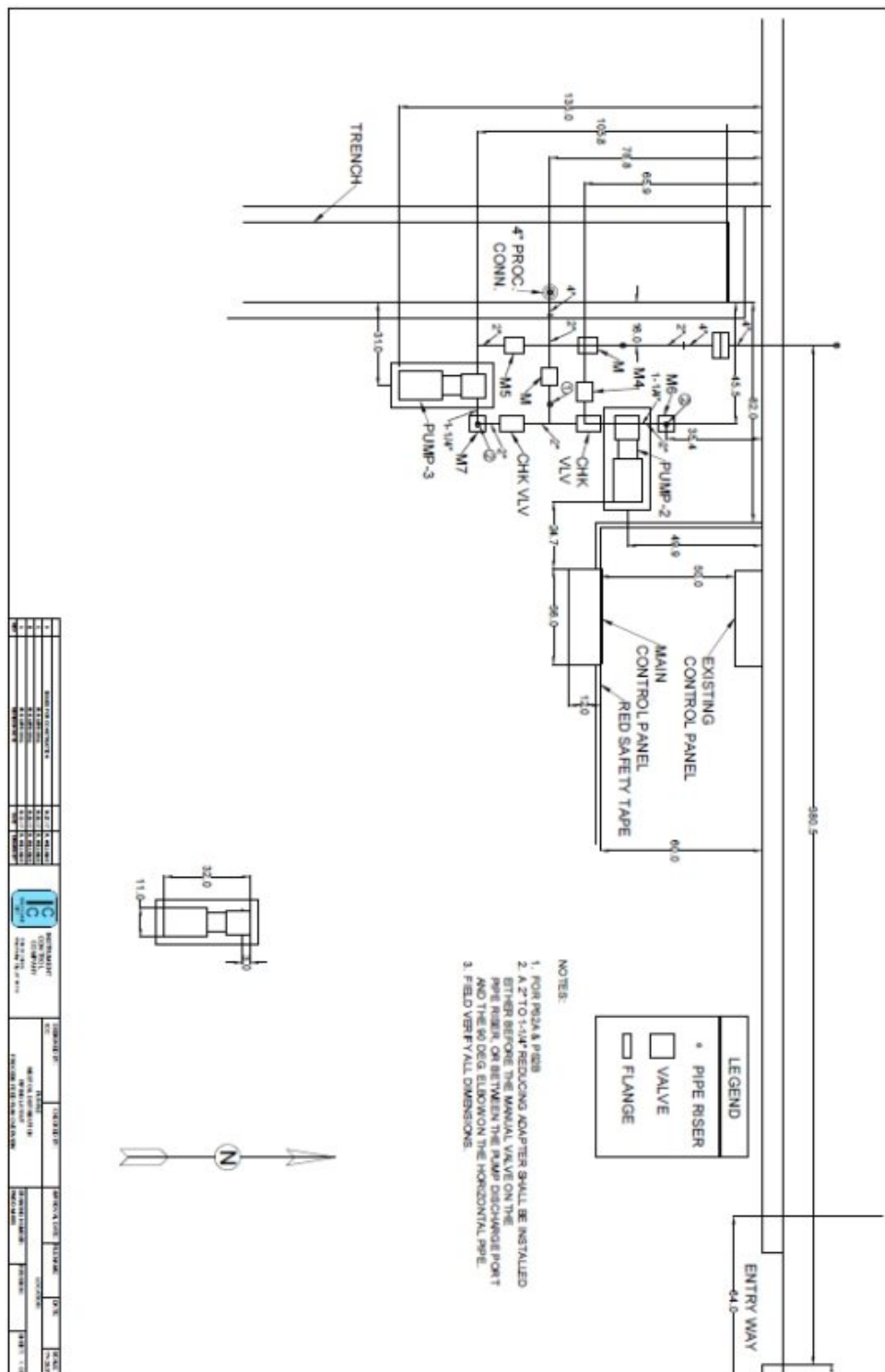


Exhibit H-2
Page 2 of 2

CERTIFICATIONS

I, Joseph B. Megibow, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Purple Innovation, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 13, 2020

/s/ Joseph B. Megibow

Joseph B. Megibow, Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Craig L. Phillips, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Purple Innovation, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 13, 2020

/s/ Craig L. Phillips

Craig L. Phillips, Chief Financial Officer
(Principal Financial and Accounting Officer)

CERTIFICATION

In connection with the Quarterly Report on Form 10-Q of Purple Innovation, Inc. (the “Corporation”) for the quarter ended June 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, Joseph B. Megibow, Chief Executive Officer of the Corporation, hereby certifies, pursuant to Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

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

Dated: August 13, 2020

/s/ Joseph B. Megibow

Joseph B. Megibow, Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

In connection with the Quarterly Report on Form 10-Q of Purple Innovation, Inc. (the “Corporation”) for the quarter ended June 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, Craig L. Phillips, Chief Financial Officer of the Corporation, hereby certifies, pursuant to Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

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

Dated: August 13, 2020

/s/ Craig L. Phillips

Craig L. Phillips, Chief Financial Officer
(Principal Financial and Accounting Officer)