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

Form 10-K

(Mark One)

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

For the fiscal year ended December 31, 2024

☐ 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	**47-4078206**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
4100 NORTH CHAPEL RIDGE ROAD SUITE 200 LEHI, UTAH	**84043**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: **(801) 756-2600**

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
Preferred Stock Purchase Rights	N/A	The NASDAQ Stock Market LLC

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

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

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

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

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

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

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☐

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404 (b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

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

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

As of June 30, 2024, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the common stock outstanding, other than shares held by persons who may be deemed affiliates of the registrant, computed by reference to the closing sales price for the common stock as of June 30, 2024, as reported on NASDAQ, was $58.5 million.

As of March 7, 2025, there were 107,545,493 shares of Class A common stock, par value $0.0001 per share, and 164,982 shares of Class B common stock; par value $0.0001 per share of the registrant issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Certain portions of the registrant's definitive proxy statement relating to the Annual Meeting of Stockholders are specifically incorporated by reference in Part III, Items 10, 11, 12, 13 and 14 of this Annual Report on Form 10-K.

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Unless the context otherwise requires, references in this Annual Report on Form 10-K to (i) "Purple," "the Company," "our company," "we," "our" and "us," or like terms, refer to Purple Innovation, Inc. and its subsidiaries, currently Purple Innovation, LLC; (ii) "Purple Inc." refers to Purple Innovation, Inc. without its subsidiary; (iii) "Purple LLC" refers to Purple Innovation, LLC, an entity of which Purple Inc. acts as the sole managing member and of whose common units we own approximately 99.9% as of March 7, 2025; (iv) "Business Combination" refers to the February 2, 2018 reverse recapitalization transaction pursuant to which Purple Inc. acquired Purple LLC; (v) "Global Partner Acquisition Corp." and "GPAC" refer to the Company prior to the closing of the Business Combination; (vi) "Common Stock" or "Class A Stock" refers to the Company's Class A common stock, par value $0.0001 per share; (vii) "Class B Stock" refers to the Company's Class B common stock, par value $0.0001 per share; and (viii) "2024 Annual Meeting" refers to the Company's 2024 annual meeting of stockholders.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report, including, without limitation, statements under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations," includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, or the Exchange Act. Statements in this report that are not descriptions of historical facts are forward-looking statements that are based on management's current expectations and are subject to risks and uncertainties that could negatively affect our business, results of operation, financial condition and stock price. These forward-looking statements relate to expectations for future financial performance, business strategies or expectations for Purple. Specifically, forward-looking statements may include statements relating to changes in the markets in which Purple competes, expansion plans and opportunities, our restructuring, our expectation of opening additional Purple showrooms, increases in capital, advertising and operational expenses, and other statements preceded by, followed by or that include the words "estimate," "plan," "project," "forecast," "intend," "expect," "anticipate," "believe," "seek," "target" or similar expressions.

The forward-looking statements contained in this report are made only as of the date hereof. 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. Forward-looking statements are based on our current expectations and beliefs concerning future developments and their potential effects on us. Future developments affecting us may not be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) and other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading "Risk Factors." Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. These risks and others described under "Risk Factors" may not be exhaustive.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this report. In addition, even if our results or operations, financial condition and liquidity, and developments in the industry in which we operate are consistent with the forward-looking statements contained in this report, those results or developments may not be indicative of results or developments in subsequent periods.

PART I

Item 1. Business

Introduction

Our mission is to deliver the greatest sleep ever invented.

We began as a digitally-native vertical brand founded on comfort product innovation with premium offerings, and have since expanded into brick & mortar stores as a true omni-channel brand. We offer a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, bases, sheets and more. Our products are the result of decades of innovation and investment in proprietary and patented comfort technologies and the development of our own manufacturing processes. Our proprietary Hyper-Elastic Polymer gel technology underpins many of our comfort products and provides a range of benefits that differentiate our products from our competitors. Specially engineered to relieve pressure, maintain an ideal body temperature, and provide instantly adaptive support, Purple's patented technology has been tested rigorously within medical and consumer applications for over 30 years. Originally designed for use in hospital beds and wheelchairs, we adapted this unique pressure-relieving material for our mattresses, pillows and other cushion products.

We market and sell our products via our direct-to-consumer channel, which includes Purple.com (our direct-to-consumer e-commerce), Purple showrooms, our customer contact center and online marketplaces (collectively "DTC"), and our wholesale channel through retail brick-and-mortar and online wholesale partners.

Our core competencies in design, development and manufacturing are the foundation of our business. We have integrated our operations to include research and development, marketing and manufacturing. As a result, we have the ability to rapidly test, learn, adapt and scale our product offerings. In order to solve complex manufacturing challenges such as large-format injection molding of our Hyper-Elastic Polymer cushioning material, we designed and produced our own manufacturing equipment including our proprietary and patented molding machinery. These fully customized machines are unique to Purple and, we believe, can handle both our size and scale requirements. We believe our combination of patents and intellectual property, proprietary and patented manufacturing equipment, production processes and decades of acquired knowledge create an advantage over our competitors who rely on commoditized materials, such as foam.

In addition to developing differentiated products and technologies, we have built a brand that we believe has high customer engagement and avid brand advocates. We have an experienced marketing team, providing efficient customer acquisition and brand demand development. Our marketing strategy enables us to market our full product suite to customers, generate frequent interactions online and drive traffic to all channels offering our products.

Our knowledge of and engagement with consumers across digital and brick and mortar retail channels is advantageous and increasing. To complement our DTC efforts, we have developed multiple wholesale relationships with best-in-class retailers in the furniture, mattress specialty, and home décor spaces. Our goal is to provide opportunities for each customer to learn, shop, and buy in the way that works for them. We believe our differentiated products (including differences across price, comfort, benefit, marketing strategies, manufacturing capabilities, branding and technology) position us to drive long-term growth. For the year ended December 31, 2024, our DTC sales accounted for 58.1% of our net revenues, as compared to 58.1% for 2023 and 57.7% for 2022, and wholesale sales accounted for 41.9% of net revenues, as compared to 41.9% for 2023 and 42.3% for 2022.

As of December 31, 2024 we operate 58 Purple showrooms across the United States as compared to 60 Purple showrooms at the end of 2023 and 55 Purple showrooms at the end of 2022. We continue to strategically open new showrooms and anticipate continued expansion of our showrooms in the future.

Industry and Competition

Our portfolio of products is driven by our commitment to innovating real comfort solutions that meaningfully help people sleep, feel and live better. Whether it's getting a better night's rest or elevating everyday life, we design and manufacture innovative, differentiated products that put our customers' comfort first.

Sleep Products

The sleep products category encompasses a variety of products including mattresses, pillows, bases, foundations, sheets, mattress protectors, blankets and duvets. Meaningful innovation in sleep products has remained stagnant and limited over the last 150 years. Coil spring mattresses and memory foam, two of the primary materials underpinning mattress technology today, were invented in the 1860s and 1990s. Latex, water and air mattresses followed, emerging in the latter part of the 20th century. The sleep product industry has generally remained complacent until the introduction of our proprietary Hyper-Elastic Polymer material, which we believe represents a meaningful innovation in pressure relief, temperature neutrality, responsiveness, durability and limited motion transfer. We believe that our proprietary technology solves problems that regular mattresses create and has proven that material innovations can have a positive impact on sleep.

Beginning in 2015, the market for sleep products underwent a fundamental transformation with the rise of e-commerce-based brands and direct-to-consumer distribution. This market change disrupted the traditional category dynamics and drove the majority of category growth (versus traditional mattress companies) for several years. Recently, the U.S. sleep product industry has experienced significant consolidation as manufacturers have acquired both direct-to-consumer companies and brick and mortar retailers to expand profitability through vertical integration and extend their reach to the consumer to capture more market share. Amidst this changing category dynamic, Purple's product differentiation and manufacturing capabilities paired with our strategic mix of showrooms, e-commerce and third-party retailers, has allowed us to gain share and be a leader in the sleep products category.

In 2022, we acquired Advanced Comfort Technologies, Inc., dba Intellibed ("Intellibed"), a premium sleep and health wellness company that was a pre-existing licensee of the founders of some of our technologies. This acquisition resulted in us owning the sole right to use all of our Hyper-Elastic Polymer technologies in our beds. In addition, the acquisition allowed us to immediately expand into the luxury mattress segment. As a result, Purple launched two collections in the second quarter of 2023, giving us three collection offerings: Essentials (including the Purple Flex, The Purple Mattress, and The Purple Plus), Restore (including Restore, RestorePlus, and RestorePremier) and Rejuvenate (including Rejuvenate, RejuvenatePlus and RejuvenatePremier). We are re-launching the Rejuvenate collection (Rejuvenate 2.0) in the second quarter of 2025 with a newly innovated grid technology.

In general, direct-to-consumer mattress companies offer convenience, flexible shipping and returns, and low prices, while leveraging third-party manufacturing and distribution. Materials used by online mattress retailers include layers of foam cushioning that are assembled, compressed and folded into a box for distribution. This market is highly fragmented, commoditized and competitive, with customer purchase decisions based primarily on price. Prior to Purple, there has been little recent success disrupting the premium market, where the majority of category revenue and profit is realized. Competitors in the premium market include Tempur Sealy and Sleep Number.

While e-commerce home goods purchases have increased over the past five years, traditional brick-and-mortar retailers command a significant part of the market for mattress products. This part of the retail market is also highly fragmented and competitive. The leading brick-and-mortar specialty mattress retailer in the United States is Mattress Firm and the leading furniture store is Ashley Furniture. These national retailers compete with both regional and local retailers as well as furniture and department stores. Purple has also expanded into many of these regional and local furniture retailers.

Across these channels, some key factors that impact competition in our industry are comfort feel, product features, reliable logistics and manufacturing capabilities, marketing efficacy and efficiency, brand differentiation, expertise of sales associates, customer care, pace of innovation and product roadmap, price of products and services, financial stability and ability to invest in innovation.

What Makes Purple Different?

We believe we have a particular set of competitive strengths that differentiate and position us for continued success:

- ***History of innovation that produced new comfort technology—*** We are a company built on innovation and licensing, with more than 30 years of expertise in comfort innovation. Purple is founded upon decades of history-developing innovative comfort solutions, including the invention of our proprietary and patented Hyper-Elastic Polymer technology. Our breakthrough mattress represents what we believe to be the first substantive innovation in the sleep product industry since the introduction of memory foam in 1992. We believe that the unique properties of our technology have resulted in several improvements to existing sleep products that are not addressed by foam, spring or air mattresses.

- ***Pressure Relief—*** Our Hyper-Elastic Polymer technology is designed around the science of column buckling which enables our mattresses to be both firm and soft. This offers support across the body's larger surface areas, such as the back, while providing pressure relief at local areas or points of pressure, such as the hips and shoulders. We believe Purple's founders were the first to leverage this technology in mattresses after their success in licensing their proprietary Hyper-Elastic Polymer technology to medical manufacturers for use in wheelchairs, critical care beds and hospital beds. The resulting feel is often described as buoyant and responsive.

- ***Temperature Neutral—*** The Hyper-Elastic Polymer material itself is temperature neutral, with the surface comprised mostly of air, made from thousands of open-air channels. The channels allow for high airflow and dissipation of heat and vapor. This is the opposite of foam beds, which absorb heat from the body and then radiate the heat back, constantly increasing the temperature. Our technology allows for continual sleeping without waking up hot.

- ***Responsive—*** Unlike memory foam, which compresses, gets hard and then takes time to recoil, our Hyper-Elastic Polymer technology is instantly responsive to the body as it moves. It will immediately flex to support the sleeper's position and spring back into place as the sleeper readjusts during the night.

- ***Durable—*** Hyper-Elastic Polymer material is a highly durable gel that we believe is more durable than most foams. The Hyper-Elastic Polymer technology also has numerous applications beyond mattress products including seat cushions and pillows. Hyper-Elastic Polymer technology is only one of numerous innovations we have developed to produce a range of unique and effective comfort products across the sleep, seat cushion and other categories.

- ***Proprietary technologies and manufacturing expertise provide a significant competitive advantage—***We believe the combination of patent protection, proprietary manufacturing equipment and decades of accumulated knowledge creates a competitive advantage through barriers to imitation. We have hundreds of granted or pending patents and hundreds of patent filings that cover current and future products as well as proprietary manufacturing equipment we have designed and fabricated. In addition to intellectual property protection of key products and manufacturing capabilities, our team has in depth experience and unique insights derived from inventing and refining proprietary comfort technologies, machines and products. Our patented and proprietary molding processes and machines allow for large-format injection molding of gels efficiently and at scale.

- ***Growing a brand with a passionate following—*** Our brand mirrors our passion for uncompromising performance, quality and durability, and our dedication to improving lives by delivering better sleep and better comfort. We believe our brand awareness rivals category leaders. Our brand has extended beyond awareness of individual products and we have successfully marketed our full suite of products to customers using our omni-channel strategy. We believe our customer satisfaction metrics are amongst the best in the industry, and that our customers' high satisfaction with our product has continued to drive "word of mouth" recommendations, one of the most persuasive ways consumers learn about our products.

- ***Balanced, omni-channel distribution strategy***— We have sought opportunities to expand brand awareness in brick-and-mortar retailers where our beds can be displayed. Our goal is to support the customer wherever and however they want to learn, try, and buy. Whether in wholesale, Purple showrooms or our e-commerce channel, we are a leader in the sleep products market. Our flexible return policies and aggressive expansion into wholesale locations (commonly referred to as "doors") and our own showrooms allow for more of our targeted customers to feel and experience our products throughout the purchase process. In our wholesale channel, we sell most of our products through select national and regional retailers as well as a variety of independent retail partners throughout the United States. As a result, we believe we will drive accelerated growth in the sleep products industry.

- ***Vertical integration enables nimble design, development and execution***— We design and develop our products in-house and we have extensive research and development capabilities led by a team of engineers, industrial designers and marketing specialists. The ability to develop and test products in this manner enables us to not only prototype and deploy new ideas, but also design and develop corresponding manufacturing equipment and processes. In addition, we continuously refine our production methods to improve product quality and enhance efficiency. The resulting real-time feedback cycle is a key differentiator compared to other competitors that outsource many of these functions and lack an integrated approach. In August 2023, we opened an innovation center near our headquarters in Utah to support and accelerate our ongoing research and development.

Growth Strategies

- ***Focus on pioneering new technologies to maintain our competitive advantage.*** Our strategy focuses on offering a differentiated product that provides unique benefits and higher customer satisfaction, all fueled by our proprietary flexible gel technology. Advancements and innovation in our grid technology has led to a new grid technology marking a significant advancement in our product lineup. Our new DreamLayer grid, stacked with our original grid, creates a unique combination that continues to differentiate us in the market while driving superior comfort and support for an even more premium sleep experience. This upgrade will result in a refresh of our current Rejuvenate line. The new Rejuvenate 2.0 collection launches in the second quarter 2025 through our direct-to-consumer channels, followed by a full wholesale roll-out expected to be complete by the third quarter 2025. In addition, we significantly expanded our distribution of pillows by launching our renowned DreamLayer and Freeform pillows into our wholesale channel.

- ***Drive sales by promoting our product differentiation.*** We started as a brand built on differentiation. In recent years, the category has relied extensively on discount messaging to attract customers, with less focus on product benefits. Our goal is to refocus our messaging to lead with our product differentiation. We intend to effectively articulate the unique qualities of sleeping on our gel grid layer to be more effective and reach more consumers. In our selling channels, we expect refocusing our messaging on promoting our differentiation will drive more and better quality traffic while improving conversion both online and in stores, and increase our share of retailer sales in our wholesale channel.

- ***Prioritize gross margin improvements.*** We expect continued gross margin gains to come from driving cost savings through plant consolidation efficiency gains, supplier diversification efforts, and improved scrap and yield results from continuous improvements efforts. We are also ramping up in-house pillow production, changing vendors for key mattress components like coils and mattress covers and improving our delivery program to drive cost improvements and better deliveries. These savings will enable us to reinvest in innovation and marketing to drive growth.

Our Products

Our current product portfolio is as follows:

- ***Mattresses—*** Our mattresses utilize the unique benefits of our patented Gelflex Grid technology creating a one-of-a-kind sleep solution that regulates body temperature, allowing you to sleep cooler through the night and soft enough to cradle pressure points while also providing support through localized buckling columns. The columns in our Gelflex Grid mattresses instantly adapt to your body to cradle your hips and shoulders while supporting your spine's natural alignment for uniquely buoyant, supportive comfort. Our Gelflex Grid products are manufactured with non-toxic ingredients that are third-party tested and free from carcinogenic chemicals. Our patented Gelflex Grid technology is used in all Purple mattresses. We back up the quality and durability of our mattress with a 100-night trial and a 10-year warranty. With our premium mattress collections, the Restore Collection and the Rejuvenate Collection, launched in 2023, we now have three collections that come in a variety of feels and price points to appeal to a wide range of consumers with high satisfaction and delivering best sleep.

- ***Pillows—*** We currently sell eight pillow models, all designed to deliver various sleep preferences and needs. The Purple Harmony™ Pillow, the Purple Freeform™ Pillow, the Purple DreamLayer™ Pillow, the Purple Harmony Anywhere™ Pillow, the Purple Pillow®, the Purple Twin Cloud® Pillow, the Purple Cloud® Pillow and the Kids Pillow®. The Purple Harmony Pillow is the world's first pillow with a full wrap of honeycomb Gelflex® Grid surrounding a soft, responsive latex core for blissfully cool comfort and responsive airy support. The newly launched Purple Freeform Pillow features the honeycomb Gelflex Grid with an all-new MicroFlex™ Moon Foam fill interior for luxurious, moldable comfort. It is our first fully adjustable pillow as the MicroFlex Moon Foam and optional neck roll chambers can be adjusted for personalized height, firmness and support. The newly launched Purple DreamLayer Pillow uses an all-new version of the Gelflex Grid combined with MicroAir Foam for a dreamy, melt-in comfort that provides contour-hugging support without the heat and delay of a traditional memory foam. The Purple Harmony Anywhere Pillow has all of the advantages and feel of the Purple Harmony Pillow in a portable, take-anywhere travel size. The Purple Pillow is designed entirely of Gelflex Grid for a firmer, no-fluff, ergonomic support with ultimate cooling and adjustable height layers. The Purple Twin Cloud Pillow is a hypoallergenic down-alternative that features our patented cover construction and two chambers of silky, down-like fibers for an extra fluffy, cloud-like comfort with two optional firmness settings. The Purple Cloud Pillow features the same fill as the Purple Twin Cloud Pillow, but a simpler, single chamber design for classic, cloud-like comfort. The Kids Purple Pillow is made entirely of Gelflex Grid, similar to the Purple Pillow, but is smaller and softer for smaller sleepers. We believe our pillows are unique and there is a sleep solution for every type of sleeper to get the best sleep of their life, with no other products in the market like them in appearance, design, functionality or comfort. We also back up the quality and durability of our pillows with a 100-night trial and a one-year warranty**.**

- ***Sheets—*** Made from stretchy and breathable bamboo-based Viscose, our Purple SoftStretch sheets are designed to maximize the functionality of our mattresses and pillows. We developed our own technology to enable customers to experience the full performance potential of our unique Gelflex Grid mattress (or any other mattress). Our sheet sets include pillowcases that also maximize the unique functionality of our pillows and come in both standard and deep pocket sizes.

- ***Waterproof Mattress Protector—*** Like our sheets, our new Purple Waterproof Mattress Protector mattress is designed to optimize the functionality of our Gelflex Grid in our mattress. Our premium mattress protector is stretchy, breathable and waterproof. It is also stain-resistant and machine-washable, making it easy to clean. All features help keep your mattress looking and feeling like-new.

- ***Bases—*** Our full line-up of smart adjustable bases has been designed to pair with our premium mattresses for the ideal Purple sleep system experience. The Purple Adjustable Base, the Purple Premium Smart Base, and the Purple Premium Plus Smart base have a wide range of functions, such as adjustable head and foot positions, zero-gravity preset for a near weightless feel, a "sitting" preset, under-bed lighting, adjustable legs and a wireless remote with in-app control. Our platform bed assortment includes the Purple Bed Foundation and the Purple Metal Platform. The Purple Bed Foundation has the look of a stylish upholstered bed frame and is easy to ship and assemble, with no tools required. Our Purple Metal Platform, with its low-profile design, features a sturdy steel frame and extra slats to ensure silent, shake-free support for the lifetime of your mattress.

- ***Seat Cushions—*** The evolution of our portfolio of seat cushions has resulted from decades of in-house manufacturing experience including development of proprietary machines and trade secrets, extending the benefits of our Gelflex Grid technology. Purple currently sells four types of seat cushions and one back cushion, all in varying sizes and shapes to meet the needs of our customers.

Technology

Technology is key to our unique position within the sleep products industry. The introduction of our proprietary Hyper-Elastic Polymer material was the first major innovation in the consumer mattress category in decades. Mattresses from our competitors are typically manufactured using one or more layers of springs, standard polyurethane foam, memory foam, air chambers or latex foam and are undifferentiated from competitors within their product type.

Proprietary Technologies

The Purple innovation team, through their scientific journey to get to the root causes of pressure sores, designed the Hyper-Elastic Polymer material and other patented and proprietary comfort technologies in order to improve the lives of "every body." Each different cushioning product line requires unique molding techniques.

Our Hyper-Elastic Polymer material is durable, elastic and can stretch up to 15 times its original size and return without losing its shape. It sleeps and sits temperature-neutral and has good ventilation to inhibit moisture build-up.

Our Hyper-Elastic Polymer material is both soft and supportive. While the columns in this structure provide support where it is needed, they also buckle where it is needed to reduce pressure by allowing shoulders and hips to sink into the cushion with reduced force pushing back on those areas of the body unlike other cushion technologies. The soft and flexible columns also return to their original position as forces lessen and are capable of immediately providing support.

Proprietary Machinery

Internally designed, developed and built, our patented and proprietary molding machines are able to mold our Hyper-Elastic Polymer material into large-format king-sized mattresses at scale. We have modified other molding machines to manufacture additional products containing Hyper-Elastic Polymer material. We also acquired in the Intellibed acquisition the patented manufacturing machine and process that had been licensed by our founders, preventing others from obtaining access to that technology. The process of molding our Hyper-Elastic Polymer material using our molding machinery is proprietary, patent-protected and complex, requiring specific knowledge and expertise to successfully execute manufacturing. We have in-house engineering and fabrication capabilities enabling us to design, manufacture, install and maintain new equipment as well as optimize the performance and efficiency of our existing machinery based on real-time insights gained from our vertically integrated operations.

Marketing

We have developed a brand that resonates with consumers. Our marketing efforts are focused on building awareness of the Purple brand and illustrating the unique way our products deliver better sleep and comfort. We leverage data-driven marketing across all communication channels to engage, acquire, and retain customers. We also amplify the voices of our evangelical product owners, whose word-of-mouth recommendations are one of our most powerful (and ownable) marketing vehicles. Deep engagement with current customers enables us to increase additional product sales across our portfolio of offerings. The success we have achieved through our marketing campaigns has been key to rapidly building our branding and awareness. We launched our elevated brand positioning in 2023 with the launch of our new products and we believe our premium brand position will allow us to increase our market share of the premium mattress category going forward.

Our Sales Channels

We sell our products via our DTC channel, which includes Purple.com (our direct-to-consumer e-commerce), Purple showrooms, our customer contact center and online marketplaces, and our wholesale channel through retail brick-and-mortar and online wholesale partners.

Direct-to-Consumer Channel

Our e-commerce distribution channel is a critical hub for consumer education and consumer engagement, as well as conversion. We have benefited from the rapid growth of the direct-to-consumer channel in the sleep product industry in addition to our differentiated product offering and unique marketing campaigns. We sell directly to consumers through our website, our customer contact center and online marketplaces. With our website and customer contact center, we help customers easily engage in relevant content, research our solutions, transact online or via our customer contact center, or find the nearest retailer. We believe our online experience expands our brand and connections with consumers, enabling deeper awareness, engagement and brand loyalty. We believe our 100-night trial, 10-year warranty, attractive financing options, strong customer testimonials and excellent service provide confidence to consumers buying a mattress.

We operate 58 Purple showrooms across the United States where consumers can experience our brand, learn and engage with our technology and purchase our products. Over time, we plan to strategically expand our showroom footprint across the United States.

Wholesale Channel

We sell our assortment of products through brick-and-mortar and online wholesale partners. We began selling mattresses and other sleep products through our largest wholesale partner, Mattress Firm, in November 2017 and have continued to expand the number of wholesale partners where our mattresses and other sleep products are sold. We now sell mattresses through Ashley Furniture, Big Sandy, City Furniture, Costco, Denver Mattress, HOM Furniture, Living Spaces, Mathis Brothers, Mattress Firm, Mattress Warehouse and Raymour & Flanigan, among others. We typically have four to five mattress models on the floor. Sales associates have been trained and we believe are effective in educating consumers regarding our unique benefits as well as shifting the mix upward to our more premium and higher-margin mattresses. We expect to continue to grow our placements with wholesale partners to give our customers the opportunity to feel the difference of our Hyper-Elastic Polymer technology for themselves.

Operations

Factories, Supply Chain and Manufacturing

In August 2024, we initiated a restructuring plan to strategically realign our operational focus to achieve operations efficiencies that are expected to improve profitability and provide for reinvesting in technology and marketing initiatives (the “Restructuring Plan”). The Restructuring Plan is comprised of the permanent closure of both Utah manufacturing facilities to consolidate mattress production in our Georgia plant. Closure of the two Utah manufacturing facilities is planned to be completed in the second quarter of 2025. Our manufacturing facility in McDonough, Georgia provides 844,000 square feet of manufacturing and distribution space where we manufacture our proprietary Hyper-Elastic Polymer cushioning used in our mattress, pillow and seat cushion products. We also have recently opened a 198,000 square foot distribution facility in Salt Lake City, Utah, that in addition to the McDonough facility, will assemble, package and ship our products. We continually strive to improve our manufacturing processes and create efficiencies in production through new equipment and process designs and resources. We also manage our production labor and capacity utilization to promote efficient use of our manufacturing facilities. We believe our McDonough factory provides ample room to accommodate our future growth and expansion plans for the near term.

We have a number of contract manufacturers who assemble mattresses and have established a network of third-party logistics providers to help with order fulfillment across the United States. These arrangements help to minimize delivery times and provide white glove service in addition to parcel services.

We outsource and resell other products, including adjustable bases, platform bases, sheets, mattress protectors, blankets and duvets. These products unique to Purple are either designed in-house or in partnership.

We have relationships with multiple suppliers for our outsourced products and components. These suppliers may be interchanged in order to maintain quality, cost and delivery expectations.

Environmental and Governmental Regulation

We are subject to numerous federal, state, local and foreign consumer protection, retail, environmental, health, safety, import/export, marketing, e-commerce, privacy, and other laws and regulations applicable to the sleep product industry. As a manufacturer of mattresses and related products, we handle regulated substances, which subject us to various environmental laws. For example, we are subject to the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act and the Comprehensive Environmental Response, Compensation and Liability Act, and related state and local statutes and regulations. Our mattress products are subject to fire-retardant standards developed by the State of California, U.S. Consumer Product Safety Commission and other jurisdictions where we sell these products.

We have made and will continue to make capital and other expenditures necessary to help us comply with these laws and regulations. These expenditures have been immaterial to our financial results. We have not suffered a material adverse effect from non-compliance with federal, state, local or foreign legislation, but there can be no assurance that material costs or liabilities will not be incurred in connection with such legislation in the future.

Research and Development

Our research and development teams are focused primarily on developing new comfort technologies and products. In 2023, we launched our three new premium mattress collections including our new line of luxury mattresses. We have an extensive history of innovation that is core to our culture and key to our continued success. Our inventions have culminated over years of persistent research and development. We intend to continue to develop and introduce new comfort technologies and products. Our vertical integration is a key differentiator that enhances the effectiveness of our research and development capabilities. By gaining real-time feedback, we can integrate these insights into our manufacturing process, digital marketing, products and equipment. In order to facilitate further innovation and development, we opened a 61,000 square foot facility in August 2023 located in Draper, Utah that serves as our innovation center.

Intellectual Property

We rely on patent and trademark protection laws to protect our intellectual property and maintain our competitive position in the marketplace. We hold various domestic and foreign patents, patent applications, trademarks and trademark applications regarding certain elements of the design, manufacturing and function of our products. We also maintain protections over proprietary trade secrets. Our intellectual property portfolio is integral to our continued success in this industry, particularly with respect to our Hyper-Elastic Polymer material as well as our molding processes and machines.

We own or have the exclusive right to use hundreds of granted or pending patents and hundreds of patent filings on inventions and designs pertaining to our machines, processes, mattresses, pillows, seat cushions, packaging techniques and other related existing and future products. Our issued United States patents that are significant to our operations are expected to expire at various dates up to 2042.

We have several trademarks registered with the U.S. Patent and Trademark Office (USPTO). Applications are pending for registration of additional trademarks and some of these listed trademarks for additional classes of goods both in the United States and internationally. Our Purple, No Pressure, Gelflex, the color purple, and Hyper-Elastic Polymer trademarks are also registered and have applications pending for various classes of goods in numerous foreign jurisdictions, some of which include Australia, Canada, China, Europe, United Kingdom, Japan and Korea. We also have several common law trademarks.

Many of the common law marks have registrations pending with the USPTO and other international jurisdictions. Solely for convenience, we may refer to our trademarks in this Annual 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.

In addition, we maintain copyrights, many registered, to past and present versions of purple.com, onpurple.com, equapressure.com, wondergel.com, marketing content, blogs, logos, graphics, videos and other marketing and promotional materials promoting our products.

While we may own or have the exclusive rights in this intellectual property it is our responsibility to maintain that exclusivity through intellectual property enforcement efforts when an infringement occurs. We continue to enforce those intellectual property rights and will continue to do so to maintain our success in this industry.

We protect and enforce our intellectual property rights, including through litigation as necessary.

Human Capital

At Purple, our primary focus is fostering the professional development of our employees through collaboration of engaged teams and helping them feel connected to Purple's success. We try to achieve this through maintaining a safe and high-functioning work environment that cultivates an authentic company culture. Our people initiatives are strategically crafted to enhance the professional growth and overall satisfaction of our employees, with the overarching goal of making Purple the best place they've ever worked.

As of March 7, 2025, we had approximately 1,200 employees engaged in manufacturing, research and development, general corporate functions, wholesale, e-commerce, and Purple showrooms.

In 2025, Purple's human resources team is focusing on four pillars that drive our people strategy: (i) acquire, retain, and develop great people; (ii) improve organizational performance; (iii) deliver competitive and meaningful pay and benefits; and (iv) celebrate our people.

Acquire, retain, and develop great people

We attempt to strategically acquire, keep and cultivate a talented, motivated, and high-caliber workforce. We believe this will be achieved by selectively recruiting outstanding talent, tailoring development plans for employees, implementing an accelerated leadership development program for promising individuals, and building cross-functional career maps.

Improve organizational performance

We attempt to drive efficiency, effectiveness, and business success through strategic people initiatives. We will continue to invest in new technology to enhance communication channels and optimize our human resource information system, enabling self-service functionalities for managers and employees. In alignment with our core values, we will place emphasis on creating shared experiences that will facilitate genuine connections and foster strong relationships within our workforce.

Deliver competitive and meaningful pay and benefits

We attempt to provide compensation packages that are both competitive and meaningful, encompassing salary and benefits that align to market standards. We will continue to provide relevant employee perks that connect our employees with our Company's mission and actively contribute to nurturing employee engagement.

Celebrate our people

We attempt to continue to focus on maintaining a culture of recognition where we actively acknowledge and honor the achievements, contributions, and milestones of our people. Through thoughtful and authentic celebration, we not only create a culture of gratitude, but we will also foster a sense of belonging and motivation, ultimately strengthening our team cohesion and morale.

Available Information

Our website address is www.purple.com. We make available, free of charge on our Investor Relations website, investors.purple.com, all of our reports filed with or furnished to the Securities and Exchange Commission ("SEC"). The SEC also maintains an Internet website that contains reports and other information regarding issuers that file electronically with the SEC located at http://www.sec.gov.

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

Information About Our Executive Officers

As of the date of this report, our executive officers are as follows:

Name	Age	Title
Robert T. DeMartini	63	Director, Chief Executive Officer
Todd E. Vogensen	56	Chief Financial Officer and Treasurer
Tricia S. McDermott-Spikes	53	Chief Legal Officer and Secretary
Eric S. Haynor	61	Chief Operating Officer
Jeffrey L. Hutchings	58	Chief Innovation Officer
Jeffery S. Kerby	56	Chief of Owned Retail Officer
John J. Roddy IV	57	Chief People Officer

Executive Officers

Robert T. DeMartini has served as Chief Executive Officer since January 2022. Prior to joining the Company, Mr. DeMartini, served as president and chief executive officer of USA Cycling, Inc., the official U.S. Olympic & Paralympic Committee governing body for all disciplines of competitive cycling in the United States, from 2019 until 2021. He previously served as president and chief executive officer of New Balance Athletic Shoes (U.K.) Ltd., from 2018 to 2019 and as president and chief executive officer of New Balance Athletics, Inc. from 2007 to 2018, each a business unit of New Balance, Inc. a leading manufacturer and retailer of athletic footwear, apparel and accessories. From 1982 through 2007 Mr. DeMartini held various leadership positions with Procter & Gamble, The Gillette Company, and Tyson Foods, Inc. He also currently serves on the board of directors of Welch's Foods and Q30 Innovations/Q30 Sports Canada, and formerly served on the board of directors of Advanced Functional Fabrics of America, The American Apparel & Footwear Association, and Aloha. Mr. DeMartini received a Bachelor of Science degree in Finance from San Diego State University.

Todd E. Vogensen has served as Chief Financial Officer since October 2023. Prior to joining the Company, Mr. Vogensen served as executive vice president and chief financial officer of Party City Holdings Inc. from February 2020 to August 2023. In January 2013, Party City Holdings Inc. filed a voluntary petition for reorganization relief pursuant to Chapter 11 of the U.S. Bankruptcy Code. Previously, Mr. Vogensen served as executive vice president—chief financial officer at Chico's FAS, Inc. from June 2015 to January 2020. He joined Chico's FAS in October 2009, and served in roles of increasing responsibility, including senior vice president – finance, and vice president – investor relations. Previously, Mr. Vogensen served in executive finance roles at Michaels Stores, Inc., Gap, Inc., Hewlett Packard Company and PricewaterhouseCoopers LLP. Mr. Vogensen received a Bachelor of Science degree in Accounting from Arizona State University.

Tricia S. McDermott-Spikes joined Purple in October 2023 and serves as Chief Legal Officer and Corporate Secretary responsible for strategic oversight of the legal organization, corporate governance, compliance intellectual property, licensing, litigation, insurance and government affairs. Ms. McDermott-Spikes is a skilled executive, attorney and business leader who brings more than 25 years of expertise in global retail and manufacturing environments. Prior to joining the Company, from February 2021 to October 2023, Ms. McDermott-Spikes served as the chief legal & risk officer and secretary at Shoe Show, Inc. Previously, from December 2011 to February 2021, Ms. McDermott-Spikes was with Perry Ellis International, Inc., where she served in roles of increasing responsibility and last served as general counsel and secretary from November 2017 to February 2021. Ms. McDermott-Spikes is active in her community, having previously served on the boards of Teach for America (Miami-Dade), Family Promise of Palm Beach County, the Association of Corporate Counsel (Charlotte), and the U.S. Patent & Trademark Office, Trademark Public Advisory Committee as an appointee of the U.S. Secretary of State. Ms. McDermott-Spikes continues her service on the Board of Trustees of the Blumenthal Performing Arts Center in Charlotte, NC, as chair of the Talent, Development & Retention Committee and member of the Governance Committee. Ms. McDermott-Spikes received a Bachelor of Arts degree in English and a Juris Doctor degree from Rutgers University along with a certificate in Accelerated Management from Yale University School of Management.

Eric S. Haynor has served as the Chief Operating Officer of the Company since June 2022. Prior to joining the company, Mr. Haynor spent most of his career with Ecolab, a supplier of cleaning, sanitizing and maintenance products and services for the institutional, hospitality, healthcare and industrial markets, in a variety of end-to-end supply chain roles. From August 2019 until he joined the Company in June 2022 he served as senior vice president, industrial supply chain at Ecolab providing strategic direction for eight industrial business units. Prior to that, he held the role of vice president, global equipment operations and strategy from June 2015 to August 2019 at Ecolab. From August 2009 to June 2015, Mr. Haynor led Ecolab's EMEA supply chain operations and from April 2005 to August 2009 he led Ecolab's Asia Pacific supply chain operations. His early career was spent in a variety of developmental supply chain roles. Mr. Haynor is a graduate of Michigan State University and holds a Bachelor of Science degree in Mechanical Engineering.

Jeffrey L. Hutchings has served as the Chief Innovation Officer of the Company since May 2022. Mr. Hutchings has more than 20 years of experience in strategic business leadership in innovation, new product introduction and quality assurance. Prior to joining the Company, Mr. Hutchings served as chief product officer at Skullcandy Inc., a designer and manufacturer of performance audio and gaming headphones and other accessory related products, from December 2018 to May 2022 and as vice president of product from June 2015 to December 2018. Prior to that from July 2010 to June 2015, Mr. Hutchings served in various engineering and director roles at HARMAN International. Mr. Hutchings holds a Bachelor of Science degree in Computer Engineering from the University of Utah.

Jeffery S. Kerby has served as the Chief of Owned Retail Officer of the Company since January 2023. Prior to joining the Company, Mr. Kerby served as vice president, head of stores of Sephora, a retailer of personal care and beauty products, since May 2019, responsible for leading 86 stores throughout Canada. From March 2018 to January 2019, he served as the senior regional director of American Eagle, a specialty retailer of clothing, accessories and personal care products, where he led American Eagle/Aerie stores in the Midwest United States and Canada with 225 stores. Prior to joining American Eagle, Mr. Kerby was with L Brands' LaSensa, a Canadian retailer of women's lingerie and apparel, from February 2017 to March 2018. Prior to that, Mr. Kerby was the vice president, head of stores/store operations for L Brands' Victoria's Secret International from June 2015 to September 2016. From October 2008 to June 2015, Mr. Kerby grew from director to associate vice president, head of stores for Bath and Body Works. Mr. Kerby holds a Bachelor of Science degree from Washington State University's School of Communications.

John J. Roddy IV has served as Chief People Officer of the Company since October 2021. Mr. Roddy brings to the Company over 20 years of experience in culture transformation, talent development, organization design and change leadership. Prior to joining the Company, Mr. Roddy served as the chief people officer for VASA Fitness, a fitness club operator, from 2018 to October 2021. Prior to that he was the chief human resources officer for SeaWorld Parks and Entertainment, a theme park and entertainment company, from 2016 to 2018. From 2012 to 2016, Mr. Roddy was the senior vice president of human resources for Luxottica Group. Prior to joining Luxottica Group, he was the vice president of human resources for Starbucks Corporation from 2004 to 2012. Mr. Roddy holds a Master's degree from Columbia University in Organizational Psychology and a Bachelor's degree in Organizational Behavior from Brigham Young University – Hawaii.

Item 1A. Risk Factors

The risk factors detailed below could materially harm our business, results of operation and/or financial condition, impair our future prospects and/or cause the price of our Common Stock to decline. These are not all of the risks we face and other factors not presently known to us or that we currently believe are immaterial may also affect our business if they occur.

Risks Relating to Our Business and Our Operations

Our indebtedness, related covenants, and certain prepayment obligations, including make-whole payments, could limit operational and financial flexibility and adversely affect our business if we breach such covenants or default on such indebtedness.

On January 23, 2024, to refinance existing obligations, we entered into a Second Amendment to Term Loan Agreement (the "Second Amendment") and an Amended and Restated Credit Agreement (the "Amended and Restated Credit Agreement) with Coliseum Capital Partners, L.P. ("CCP"), Blackwell Partners LLC – Series A ("Blackwell"), Harvest Small Cap Partners Master, Ltd.("Harvest Master"), Harvest Small Cap Partners, L.P. ("Harvest Partners"), and HSCP Strategic IV, L.P. ("HSCP" and together with CCP, Blackwell, Harvest Master, and Harvest Partners, the "Lenders"). Upon entry into the Amended and Restated Credit Agreement, we received a term loan in the amount of $61.0 million. The Amended and Restated Credit Agreement imposes various affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, paying dividends or making distributions and transactions with affiliates, among other customary covenants.

These restrictions may prevent us from taking actions that we believe would be in the best interests of the business and complicate our ability to execute our business strategy or compete with less restricted companies. If we fail to comply with the covenants under the Amended and Restated Credit Agreement, we may need to seek future amendments or waivers and/or alternative liquidity sources, such as subordinated debt, which may not be favorable or available. Before taking any action requiring a waiver under the Amended and Restated Credit Agreement, we must first obtain approval from the Lenders, which may cause us to incur additional costs and may not be granted. Non-compliance could lead to defaults, which could materially adversely affect our financial condition and results of operations, including possible acceleration of our debt and, as well as other cross-defaulting debt obligations. Additionally, defaults could significantly impair our ability to secure alternative financing and limit our business strategies. Our compliance with these covenants will depend on successfully implementing our business strategy, as breaches could lead to defaults and acceleration of our debt, potentially forcing us into bankruptcy or liquidation.

In addition, on March 12, 2025, we entered into an Amendment to the Amended and Restated Credit Agreement (the "2025 Amendment"), pursuant to which the Lenders agreed to provide us with an incremental term loan of $19.0 million. The 2025 Amendment also amended the Amended and Restated Credit Agreement to (i) provide for an additional term loan from the 2025 Term Loan Lenders (as defined in the 2025 Amendment) in an aggregate amount not to exceed $20.0 million, subject to the approval of the Required Lenders in their discretion, (ii) provide for the payment of substantial make-whole payments in the event we prepay the loans prior to their maturity, and (iii) provide that the incremental term loan will be senior in right of repayment to the initial term loan.

Under the Amended and Restated Credit Agreement, we have mandatory prepayment obligations, including upon certain asset dispositions, equity issuances, debt incurrences and extraordinary receipts of cash. As amended by the 2025 Amendment, we may be required to make substantial "make-whole" payments to the Lenders. If required to prepay or pay such make-whole payments, we may lack the liquidity to do so, resulting in default. Prepayments, including make-whole payments, would also divert resources from operating expenses, potentially harming relationships with suppliers, hindering growth strategies, and jeopardizing our business continuity. In addition, such payments could result in holders of our Class A Stock not receiving any consideration in a sale of our business, or if we were to liquidate, dissolve, or wind-up, either voluntarily or involuntarily.

We may need additional funds to execute our business plan, maintain our liquidity, repay our debt and fund our operations. We may not be able to obtain such funds on acceptable terms or at all.

We have experienced recurring operating losses and negative cash flows and may continue to generate operating losses and consume significant cash resources in the future. For the years ended December 31, 2024, and 2023, we had negative cash flow from operating activities of $18.0 million and $54.7 million, respectively. As of December 31, 2024, we had unrestricted cash and cash equivalents of $29.0 million and borrowings of $70.7 million under our Amended and Restated Credit Agreement (as defined below), which will become due on December 31, 2026.

On March 12, 2025, we borrowed an additional $19.0 million under the Amended and Restated Credit Agreement pursuant to the 2025 Amendment (as defined below), which will also become due on December 31, 2026. The 2025 Amendment (as defined below) also added certain make-whole payments with respect to our borrowings under the Amended and Restated Credit Agreement, which would require substantial payments in connection with certain pre-payments or refinancing of our outstanding borrowings.

In connection with the preparation of our 2024 financial statements, we undertook a going concern assessment and concluded the Company will have sufficient liquidity for its operations for at least one year from the date these consolidated financial statements are issued. However, there can be no assurance that we will be able to maintain the liquidity necessary to fund our long-term operations and growth strategies, or repay our debt obligations when due. As a result, we may need to secure additional sources of liquidity to fund our long-term operating activities and capital expenditures. However, there can be no assurance that we will be able to obtain additional financing as needed on terms favorable to us, or at all. If we fail to meet liquidity and capital requirements, we may need to scale back or halt our growth plans, risking slower growth, losing suppliers, failing to meet customer demands, and losing employees. We may also need to restructure our obligations or pursue other measures to address any liquidity deficiency.

Under the Amended and Restated Credit Agreement, we can request additional loans, but the Lenders may deny requests, limiting our access to future funds and adversely affecting our liquidity, financial condition and results of operations.

Future equity or debt financings may involve issuing securities likely to be dilutive to our existing stockholders, such as warrants, as we did on January 23, 2024 when we issued to the Lenders, as partial consideration for their entering into the Amended and Restated Credit Agreement, warrants (the "2024 Warrants") to purchase 20.0 million shares of our Common Stock (approximately 19% of our currently outstanding Common Stock) at a price of $1.50 per share, subject to certain adjustments. In addition, on March 12, 2025, we issued to the Lenders, as partial consideration for their entering into the 2025 Amendment, warrants (the "2025 Warrants" and together with the 2024 Warrants, the "Warrants") to purchase 6.2 million shares of our Common Stock (approximately 6% of our currently outstanding Common Stock) at a price of $1.50 per share, subject to certain adjustments. The exercise of such warrants and/or any additional similar securities in the future would dilute the value and amount of our Common Stock. Similarly, any new securities we may issue may carry preferences, superior voting rights, or additional terms that could adversely affect shareholders of our Common Stock. Future capital raising efforts may incur substantial costs, such as investment banking, legal, and accounting fees, and could lead to non-cash expenses that negatively impact our financial condition.

We may not realize all the intended benefits of our Restructuring Plan and other cost-saving initiatives, which could adversely affect our results of operations and our financial condition.

In 2024, we implemented our Restructuring Plan to consolidate our Utah manufacturing operations into our McDonough, Georgia plant, and we plan to undertake further cost-saving initiatives in 2025. However, the remaining costs under our Restructuring Plan may exceed estimates, and we may not achieve all the expected financial benefits or savings. Relocating equipment to Georgia and expanding our workforce there could be challenging. Replacing experienced Utah employees with less experienced Georgia staff may lead to a loss of knowledge, lower productivity, and decreased efficiency and quality. Manufacturing in a single U.S. region could increase our distribution costs. Consolidating plants may cause disruptions in our inventory and raw material supply. We may not fully sublease our Utah facilities, impacting our financial condition. The Restructuring Plan, as well as past and future restructurings, including workforce reductions, could harm employee morale, disrupt business operations, result in the loss of institutional knowledge, damage our reputation, and impair our ability to attract skilled talent, negatively affecting the business.

In addition, we plan to implement additional cost savings measures in 2025 beyond those implemented pursuant to our 2024 Restructuring Plan. We may not achieve the expected financial benefits or savings from these additional cost savings measures, which could further adversely affect our results of operations and financial condition. Additionally, such cost saving measures may adversely affect our ability to generate additional revenue in the future.

We have in the past experienced and may in the future experience significant fluctuations in our results of operations, which could make our future results of operations difficult to predict or cause our results of operations to fall below analysts' and investors' expectations.

Our quarterly and annual results of operations have fluctuated in the past and we expect our future results of operations will fluctuate due to a variety of factors, many of which are beyond our control. Fluctuations in our results of operations could cause our performance to fall below the expectations of analysts and investors and adversely affect the price of our Common Stock. If we fail to meet or exceed the expectations of analysts and investors or if analysts and investors have estimates and forecasts of our future performance that are unrealistic or that we do not meet, the market price of our Common Stock could decline. In addition, if one or more of the analysts who cover us adversely change their recommendation regarding our stock, the market price of our Common Stock could decline.

Coliseum Capital Management, LLC is our largest stockholder and Lender, and exercises substantial control over our Board composition, management team members and strategies.

As reported by Coliseum in its Schedule 13D/A filed on January 23, 2024, Coliseum Capital Management LLC ("Coliseum") beneficially owns 58.5 million shares of Common Stock (which includes 46.9 million shares of Common Stock currently owned and 11.6 million shares of Common Stock that could be acquired upon exercise of its Warrants). Coliseum will only have the right to exercise its Warrants to the extent that it (together with its affiliates) would not beneficially own in excess of 49.9% of the shares of Common Stock outstanding immediately after such exercise (the "Beneficial Ownership Cap").

As a result of its significant beneficial ownership of our Common Stock, Coliseum has the ability to influence the outcome of any corporate actions which require stockholder approval, including but not limited to, the election of directors, significant corporate transactions including a merger or other sale of the Company or the sale of all or substantially all of our assets. This concentrated voting control will limit other stockholders' ability to influence corporate matters, including control of the composition of our Board and management, as well as our corporate strategies, and could adversely affect the market price of our Common Stock or the sale of the Company. In addition, Coliseum exercises substantial control over us as the primary Lender under the Amended and Restated Credit Agreement.

In 2022, Coliseum delivered to us an unsolicited bid to acquire the remaining outstanding shares of our Common Stock, submitted a notice of its intent to nominate a slate of directors, which slate would have constituted a majority of the Board, and filed a lawsuit challenging our issuance of a dividend of shares of preferred stock (the "Action"). On April 19, 2023, Coliseum and the Company entered into a cooperation agreement (the "Cooperation Agreement") settling the Action, which included among other items the appointment of certain new directors and agreement to certain standstill provisions, as discussed further in Note 16 – Related Party Transactions Coliseum Capital Management, LLC of the Notes to the Condensed Consolidated Financial Statements. The Cooperation Agreement terminated on the date following our 2024 annual meeting of stockholders. Under the terms of the Cooperation Agreement, our current Chair of the Board, Mr. Gray, and four of our other current directors, Mr. Darling, Mr. Pate, Mr. Peterson and Ms. Serow, were appointed or nominated to serve on our Board.

There can be no assurance that Coliseum will not make another unsolicited bid to acquire the remaining outstanding shares of our Common Stock or attempt to nominate additional or replacement members to the Board. Such future actions by Coliseum may require us to devote significant additional resources and time that would otherwise be directed at our business and operations or may demotivate current executives and discourage other executives from joining the Company. In addition, such actions could cause the price of our Common Stock to change based on investors' perceptions of Coliseum's actions and Coliseum's influence over the Company and our Board.

We have engaged in significant related-party transactions with Coliseum and other parties that may give rise to conflicts of interest or otherwise adversely affect our results of operations and the value of our business.

We have engaged in numerous related-party transactions with significant stockholders, directors, and their affiliated entities. For example, under the Amended and Restated Credit Agreement, as amended by the 2025 Amendment, the Lenders, which include Coliseum, have loaned to us an aggregate of $80.0 million and we have issued Warrants to Coliseum and the other Lenders to purchase an aggregate of 26.2 million shares of our common stock at $1.50 per share. Coliseum, our largest stockholder, has appointed or nominated a total of five directors to serve on our Board, each of whom continues to serve on our Board, including, Adam Gray, who continues to serve as Chairman. Any future transactions with the Lenders or any other related parties may give rise to conflicts of interest or otherwise adversely affect our business.

Our preliminary exploration of potential strategic alternatives may not be successful, which may adversely affect our ability to compete with larger, including combined, competitors.

We regularly engage in dialogue with market participants regarding potential business combinations, partnerships and other strategic alternatives. Based on certain recent preliminary inquiries, the Board has formed a special committee of independent directors and we have engaged a financial advisor to support them in evaluating any indications of interest and exploring other potential strategic alternatives. There can be no assurance that any of such preliminary exploratory activities will result in our engaging in a strategic alternative transaction, or even if we do so, that any such strategic alternative transaction will result in favorable terms and conditions for us or our shareholders. If we are unsuccessful in engaging in a favorable strategic alternative, then our ability to grow our business and compete with larger, including combined, competitors may be adversely affected. As a result, we may face liquidity challenges in the long-term and our ability to achieve consistent profitability may be adversely affected.

We may not be able to successfully anticipate consumer trends and demand and our failure to do so may lead to a loss of consumer acceptance of the products we sell.

Our success may depend on our ability to timely anticipate and respond to changing consumer trends. Those changes and resulting changes in our product mix and distribution strategy could adversely affect our business and results of operations. For example, as retail stores reopened following the COVID-19 pandemic, consumers shifted away from online retail purchases towards brick-and-mortar shopping. Our gross profit margins for sales through wholesale customers are lower than those in our DTC channel, so that shift adversely affected our gross profit margins. If we fail to identify and respond to emerging trends, consumer acceptance of the products we manufacture and sell and our image with current or potential customers may be harmed, which could reduce our net sales. If we misjudge market trends, we may significantly overstock inventory and be forced to take significant inventory markdowns, which would have a negative impact on our gross profit and cash flow. Conversely, shortages of inventory or increases in time for fulfillment of our products that prove popular could also reduce our sales.

We operate in the highly competitive sleep products industry, and if we are unable to compete successfully, our results of operations could be adversely affected.

The sleep products industry is highly competitive and fragmented, with competition from manufacturers (including those sourcing from low-cost countries), traditional retailers, and online direct-to-consumer brands. Competition centers on price, quality, brand recognition, availability, and performance across various distribution channels. This competitive environment exposes us to risks of losing market share, significant customers, margins, and new customer acquisition. We have introduced new products in the luxury mattress market but have limited experience in this sector. If we fail to compete effectively with other manufacturers and retailers of our products, our sales, profitability, cash flow, and financial condition may be materially adversely affected.

Many of our significant competitors, including established manufacturers, retailers, and new entrants, offer products directly competing with ours. This increasing competition from both domestic and international sources, including competitors that source from low-cost locations such as China and Vietnam, could adversely affect our business, financial condition and results of operations. Competitors are expanding their distribution channels, with many offering direct-to-consumer sales online. Major retailers like Mattress Firm, Amazon, and Walmart also sell competing products. Additionally, foreign retailers may vertically integrate by acquiring U.S. mattress manufacturers or other retailers. Many of our competitors have greater financial resources, technical expertise, larger customer bases, established industry relationships, and more mature distribution channels. They may aggressively pursue market share with new or existing products, and we cannot guarantee we will have the resources or expertise to compete successfully. Additionally, competitors with better e-commerce platforms could hurt our sales. We have limited ability to predict competitors' actions, such as new product launches, pricing strategies, or marketing campaigns, which could impact our market share and product margins. Competitors may also secure better terms from vendors, adopt more aggressive pricing, and invest more in technology and marketing. With many competitors offering a wide range of products, it may be difficult for us to differentiate through value, style, or functionality. Additionally, our products are often heavier, and some markets may not support affordable delivery, limiting our reach. The retail sleep product industry has low barriers to entry, allowing new or existing retailers to increase competition. This could delay or prevent us from gaining market share and negatively impact our growth and future results of operations.

The Sleep products industry has experienced significant consolidation in recent years, including vertical integrations, with competitors acquiring brands to expand distribution networks, leverage economies of scale to gain market share and lower prices, gain greater bargaining power with suppliers, enhance brand recognition, advance research and development, and extend marketing and retail distribution channels. Consolidation among retailers may result in fewer sales channels or more restrictive terms for standalone brands. If we are unable to adapt to these industry shifts, our growth, results of operations, and market share could be adversely impacted.

Technological changes, such as advances in artificial intelligence, may render our current technologies obsolete or require costly updates. These new technologies may be superior to the technologies we currently use in our products and services. Adopting new technologies could be hindered by industry standards, regulations, resistance from clients, expense, or third-party intellectual property rights. Our competitiveness may depend on our ability to innovate and adapt to these changes and failure to keep pace may adversely affect our results of operations.

Timely product delivery affects our competitiveness. Failure to maintain or enhance our delivery processes and infrastructure could negatively impact our ability to compete. Disruptions, delays, or increased freight costs with our carriers and freight forwarders could harm sales, increase cancellations, damage our brand, and adversely affect our results of operations and our financial condition. If we fail to deliver products on time, our DTC and wholesale customers may reduce or stop future orders, and we may face late charges from wholesale partners. Production or shipment issues that lead to lower demand could materially impact our business and results of operations

Lack of availability and quality of raw materials, labor, components and shipping services, or increases in the cost of such inputs, have caused and may continue to cause delays in our inability to provide goods to our customers or could increase our costs, either of which could adversely affect our results of operations.

We rely on external suppliers for key raw materials like polyurethane foam, oil, spring units, and our Hyper-Elastic Polymer® ingredients. Any supply issues, quality concerns, or price fluctuations could raise costs and hinder our ability to meet customer demand. These issues or concerns may be magnified to the extent we rely on a limited number of suppliers or a sole supplier. Competitive pressures may also limit our ability to pass on price increases, potentially leading to lost sales. Shortages of widely used components like foam and spring units, due to factors like increased demand, weather events, or supply chain issues, could impact our production and operations. If a supplier fails to deliver, we will need to find replacements, potentially on unfavorable terms. Any disruption in component supply could significantly interrupt production and raise costs.

Even with timely access to raw materials, supply chain constraints, inflation, increased duties and tariffs, and other factors will increase shipping, labor, and production costs. Rising costs for materials, transportation, and labor could impact our production efficiency, reduce gross margins, and negatively affect our results of operations. Shipping costs and delays have in the past risen and may again in the future rise due to port closures, congestion, and shortages of containers and ships. Future disruptions, such as pandemics, geopolitical conflicts, and increased duties and tariffs, could worsen delays and increase material costs. These issues may impact our ability to maintain inventory, meet demand, and affect our operations. Any significant supply chain interruptions or inability to source materials at acceptable prices could harm our business.

Our information technology systems may fail to perform adequately, may be disrupted by natural disasters or other catastrophes, or we may be unable to protect the privacy, integrity and security of our information systems.

Our operations and our revenue rely heavily on information technology systems. Any failure in these systems could disrupt our sales and various functions, including order processing, inventory management, and product delivery. Upgrades or improvements to our systems may require significant capital, time, and resources, potentially causing disruptions. Difficulties with system upgrades or failures, or an inability to adapt our systems to business changes could negatively impact our operations. Our systems may face interruptions or degradation from hardware or software issues, cyberattacks, natural disasters, power losses, fraud, political conflicts, or other events. Some systems may lack sufficient redundancy, and our disaster recovery planning may not cover all scenarios. They are also vulnerable to natural disasters, security breaches, sabotage, and data theft. Any such issues could negatively impact our results of operations.

We collect and store personal information from customers and suppliers, including customer payment details. We may share this information with third parties. Cyberattacks targeting sensitive data are a known threat, and hackers may attempt to breach our systems or those of third parties. Employees, contractors, or business partners could also intentionally or unintentionally compromise security. For example, we previously experienced an unauthorized intrusion involving a former contractor's credentials, though no personal information was accessed. Future breaches could occur if there are weaknesses in our internal controls over financial reporting related to information technology systems. We and third-party partners have experienced and, in the future, may experience various cyber-attacks, including phishing, malware, and ransomware attacks. In 2022, we experienced a spear-phishing attack that led to a $140,000 loss due to unauthorized changes to a vendor's bank account. We expect continued exposure to similar threats. Additionally, increasing use of artificial intelligence by us and our third-party partners may increase these risks. A breach releasing sensitive data could harm our reputation, result in financial losses, and increase our security costs. Successful ransomware attacks could disrupt our operations, and while our insurance may cover some losses, it may not be sufficient for all liabilities. We are subject to evolving data privacy and breach laws, both at the state level (e.g., the California Consumer Privacy Act), the federal level, and internationally as we expand. These laws' rapid changes and potential inconsistencies increase compliance costs and non-compliance risks. While we aim to comply, failure to do so could result in fines, administrative actions, and reputational damage.

Changes in economic conditions, including the housing market and tariffs, have or will adversely affect our business, results of operations and financial condition.

We have experienced and may continue to experience volatility due to global and U.S. market conditions including the housing market, mortgage interest rates, tariffs, and inflation. These market conditions impact demand for mattresses and related products. We have experienced and may continue to experience a negative impact on our demand as a result of the current housing market. The impact of newly implemented or threatened tariffs is uncertain but will increase our costs and may negatively impact the demand for our products. We may not be able to pass along the costs of such tariffs to our customers, which could adversely affect our results of operations and financial condition. Continued inflation may reduce consumer discretionary spending, negatively affecting demand for our products.

Disruption of our manufacturing has and could increase our costs of doing business or lead to delays in shipping and could materially adversely affect our business, our results of operations, and our financial condition.

Disruptions to our manufacturing operations, whether from the Restructuring Plan, a pandemic, natural disasters, lease issues, or equipment failures, could increase costs, delay production and shipping, and negatively impact our business, operations, and financial condition. Workplace injuries, industrial accidents, or violence could also lead to production suspensions and delays, affecting customer satisfaction, results of operations, financial condition including our cash flow. The Restructuring Plan, which consolidated our manufacturing operations into one plant, may heighten the risk of disruption, particularly from regional economic downturns, hurricanes, pandemics, utility shortages, or other events affecting our Georgia plant, potentially harming our business.

Future growth and profitability may depend on our ability to improve our product line, successfully introduce new products, and effectively and efficiently market our products to attract and retain customers.

The mattress, pillow, bedding, bed base, and cushion industries are highly competitive. Competitors may develop or acquire superior technology. Our ability to grow market share depends on continually improving and expanding our product line and accessories. We invest significantly in research and development to improve and expand our products. If these efforts fail to lead to meaningful improvements or consumer acceptance, our results of operations, financial results, and reputation could suffer, potentially harming our business. A large portion of our gross profit comes from mattress products. If we fail to develop or successfully market new models, such as those introduced in recent years, our results of operations and business could be harmed.

We rely on effective marketing messages and efficient advertising to drive consumer awareness and sales. We continually adjust our strategies, including messaging, budget, and channels. However, we may struggle to adapt to changing consumer preferences, competition, and advertising efficiency. We rely on internet-based advertising through media and e-commerce platforms. If these platforms become less effective, lose users, or fail to target our audience, our advertising may lose effectiveness and adversely affect our business. Advertising costs on social media platforms such as Facebook have risen significantly, reducing efficiency, and we expect costs to keep increasing. We rely on relationships with media partners, search engines, social media influencers, and e-commerce platforms to drive traffic and attract customers. If we can't maintain or develop these relationships on favorable terms, or if our reputation suffers, our ability to grow could be impacted. If we can't manage these costs or generate expected sales, our business could be adversely affected.

Our growth may be impacted by the effectiveness of our online experience for targeted audiences, including advertising and search optimization. We also need to manage consumer sentiment, prevent false information about our products, and ensure website stability. The increased presence of direct-to-consumer internet retailers and traditional mattress and furniture retailers and manufacturers has increased competition for search terms, driving up marketing costs. The growing number of third-party review websites gives customers many platforms to review our products, and negative reviews can significantly impact our reputation and brand and may adversely affect our results of operations. If we can't manage relationships with reviewers to ensure accurate feedback, misleading reviews may harm our brand and hinder efforts to improve it. Ineffective marketing messages, inefficient advertising, or poorly targeted programs may harm brand awareness, consumer traffic, and our financial performance. Additionally, failure to prevent misleading information or negative sentiment on social media could also negatively impact our results of operations and financial condition.

Our expansion into wholesale distribution and new sales channels, new products, market segments and geographic regions subjects us to additional business, legal, financial, and competitive risks.

Most of our sales are through DTC channels, but we have expanded into wholesale distribution. However, we cannot guarantee success with wholesale partners. We may struggle to generate additional sales through wholesale channels, and extending credit terms to wholesale partners could expose us to the risk of unpaid or late invoices. Providing fixtures to wholesale partners could also pose challenges in recovery or reuse. Wholesale customers may not purchase at expected volumes, and gross profit from wholesale sales are lower than DTC. If these issues arise, they could harm our reputation, limit growth, and negatively impact our results of operations.

We may struggle to open additional Purple showrooms beyond those already established. Operating showrooms involves risks such as inventory shrinkage, increased expenses, lease obligations, distribution challenges, and employee management. If we fail to operate these stores profitably or if we close unprofitable stores, it could harm our reputation, limit growth, and negatively impact our business. Expanding into new product offerings through e-commerce, wholesale, and Purple showrooms presents challenges, including potential service disruptions, quality issues, and customer claims. Expanding sales channels may also require new products to avoid conflicts between channels. New products may introduce warranty and return risks. Expanding into new markets or regions could expose us to additional regulations, leading to increased compliance and distribution costs.

Our business could suffer if we are unsuccessful in making, integrating and maintaining commercial agreements, strategic alliances and other business relationships.

We rely on commercial agreements and strategic relationships with suppliers, service providers, and wholesale partners. Disruptions in these relationships or strategic decisions by partners could negatively affect our business. For example, (i) one of our competitors is purchasing one of our wholesale partners, which could disrupt our relationship or prevent us from continuing to sell our products in favorable placements alongside the competitor's products or at all in the wholesale partner's stores, and (ii) one of our competitors owns a manufacturing company with which we have a manufacturing relationship, and that competitor could disrupt that relationship to harm our manufacturing efforts. We may also struggle to maintain or develop these relationships and may not be able to secure new ones on favorable terms.

We sell products through wholesale partnerships and may seek to expand these relationships. However, these wholesale partnerships may not be profitable and could incur additional costs compared to our DTC operations. Wholesale relationships may be terminated or modified, or wholesale partners may reduce orders or fail to meet their obligations, resulting in lost sales and adversely affecting our financial performance, results of operations and financial condition. Disputes with partners or the termination or amendment of agreements could lead to expenses, delayed payments, liabilities, and distractions from our strategic objectives. If we cannot renew or replace agreements on favorable terms, it could harm our business. Wholesale partners may also compete against us in key channels, harming our business. Maintaining these relationships may require significant resources and could limit our sales channels, adversely affecting other areas of our business.

We are expanding Purple showrooms across the U.S., which may compete with our wholesale partners for customers. This omni-channel strategy carries the risk of diminishing sales in other channels, increasing costs, and the potential loss of wholesale partners. Managing this omni-channel strategy may require significant resources, potentially impacting other areas of our business. If our financial performance falls short of expectations, we may struggle to secure favorable payment terms or obtain credit from commercial partners that have extended credit to us.

A reduction in the availability of credit to consumers or the availability of more favorable credit terms with competitors could adversely affect our results of operations and financial condition.

We offer consumer financing through third-party finance companies, with a significant portion of our sales financed in 2024. Macroeconomic factors and changes in credit lending criteria may reduce available credit, and we may face higher costs to maintain lending approvals. Additionally, federal regulations are placing more restrictions on consumer credit programs, including promotional credit offers. Some of our agreements with third-party finance companies, which offer financing to our customers, may be terminated by them with 30 days' notice. They control financing offers and credit standards and may provide better terms to our competitors or in channels outside our focus. Reduced credit availability from economic changes, regulatory shifts, terminated agreements, or competitors offering better terms could negatively impact our results of operations and financial condition.

Over or under supply of raw material inventory and finished products could leave us vulnerable to shortages or shrinkage that may harm our ability to satisfy consumer demand and could adversely affect our results of operations.

We have in the past accumulated and may again in the future accumulate excess raw material inventory, which is vulnerable to shrinkage, theft, obsolescence, or otherwise becoming unsellable, and excess finished product inventory. Excess inventory uses valuable warehouse space. If our efforts to manage inventory are unsuccessful, excess stock and related inefficiencies could negatively impact our results of operations. On the other hand, failing to maintain adequate inventory levels could lead to supply shortages, harming our ability to meet consumer demand and negatively affecting operations. Lead times for products and components, especially those sourced internationally, can vary. Risks from legal, economic, political, or health issues, as well as disruptions in global trade, including due to tariffs or trade wars, could impact production and result in inadequate inventory levels. Sourcing challenges, particularly from China, due to trade tensions, tariffs or other geopolitical factors, will also increase costs and disrupt supply. Any shortages or delays in meeting demand could harm customer satisfaction, results of operations and financial condition.

We rely on key suppliers, some of which are our only sources for certain products, materials, or services. While alternative suppliers may be available, disruptions or cost increases in the supply of materials could negatively affect our results of operations and financial condition. Additionally, changes in a supplier's financial condition could delay their product delivery to us. Shipping delays from port closures, congestion, and shortages of containers or ships could disrupt manufacturing, supply of materials, and inventory management. These delays may hinder our ability to meet product demand and deliver on time, negatively impacting our business and results of operations.

If we lose members of the leadership team we may not be able to run our business effectively.

Our success depends on attracting and retaining key personnel in areas like executive leadership, marketing, sales, innovation, and operations. If members of our leadership team leave or additional expertise is needed, finding qualified replacements may be challenging due to competition and potential uncertainties from our ownership structure or stockholder activism. Delays in replacing members of the leadership team could disrupt growth and strategic plans. If we fail to offer competitive compensation and incentives, it may adversely affect our business. For example, due to our recent results of operations and stock price, our short-term incentive plans, long-terms incentive plans, and option grants may not be adequate to retain our leadership team and other participating employees. Additionally, we do not have key-person insurance for our executives.

Regulatory and Litigation Risks

Regulatory requirements may require costly expenditures and expose us to liability.

Our products, marketing, and advertising are regulated by various U.S. authorities, including the Federal Trade Commission, as well as consumer protection laws specific to the sleep product industry. These regulations may change or conflict with each other, leading to ongoing compliance costs, such as quality control and compliance processes. We are subject to federal, state, and local environmental, health, and safety regulations, including those related to environmental protection, recycling, and occupational health and safety. While we strive for compliance, past changes to our facilities have been required, and we will continue to invest in meeting these standards. If harmful substances are released or contamination is found on our properties, we may face significant liability. As a manufacturer of mattresses and related products, we handle regulated substances, which subject us to various environmental laws. For example, we are subject to the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act and the Comprehensive Environmental Response, Compensation and Liability Act, and related state and local statutes and regulations.

We are subject to federal laws on international shipments, customs, and import controls. Non-compliance may result in penalties or fines, adversely affecting our financial condition and results of operations. We are subject to laws covering the internet, e-commerce, electronic devices, taxation, privacy, data protection, pricing, consumer protection, employment, disabilities, and more. The application of traditional areas of the law to newly developed technologies may be unclear, and unfavorable regulations could reduce demand for our products, increase costs, or limit access to our products. Our ongoing efforts to enhance compliance and regularly test our site, as well as legal challenges we may face, may increase our business costs. Additionally, we are subject to health and environmental regulations like California Proposition 65, which require resources for compliance, and with respect to which we have experienced and may in the future face claims, requiring resources for defense. Laws addressing climate change could impose stricter standards, raise our costs, disrupt our business and negatively impact our financial condition and results of operations. Negative public perception or climate-related litigation could harm our reputation and business.

Regulatory requirements relating to the manufacture and disposal of mattresses may increase our product costs and increase the risk of disruption to our business.

The U.S. Consumer Product Safety Commission (CPSC) and other jurisdictions have fire retardancy standards for the mattress industry, with some states and Congress considering stricter regulations. These standards require fire retardant materials, quality assurance programs, random product testing, and documentation retention, which can be costly. If testing or inspections show our products don't meet flammability standards, we could face production halts, recalls, fines, or penalties, negatively impacting our operations and financial condition. New legislation on fire retardancy, bed bug prevention, or mattress recycling could lead to recalls or higher operating costs. Non-compliance may result in penalties, business restrictions, or negative publicity. Conflicting regulations could raise costs, change manufacturing processes, and harm product performance, negatively affecting our business.

We could be subject to additional sales tax or other indirect tax liabilities.

We are subject to sales tax or other indirect tax obligations as imposed by the various states and jurisdictions in the United States. The application of indirect taxes (such as sales and use tax, value-added tax ("VAT"), goods and services tax, business tax and gross receipt tax to applicable e-commerce businesses and to our users is a complex and evolving issue and we may be unable to timely or accurately determine our obligations with respect to such indirect taxes, if any, in various jurisdictions. Many statutes and regulations that impose these taxes were established before the adoption and growth of the internet and e-commerce. States may consider or adopt laws or administrative practices, which impose additional obligations on remote sellers and online marketplaces to collect transaction taxes such as sales, consumption, value added, or similar taxes. Failure to comply or a successful assertion by states requiring us to collect taxes where we did not, could result in substantial tax liabilities for past sales, as well as penalties and interest. If the tax authorities challenge our filings or request an audit, our tax liability may increase. We are currently undergoing routine audits in a few states.

We may be subject to laws and rules that require us to collect information from our customers, vendors, merchants, and other third parties for tax reporting purposes and report such information to government agencies. The scope of such requirements continues to expand, requiring us to develop and implement new compliance systems. Failure to comply with such laws and regulations could result in significant penalties.

Pending or unforeseen litigation and the potential for adverse publicity associated with litigation could adversely affect our business, reputation, results of operations or financial condition.

We may be involved in legal proceedings arising in the ordinary course of business, including commercial, product liability, employment and intellectual property claims. Litigation is unpredictable, and it is possible that the outcome of future claims asserted, or adverse publicity resulting from litigation, could adversely affect our business, reputation, results of operations or financial condition.

Risks Relating to our Intellectual Property

We may not be able to adequately protect our product designs, brand and other proprietary rights, which could adversely affect our competitive position, reduce the value of our products and brands, and may result in costly litigation to protect our intellectual property rights.

We focus on strengthening and differentiating our product portfolio through innovation in design and materials. Our intellectual property, including trademarks, patents, and trade secrets, is vital to our success. We rely on intellectual property laws and contractual protections, like confidentiality and non-compete agreements, to safeguard our rights. If we cannot enforce these protections, it could negatively impact our operations. We own U.S. and foreign patents for product designs, function, formulas, materials, and technologies, along with trademarks, trade secrets, trade dress, and copyrights. Our success relies on protecting these intellectual property rights and avoiding infringement on third-party rights.

Despite our efforts, we may not fully protect our intellectual property and proprietary rights. Counterfeit goods and patent/trademark infringements are increasing, leading to higher enforcement costs, including actions with the International Trade Commission seeking general exclusion orders against foreign entities. We expect significant financial and managerial resources to be spent on protecting our intellectual property rights. Even with favorable outcomes, infringement and counterfeits could harm our business and intellectual property value. Laws may not adequately safeguard our trademarks. Licensees could also harm our proprietary rights or reputation. Inadequate protection of our intellectual property could negatively impact our results of operations.

We may be subject to claims that we or the licensors of intellectual property rights licensed to us have infringed on proprietary rights, which could require us and our licensors to obtain a license or change designs.

As we increase our innovations, create new products and technologies, and enter new product categories, we may be limited by the intellectual property rights of others. We respect the intellectual property rights of others but our ability to innovate and increase product offerings may be limited by the intellectual property rights of other parties. We have in the past and may in the future face claims regarding alleged intellectual property infringement, though we believe our products do not infringe others' rights. However, we cannot guarantee that such claims, including claims of invalidity and indemnification, will not arise or negatively impact our business. Defending against these claims could incur costs and divert resources. Infringement claims could also result in injunctions preventing distribution of our products or forcing us to alter our designs if licensing terms are unavailable or unreasonable.

We previously licensed certain intellectual property to EdiZONE, LLC ("EdiZONE"), for the purpose of enabling EdiZONE to meet its contractual obligations to licensees. Some of those licensees are competitors and have exclusive rights that we may be required to observe.

Before the Business Combination, we entered into an Amended and Restated Confidential Assignment and License Back Agreement with EdiZONE, controlled by our founders, pursuant to which EdiZONE transferred intellectual property to us and licensed back certain intellectual property to meet pre-existing third-party obligations. EdiZONE agreed not to modify, extend, or enter new third-party licenses, with all rights reverting to us as these licenses expire. One of EdiZONE's prior licenses grants exclusivity to a third party of an earlier technology that could prevent us from selling a mattress made from that earlier technology in the European Union. This risk could be mitigated by redesigning our Hyper-Elastic Polymer material using existing or new technologies. However, there is no guarantee that any of our future sales in the European Union won't be challenged by EdiZONE's licensee, and any such redesigned mattresses may not succeed. If challenged, we are required to indemnify EdiZONE. We have the right to enforce our intellectual property against licensees who violate their agreements or infringe on our intellectual property. We must indemnify EdiZONE and cover enforcement costs. However, there is no guarantee that such enforcement efforts would succeed, which could negatively impact our business.

Risks Relating to our Common Stock

NASDAQ may delist our securities from its exchange, which could harm our business and limit our stockholders' liquidity.

Our Common Stock is currently listed on NASDAQ, which has listing criteria. We cannot assure that our Common Stock will continue to be listed on NASDAQ in the future. To continue listing our Common Stock on NASDAQ, we must maintain certain governance, financial, distribution and stock price levels. Generally, we must maintain a minimum amount in stockholders' equity, a minimum number of holders of our Common Stock, and a $1.00 minimum per share bid price for our Common Stock. If we fail to maintain a $1.00 minimum per share bid price for a period of 30 consecutive business days, we have 180 calendar days to maintain our Common Stock at a $1.00 minimum per share bid price for 10 consecutive trading days. If we do not regain compliance within 180 calendar days, NASDAQ may grant a second compliance period of 180 calendar days or it may determine to delist our Common Stock, at which point we would have an opportunity to appeal the delisting determination to a hearings panel. On November 11, 2024, we received written notice from NASDAQ that we were not in compliance with Nasdaq minimum share price rule, since the closing price of our Common Stock had been below $1.00 per share for 30 consecutive business days. However, we regained such compliance on February 3, 2025. It is possible that we may again fail to comply with such minimum bid price requirement in the future if our stock price again falls below $1.00 for an extended period. Currently, our stock price has been below $1.00 since February 19, 2025.

If we are unable to comply with NASDAQ'S continued listing requirements, our Common Stock may be subject to delisting. If NASDAQ delists our Common Stock from trading on its exchange or if we decide to voluntarily delist from NASDAQ and/or deregister our Common Stock under the federal securities laws, we could face significant material adverse consequences, including but not limited to (i) a limited availability of market quotations for our Common Stock; (ii) reduced liquidity for our Common Stock; (iii) a determination that our Common Stock is a "penny stock" which will require brokers trading in our Common Stock to adhere to more stringent rules and possibly result in a reduced level of trading activity in the secondary trading market for our securities; (iv) a limited amount of news and analyst coverage, and in the event of deregistration of our Common Stock, less public disclosure about us; and (v) a decreased ability to issue additional securities or obtain additional financing in the future.

The market price of our Common Stock is volatile and may decline regardless of our results of operations, and Stockholders may not be able to resell shares at or above their purchase price.

The market price of our Common Stock has been highly volatile, and stockholders may not be able to resell shares at or above their purchase price. It can fluctuate significantly due to various factors, some beyond our control and unrelated to our results of operations, including but not limited to:

- actual or anticipated changes or fluctuations in our results of operations or fluctuations in the trading volume of our shares or the size of our public float;
- actual or anticipated changes in the expectations of investors or securities analysts, including our results of operations, or the extent to which analysts cover our stock;
- fluctuations in the overall stock market and volatility in the market price and trading volume of companies in our industry, or general or industry economic conditions and trends;
- relevant regulatory developments in any jurisdiction, or litigation involving us or our industry;
- terrorist attacks, trade wars, political upheaval, natural disasters, public health crises, or other major catastrophic events;
- sales of large blocks of our Common Stock, including SEC filings related to such potential sales; or
- an adverse impact on us from any of the other risks cited herein.

Anti-takeover provisions in our Second Amended and Restated Certificate of Incorporation, our Third Amended and Restated Bylaws as well as provisions of Delaware law, contain anti-takeover provisions, any of which could delay or discourage a merger, tender offer, or assumption of control of our Company not approved by our Board of Directors that some stockholders may consider favorable.

Provisions of Delaware law, our Second Amended and Restated Certificate of Incorporation, our Third Amended and Restated Bylaws and the existence of a significant stockholder who is our primary lender, could discourage a third party from attempting to acquire control of us. Stockholders may not have the opportunity to participate in these transactions. These provisions or circumstances could also limit the price that investors might be willing to pay in the future for Common Stock, including the potential to realize a premium for shares pursuant to a change in control transaction. We have amended our bylaws to add requirements relating to stockholder nominations of directors, including that stockholder nominees complete a written questionnaire and make themselves available for interviews by our Board. In addition, we are subject to the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit certain transactions with stockholders owning 15% or more of our outstanding voting stock or require us to obtain stockholder approval prior to engaging in such transactions.

As reported by Coliseum in its Schedule 13D/A filed on January 23, 2024, Coliseum beneficially owns 58.5 million shares of Common Stock (which includes 46.9 million shares of Common Stock currently owned and 11.6 million shares of Common Stock that could be acquired upon exercise of its Warrants). The existence of such a large stockholder may limit the potential for third party offers to acquire the Company.

Significant payment obligations under our Tax Receivable Agreement are accelerated upon a change of control and may discourage the potential acquisition of our Company and adversely affect any potential control premium payable for shares of our Common Stock.

Prior to us being a public company, we entered into the Tax Receivable Agreement with our founders (the "Tax Receivable Agreement"), which provides for our payment to our former founders of 80% of certain tax benefits that we realize as a result of certain increases in our asset tax basis and of certain other tax benefits. If we experience a change of control (as defined under the Tax Receivable Agreement), we could be required to make an immediate lump-sum payment to our former founders under the terms of the Tax Receivable Agreement (as defined herein). We currently estimate the liability associated with this lump-sum payment as of December 31, 2024, to be approximately $131.1 million on a discounted basis. The acceleration of such a material lump-sum payment obligation under our Tax Receivable Agreement could materially adversely affect a third party's acquisition, discourage a third party from attempting to acquire control, or materially adversely affect the price payable for our Common Stock pursuant to such a transaction. As a result, stockholders may not have the opportunity to participate in or realize a potential control premium for shares pursuant to such a change of control transaction. These obligations could also limit the price that investors might be willing to pay in the future for our Common Stock.

Our Second Amended and Restated Certificate of Incorporation could make it very difficult for an investor to bring any legal actions against us, our directors, or our officers and may limit our stockholders' ability to obtain a favorable judicial forum.

Our Second Amended and Restated Certificate of Incorporation provides that the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents. It also provides that, unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any (i) derivative action or proceeding brought on our behalf; (ii) any action asserting a claim for or based on a breach of duty or obligation owed by any current or former director, officer or employee of ours to us or to our stockholders, including any claim alleging the aiding and abetting of such a breach; (iii) any action asserting certain claims against us or any current or former director, officer or employee; or (iv) any action asserting a claim related to or involving us that is governed by the internal affairs doctrine. This exclusive forum provision would not apply to certain suits brought to enforce certain liability or duty or any other claim for which the federal courts have exclusive jurisdiction. Furthermore, the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that the stockholder finds favorable for disputes with us or our directors, officers or employees, which may discourage such lawsuits against us and our directors, officers or employees. Alternatively, if a court were to find the choice of forum provision contained in our Certificate of Incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could have a material adverse effect on our business, financial condition, results of operations.

Future sales of our Common Stock in the public market may depress our share price.

Sales or the perception of future sales of a substantial number of shares of our Common Stock could depress the market price of our Common Stock and impair our ability to raise capital through the sale of additional equity or other convertible securities, regardless of any relationship between such sales and the performance of our business.

In connection with the issuance of Warrants pursuant to the Amended and Restated Credit Agreement and the 2025 Amendment, the Company entered into a Second Amended and Restated Registration Rights Agreement (the "Registration Rights Agreement") with CCP, Blackwell, Coliseum Capital Co-Invest III, L.P. ("C-3"), Harvest Master, Harvest Partners, and HSCP (the "Holders"), providing for the registration of the Warrants, the shares of Common Stock issuable upon the exercise of the Warrants, and the Class A Common Stock held by the Holders as of such date (the "Registrable Securities"). The market price of our Common Stock could decline as a result of sales by a few large stockholders, such as Coliseum or the Holders, or the perception that these sales could occur, including as a result of the registration statement. These sales might also make it more difficult for us to sell equity securities at a time and price that we deem appropriate.

Our stockholders may experience substantial dilution in the value of their investment or may otherwise have their interests impaired if we issue additional debt or equity securities or securities convertible into equity securities, as well as due to the exercise of the currently outstanding Warrants.

We may attempt to increase our capital by entering additional secured or unsecured debt or debt-like financing, or by issuing additional debt or equity securities, including issuances of secured or unsecured notes, preferred stock, hybrid securities or convertible securities. Our Second Amended and Restated Certificate of Incorporation allows us to issue up to 300 million shares of our common stock, including 210 million shares of Class A common stock and 90 million shares of Class B common stock, and up to five million shares of undesignated preferred stock.

We have previously sold and may in the future sell additional shares of our Common Stock or convertible securities at prices that are lower than the prices paid by existing stockholders, and investors purchasing shares or other securities could have rights superior to existing stockholders, which could result in substantial dilution of existing stockholders. For example, in February 2023 we issued 13.4 million shares of Common Stock pursuant to a public offering, on January 23, 2024, we issued to the Lenders under the Amended and Restated Credit Agreement the 2024 Warrants to purchase 20.0 million shares of our Common Stock at a price of $1.50 per share, subject to adjustments, and on March 12, 2025, we issued to the Lenders under the 2025 Amendment the 2025 Warrants to purchase 6.2 million shares of our Common Stock at a price of $1.50 per share, subject to adjustments. The exercise of the Warrants will dilute the value of Class A common stock and stockholder voting power. In addition, the Warrants include full-ratchet anti-dilution protections, subject to certain conditions, which could result in the Warrants becoming exercisable for a significantly greater number of shares if we engage in a dilutive financing.

In the event of our liquidation, holders of our debt would receive distributions of our assets before distributions to holders of our Common Stock, including substantial make-whole payments, and holders of securities senior to the Common Stock would receive distributions of our assets before distributions to the holders of our Common Stock. Because future debt and equity offerings may be influenced by market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings or debt financings. Market conditions could impose less favorable terms for the issuance of our securities in the future.

Our only significant asset is our ownership of Purple LLC and such ownership may not be sufficient to enable us to satisfy our financial obligations.

We are a holding company and do not directly own any operating assets other than our ownership of interests in Purple LLC. We depend on Purple LLC for distributions, loans and other payments to generate the funds necessary to meet our financial obligations, including our expenses as a publicly traded company. The earnings from, or other available assets of, Purple LLC may not be sufficient to allow us to pay our financial obligations.

If we fail to maintain an effective system of internal controls, we may not be able to report our financial results accurately, may make a material misstatement in our financial statements, may experience a financial loss or may face litigation. Any inability to report and file our financial results accurately and timely could adversely affect the value of our Common Stock.

We are required to maintain internal controls over financial reporting and disclosure, as mandated by the Sarbanes-Oxley Act and SEC rules. However, even with these controls, management cannot guarantee that they will prevent all errors or fraud. All control systems have inherent limitations, such as human error, circumvention, or collusion, and cannot provide absolute assurance of detection or prevention. Controls may also become inadequate over time due to changes, new fraudulent schemes, or deteriorating compliance, increasing the risk of undetected misstatements. The accuracy of our financial reporting relies on effective internal controls, which can only provide reasonable assurance and may not detect all misstatements. Any failure in internal controls or disclosure procedures could undermine the accuracy and timeliness of our disclosures, potentially eroding investor confidence, requiring significant resources to fix, and exposing us to legal or regulatory actions. For example, we identified a material weakness in our warranty reserve accounting during the preparation of our September 30, 2023, financial statements. However, as of June 30, 2024, we concluded that the material weakness has been remediated and that our internal controls over financial reporting are effective.

We continue to evaluate, design and implement controls and procedures designed to avoid material weaknesses. If our efforts are insufficient or if new weaknesses arise, our financial statements may be misstated, potentially requiring restatements, incurring additional accounting, legal costs, and exposing us to shareholder litigation. We cannot guarantee against future material weaknesses in our internal control. Failure to maintain effective internal control could impact the accuracy and timeliness of our financial reporting, potentially leading to sanctions from NASDAQ, the SEC, or other regulators. Failure to timely file will cause us to be ineligible to utilize short form registration statements on Form S-3, which may also impair our ability to raise capital, execute business strategies, or issue shares for acquisitions. Additionally, it could erode investor confidence and negatively affect our stock price.

Tax Risks Relating to our Structure

Obligations under the Tax Receivable Agreement could materially adversely affect our future cash flow if we become profitable and begin paying income taxes. Payments under the Tax Receivable Agreement may be accelerated or significantly exceed the actual benefits we realize.

Our Tax Receivable Agreement with our founders requires us to pay 80% of certain tax benefits realized from increases in asset tax basis and other tax benefits. As of December 31, 2024, our preliminary estimate of liability under the agreement was $169.0 million. This liability may increase if we realize future tax benefits, face changes in tax rates, or if payments are accelerated. However, since we have not been profitable recently, we determined as of December 31, 2024, that the likelihood of incurring a liability was not probable and no liability was recorded. If we become profitable and realize tax savings covered by the Tax Receivable Agreement, we will incur payment obligations, which could negatively impact our cash flow.

The lump sum payment of $131.1 million required upon early termination of the Tax Receivable Agreement in the event of a change in control could negatively impact liquidity, delay or prevent business transactions, and reduce the value of our Common Stock. If our cash resources are insufficient, we may need to incur additional debt to meet these obligations, which could materially harm our financial condition. Even without early termination, a change of control, or late payments, our liquidity could be adversely affected if payments under the Tax Receivable Agreement exceed the tax savings we realize, or if distributions from Purple LLC are insufficient to cover payments after taxes and expenses.

Our ability to utilize our net operating loss carryforwards and certain other tax attributes may be limited. Future use and amount of our Current NOLs and other tax benefits is uncertain.

Under Section 382 and related provisions of the Internal Revenue Code of 1986, as amended (the "Code"), if a corporation undergoes an "ownership change", the corporation's ability to use its pre-change net operating loss carryforwards ("NOLs") and other pre-change tax attributes to offset its post-change income may be limited. Generally, an ownership change is defined as a change in its equity ownership by certain stockholders over a three-year period of greater than 50 percentage points (by value). If finalized, Treasury Regulations currently proposed under Section 382 of the Code may further limit our ability to utilize our pre-change NOLs or other tax attributes if we undergo a future ownership change. Thus, our ability to utilize carryforwards of our net operating losses, including net operating losses acquired from the Intellibed acquisition, and other tax attributes to reduce future tax liabilities may be substantially restricted. As of December 31, 2024, we completed a study to assess whether an ownership change has occurred, as defined by IRC Section 382, or whether there have been ownership changes since the Company's formation. The results of this study indicate that we experienced one ownership change on December 31, 2021. We may also experience ownership changes in the future as a result of subsequent shifts in our stock ownership. As a result, if we generate taxable income, our ability to use our pre-change NOL and tax credits carryforwards to reduce U.S. federal and state taxable income may be subject to further limitations, which could result in increased future tax liabilities to us. Moreover, our federal NOLs from years prior to 2018 can be carried forward for a maximum of 20 years from the year in which the NOL was incurred, and our state NOLs are subject to carryforward limitations that vary from state to state; as a result, all or a portion of those carryforwards could expire before being available to reduce future income tax liabilities.

On June 27, 2024, our Board approved the NOL Rights Plan to protect stockholder value by attempting to safeguard our ability to use Current NOLs of approximately $310.7 million to reduce potential future federal income tax obligations from becoming substantially limited by future ownership of our Common Stock. At the Special Meeting, stockholders ratified the NOL Rights Plan. Under the NOL Rights Plan, the Board authorized and declared a dividend of one Right for each outstanding share of Common Stock to stockholders of record at the close of business on July 26, 2024. Upon a stockholder acquiring greater than a 4.9% ownership percentage threshold (or, if a stockholder has beneficial ownership of in excess of 4.9%, then the ownership percentage that is one-half of one percentage point greater than their current beneficial ownership percentage), the Rights will become exercisable to significantly dilute any stockholder who violates the ownership limitations of the NOL Rights Plan. In connection with the NOL Rights Plan, the Board adopted, and our stockholders approved at the Special Meeting, the NOL Protective Charter Amendment that adds an additional layer of protection to our Current NOLs until June 30, 2025 by voiding any transfer of Common Stock that results in a stockholder acquiring beyond a 4.9% ownership percentage threshold (or, if a stockholder has current beneficial ownership of in excess of 4.9%, then the ownership percentage that is one-half of one percentage point greater than their current beneficial ownership percentage).

Use of our Current NOLs and other tax benefits depends on our ability to generate taxable income in the future. We cannot ensure whether we will have future taxable income or, if we do, whether such income or our Current NOLs or other tax benefits at such time will exceed any potential limitation under Code Section 382.

The IRS may challenge our Current NOLs and other tax benefits.

As of December 31, 2024, the amount of our Current NOLs has not been audited or validated by the Internal Revenue Service (the "IRS"). The IRS could challenge the amount of our Current NOLs, which could result in an increase in our future liability for income taxes. In addition, determining whether an ownership change under Code Section 382 has occurred is subject to uncertainty because of the complexity and ambiguity of the provisions of Code Section 382 and because of limits on timely knowledge that any publicly traded company can have about the ownership of and transactions in its securities. We cannot ensure that the IRS or another taxing authority will not claim in the future that we experienced an ownership change under Code Section 382 and attempt to reduce the benefit of our Current NOLs and other tax benefits available, even if the NOL Protective Charter Amendment is in place.

There is continued risk of ownership change under Code Section 382.

Although the NOL Protective Charter Amendment and NOL Rights Plan intend to reduce the likelihood of an ownership change under Code Section 382, we cannot ensure that the NOL Protective Charter Amendment and the NOL Rights Plan will be effective. The amount by which a future ownership interest under Code Section 382 may change could, for example, be affected by purchases of our Common Stock by stockholders who are 5% stockholders (as defined under Code Section 382) or by purchases of stock or other interests in corporations, partnerships or other legal entities that own 4.9% or more of our Common Stock, over which we have no control. Further, while the NOL Protective Charter Amendment and the NOL Rights Plan allow for the exercise of currently outstanding conversion rights, exchange rights, warrants or options or otherwise, such exercises may result in an ownership change under Code Section 382. It may also be in our best interests, considering all relevant facts and circumstances at the time, to permit the acquisition of our Common Stock in excess of the specified limitations or to issue new or redeem existing equity in the future, all of which may increase the likelihood of an ownership change under Code Section 382.

The Current NOL protections under the NOL Protective Charter Amendment and NOL Rights Plan will expire by their terms on June 30, 2025.

The NOL Protective Charter Amendment and the NOL Rights Plan may potentially adversely affect the market for, and negatively impact the value of, our Common Stock.

The NOL Protective Charter Amendment and the NOL Rights Plan intend to prohibit or deter a stockholder's ability to acquire, directly, indirectly or constructively, additional shares of our Common Stock in excess of specific limitations. A stockholder's ability to dispose of our Common Stock may be limited by reducing potential acquirers for such shares. A stockholder's ownership of our Common Stock may become subject to the restrictions of the NOL Protective Charter Amendment, or may trigger applicable thresholds under the NOL Rights Plan, upon actions taken by Persons (as such term is defined in the NOL Protective Charter Amendment or the NOL Rights Plan, as applicable) related to, or affiliated with, such stockholder.

Because the NOL Protective Charter Amendment and the NOL Rights Plan were approved by our stockholders at the Special Meeting, we have included a legend reflecting the transfer restrictions included in the NOL Protective Charter Amendment and the Rights issued pursuant to the NOL Rights Plan on certificates representing newly issued or transferred shares of our Common Stock and disclosed such Rights and restrictions to Persons holding our Common Stock in uncertificated form, and to the public generally. Because certain buyers, including Persons who wish to acquire more than 4.9% of our Common Stock and certain institutional holders who may not be comfortable holding our Common Stock with restrictive legends, may choose not to purchase our Common Stock, the NOL Protective Charter Amendment and the NOL Rights Plan could have an adverse effect on the marketability and trading value of our Common Stock in an amount that could more than offset any value preserved from protecting our Current NOLs. The NOL Protective Charter Amendment and NOL Rights Plan could also have a negative impact on the trading value of our Common Stock by deterring Persons or groups of Persons from acquiring our Common Stock, including in acquisitions that might result in some or all our stockholders receiving a premium above market value.

The NOL Protective Charter Amendment and the NOL Rights Plan may have an anti-takeover effect.

While the NOL Protective Charter Amendment is not intended to prevent, or even discourage, a proposal to acquire the Company, the NOL Protective Charter Amendment may have a potential anti-takeover effect because, among other things, it will restrict the ability of a Person, entity or group to accumulate more than 4.9% of our Common Stock and the ability of Persons, entities or groups now owning more than 4.9% of our Common Stock to acquire any significant amount of additional shares of our Common Stock, in each case, without the approval of our Board. Similarly, while the NOL Rights Plan is not intended to prevent, or even discourage, a proposal to acquire the Company the NOL Rights Plan may have a potential anti-takeover effect because, among other things, an Acquiring Person (as such term is defined in the NOL Rights Plan) may have its ownership interest diluted upon the occurrence of a triggering event. The overall effects of the NOL Protective Charter Amendment and NOL Rights Plan may be to render more difficult or discourage a merger, tender offer, proxy contest or assumption of control by a substantial holder of our Common Stock and have an adverse effect on the marketability and the trading value of our Common Stock. However, the NOL Protective Charter Amendment and NOL Rights Plan should not interfere with any merger or other business combination approved by the Board.

Item 1B. Unresolved Staff Comments

None.

Item 1C. Cybersecurity Risk Management, Strategy, and Governance

In the ordinary course of our business, we receive, process, use, store and share digitally large amounts of data, including user data as well as confidential, sensitive, proprietary and personal information. We depend largely upon our information technology systems in the conduct of all aspects of our operations. Maintaining the integrity and availability of our information technology systems and this information, as well as appropriate limitations on access and confidentiality of such information, is important to our operations and business strategy. To this end, we have implemented processes and systems designed to assess, identify, and manage risks from potential unauthorized occurrences on or through our information technology systems to prevent adverse effects on the confidentiality, integrity, and availability of these systems and the data residing in them.

In 2024, we did not identify any cybersecurity breaches that materially affected, or are reasonably likely to materially affect, our business strategy, results of operations, or financial condition.

Management's Role

Our management team is responsible for monitoring, preventing, detecting, mitigating and remediating cybersecurity incidents. Our chief technology officer has over 41 years of experience and has held various leadership roles in information technology, including serving as a chief information officer and chief technology officer for the last 13 years. He has successfully implemented and managed large enterprise resource planning systems, e-commerce websites, stores and enterprise infrastructure, both cloud-based and on-premise. His expertise extends to evaluating and hiring cybersecurity personnel and outsourced managed services, defining incident response plans, conducting tabletop exercises, and establishing communication protocols with internal executives, board members, and vendors. He has firsthand experience in responding to actual cybersecurity incidents, showcasing a deep understanding of the challenges and complexities within the cybersecurity landscape in the retail sector. Our senior director of cybersecurity and compliance has a 16-year track record as an information technology and information security professional, complemented by an Executive MBA. His career is distinguished by a decade of leadership as the commander of the United States Army cyber protection team (174 CPT), where he gained cybersecurity experience at USCYBERCOM and ARCYBER. He holds multiple professional certifications, including CISSP, PMP and multiple SANS certifications. Our chief technology officer and senior director of cybersecurity and compliance report to the Audit Committee on these matters.

We maintain a cybersecurity risk management program designed to identify, assess, manage, mitigate, and respond to cybersecurity threats. Our cybersecurity risk management processes are being integrated into our overall risk management processes. We are making efforts to incorporate cybersecurity considerations as a part of our business processes. We engage with external cybersecurity experts, including assessors, consultants, and auditors, to enhance our cybersecurity measures and ensure compliance with industry best practices. For example, a comprehensive cyber risk assessment, both physical and logical, was conducted by a third party, serving as an external penetration test to validate our security posture. We have established processes to oversee and manage cybersecurity risks associated with our use of third-party service providers, ensuring they adhere to our security standards. We review third-party service provider contracts to ensure they contain data privacy and security provisions, aligning with our standards and regulatory requirements. Additionally, we have established a Technology Review Committee ("TRC") tasked with the role of evaluating new software tools and technologies before their implementation. The TRC consists of experts from various domains within our organization, including information technology security, compliance, legal, and operations. This TRC conducts assessments to ensure that any new software tools meet our standards for security, compliance and operational efficiency.

Board of Directors Oversight

The oversight of our cybersecurity is assigned to the Audit Committee of our Board of Directors. The Audit Committee receives regular reports and briefings from management on our cybersecurity threat risk management and strategy processes, including on topics such as our data security posture, results from third-party assessments, progress towards pre-determined risk-mitigation-related goals, incident response plans, and cybersecurity threat risks or incidents and developments, as well as the steps management has taken to respond to these risks. In addition, management updates the Audit Committee as necessary regarding any material cybersecurity incidents as well as any incidents with lesser impact potential. The Audit Committee received one report from our Senior Director of Cybersecurity and Compliance in 2024.

Item 2. Properties

We lease a manufacturing facility in McDonough, Georgia with approximately 844,000 square feet. In August 2024, we initiated our Restructuring Plan to strategically realign our operational focus to achieve operations efficiencies that are expected to improve profitability and provide for reinvesting in technology and marketing initiatives. The Restructuring Plan is comprised of the permanent closure of two Utah manufacturing facilities to consolidate mattress production in our Georgia plant. The closure of the manufacturing facilities in Grantsville, Utah with 574,000 square feet and Salt Lake City, Utah with 67,000 square feet is planned to be completed in the second quarter 2025. Our facility in Salt Lake City was acquired in the Intellibed acquisition in August 2022. In January 2025, we leased an approximately 198,000 square foot distribution and fulfillment facility in West Valley City, Utah, that will be opened in April 2025. We also lease a building with approximately 61,000 square feet in Draper, Utah that serves as our innovation center. In addition, we lease approximately 30,000 square-feet of office space in Lehi, Utah for our corporate headquarters. As of December 31, 2024, we had 58 Purple showrooms under lease with 12 located in California, six in Texas, four in Utah and 36 located in 23 other states throughout the United States.

Item 3. Legal Proceedings

Information regarding legal proceedings can be found in Note 13, "*Commitments and Contingencies*" and Note 23, "*Subsequent Events – Class Action Lawsuit*" of the Notes to our Consolidated Financial Statements, included in Part II, Item 8 of this Report, "Financial Statements and Supplementary Data," and is incorporated herein by reference.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

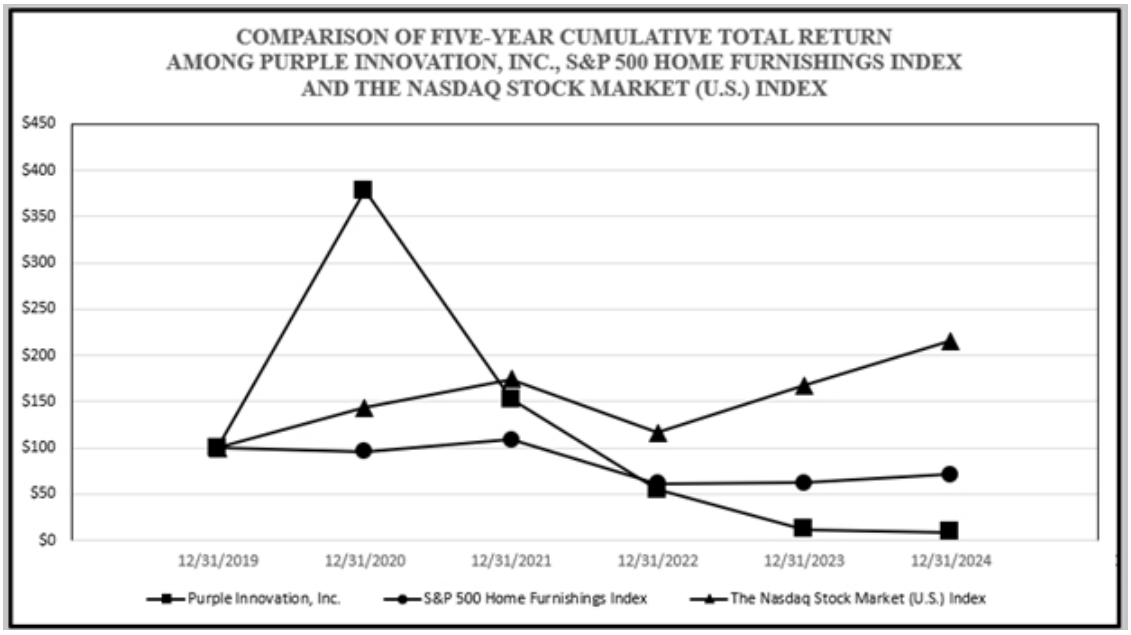
Item 5. Market for Registrant's Common Equity, Related Stockholder Matters, and Issuer Purchases of Equity Securities

Our Common Stock is listed on NASDAQ under the symbol "PRPL". As of March 7, 2025, there were approximately 83 holders of record of shares of our Common Stock and 7 holders of record of shares of our Class B Stock. Our Class B Stock is not listed or quoted on any exchange and is not transferrable by the holders, subject to certain limited exceptions, including the exchange of Class B Stock for shares of Common Stock. The number of holders of record of our Common Stock does not include stockholders for which shares are held in "nominee" or "street" name.

We have not paid any cash dividends on our Common Stock to date. The payment of cash dividends in the future will be dependent upon our revenues and earnings, if any, capital requirements, general financial condition, our compliance with restrictive covenants in the Amended and Restated Credit Agreement and other future indebtedness that we may incur, opportunities to invest in future growth initiatives, and the discretion of our Board of Directors at such time. Our Board of Directors is not currently contemplating and does not anticipate declaring any cash dividends on our Common Stock in the foreseeable future.

Comparative Stock Performance

The following graph illustrates the cumulative total return over the last five years from December 31, 2019 through December 31, 2024, for (i) our Common Stock, (ii) the Standard and Poor's (S&P) 500 Home Furnishings Index, and (iii) the NASDAQ Stock Market (U.S.) Index. The graph assumes $100 was invested on December 31, 2019 in each of our Common Stock, the S&P 500 Home Furnishings Index, and the NASDAQ Stock Market (U.S.) Index, and that any dividends were reinvested. The comparisons reflected in the graph are not intended to forecast the future performance of our Common Stock and may not be indicative of our future performance. The graph and related information shall not be deemed to be "soliciting material" or to be "filed" with the SEC, nor shall such information be incorporated by reference into any future filing with the SEC, except to the extent that the Company specifically incorporates it by reference into such filing.



	12/31/19	12/31/20	12/31/21	12/31/22	12/31/23	12/31/24
Purple Innovation, Inc.	$ 100.00	$ 378.19	$ 152.35	$ 54.99	$ 11.83	$ 8.96
S&P 500 Home Furnishings Index	100.00	96.04	109.06	61.16	61.96	71.32
The NASDAQ Stock Market (U.S.) Index	100.00	143.64	174.36	116.65	167.30	215.22

Recent Sales of Unregistered Securities

On January 23, 2024, in connection with the Amended and Restated Credit Agreement, we issued Warrants to purchase 20.0 million shares of our Class A common stock to the Lenders. On March 12, 2025, in connection with the 2025 Amendment, we issued Warrants to purchase 6.2 million shares of our Class A common stock to the Lenders. The Warrants will expire on the 10-year anniversary of their issuance, or earlier upon redemption. The Holders do not have the rights or privileges of holders of Class A common stock or any voting rights until they exercise their Warrants. After the issuance of shares of Class A common stock upon exercise of the Warrants, each Holder will be entitled to one vote for each share of Class A common stock held on all matters to be voted on by stockholders generally. A Holder of Warrants will not have the right to exercise its Warrants, to the extent that after giving effect to such exercise, the Holder (together with its affiliates) would beneficially own in excess of 49.9% of the shares of Class A common stock outstanding immediately after giving effect to such exercise

We believe that such issuances were exempt from registration pursuant to Section 4(a)(2) of the Securities Act as privately negotiated, isolated, non-recurring transactions not involving any public solicitation.

Issuer Purchases of Equity Securities

None.

Item 6. [Reserved]

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

Forward-Looking Statements

This Annual Report on Form 10-K, including Management's Discussion and Analysis of Financial Condition and Results of Operations, contains forward-looking statements regarding future events and our future results that are subject to the safe harbors created under the Securities Act and the Exchange Act. All statements other than statements of historical facts are statements that could be deemed forward-looking statements. These statements are based on current expectations, estimates, forecasts, and projections about the industries in which we operate and the beliefs and assumptions of our management. Words such as "expects," "anticipates," "targets," "goals," "projects," "intends," "plans," "believes," "momentum," "seeks," "estimates," "continues," "endeavors," "strives," "may," variations of such words, and similar expressions are intended to identify such forward-looking statements. In addition, any statements that refer to projections of our future financial performance, our anticipated growth and trends in our businesses (including the discussion under the heading "Outlook for Growth"), and other characterizations of future events or circumstances are forward-looking statements. Readers are cautioned that these forward-looking statements are only predictions and are subject to risks, uncertainties, and assumptions that are difficult to predict, including those under "Part I, Item 1A. Risk Factors," and elsewhere herein. Therefore, actual results may differ materially and adversely from those expressed in any forward-looking statements. We undertake no obligation to revise or update any forward-looking statements for any reason.

The following discussion is intended to provide a more comprehensive review of our results of operations and financial condition than can be obtained from reading our consolidated financial statements alone. This discussion should be read in conjunction with our consolidated financial statements and the notes thereto included in "Part II Item 8. Financial Statements."

Overview of Our Business

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

We are an omni-channel company that began as 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, duvets, duvet covers 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 Hyper-Elastic Polymer gel technology 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 via our DTC channel, which includes Purple.com (our direct-to-consumer e-commerce), Purple showrooms, our customer contact center and online marketplaces, and our wholesale channel through retail brick-and-mortar and online wholesale partners.

Organization

Our business consists of Purple Inc. and its consolidated subsidiary, Purple LLC. Purple Inc. was incorporated in Delaware on May 19, 2015 as a special purpose acquisition company under the name of GPAC. On February 2, 2018, we consummated a transaction structured similar to a reverse recapitalization (the "Business Combination") pursuant to which Purple Inc. acquired an equity interest in Purple LLC as holder of all Class A units and became its sole managing member. 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. At December 31, 2024, Purple Inc. had a 99.8% economic interest in Purple LLC while other Class B unit holders had the remaining 0.2%.

On August 31, 2022, we acquired all the issued and outstanding stock of Intellibed to consolidate ownership of our licensed intellectual property while enhancing our innovation and manufacturing capabilities and financial profile. For further discussion see Note 4 — *Acquisition.*

Recent Developments in Our Business

Operational Developments

During 2024, we have been realizing efficiencies with our media investments by targeting specific segments most likely to purchase Purple and by focusing more effort on those consumers currently in the market for a sleep product. We are concentrating efforts on driving gross margin improvement through various methods such as selective pricing actions, continued mix shift towards our Restore and Rejuvenate collections, and by driving cost savings through supply chain initiatives and manufacturing efficiency. We have also delivered direct material cost savings from our supplier diversification efforts, improved scrap and yield results from continuous improvements, and our outbound freight costs reflect cost improvements along with improved delivery reliability. Moreover, we believe consolidation of our manufacturing footprint pursuant to our Restructuring Plan is an important step to advance our grid innovation and build momentum to achieve positive operating cash flow and market share growth over the long- term. The fourth quarter 2024 was significant for us as we achieved profitability and positive cash flow. This was the direct result of our disciplined execution, operational improvements and cost saving initiatives throughout the year. Other key highlights during the fourth quarter of 2024 included significant improvements in Purple showroom profitability and the successful launch of our product in Costco retail locations.

In 2025, we announced the re-launching of our Rejuvenate line in the second quarter 2025 through our DTC channels, followed by a full wholesale channel roll-out expected to be complete by the third quarter 2025. The new Rejuvenate 2.0 will have a newly innovated grid technology that when stacked with our original Gelflex grid, creates a unique combination that continues to differentiate us in the market while driving superior comfort and support for an even more premium sleep experience.

Restructuring Activities

In August 2024, we initiated the Restructuring Plan to strategically realign our operational focus to achieve efficiencies in our operations that are expected to improve profitability and provide for reinvesting in technology and marketing initiatives. The Restructuring Plan includes the permanent closure of both Utah manufacturing facilities to consolidate mattress production in our Georgia plant, and a headcount reduction at our Utah headquarters to drive additional operating efficiencies. Closure of the two Utah manufacturing facilities is projected to be completed in the second quarter of 2025 while consolidation into the Georgia facility was finalized in December 2024. The reduction in workforce at our Utah headquarters was completed in August 2024. During 2024, we recognized $36.4 million in costs relating to the Restructuring Plan., which included $4.3 million of employee-related costs, $11.3 million of accelerated depreciation, $9.3 million related to write-downs of inventory and long-lived assets to be disposed of or equipment in progress that will not be put in service, $11.0 million of impairment charges associated with entering into a sublease for one of the Utah manufacturing facilities to be closed and impairment of an intangible asset, and $0.5 million of other related costs. We expect to record additional restructuring and other related charges in the amount of $4.6 million through the second quarter of 2025. These charges include certain estimates that are provisional and include management judgments and assumptions that could change materially as we complete the execution of our plans. Actual results may differ from these estimates, and the completion of our plan could result in additional restructuring, impairment or other related charges not reflected.

In addition, we plan to implement additional cost savings measures in 2025 beyond those implemented pursuant to our 2024 Restructuring Plan.

Debt Financings

On January 23, 2024, Purple LLC, Purple Inc. and Intellibed (collectively, the "Loan Parties") entered into the Amended and Restated Credit Agreement, which amended and restated the then existing term loan agreement ("Term Loan Agreement"), with CCP and other lenders (collectively, the "Lenders") and Delaware Trust Company, as administrative agent. The Lenders agreed to assume our obligations under the Term Loan Agreement and agreed to refinance our existing obligations. Pursuant to the Amended and Restated Credit Agreement, we borrowed $61.0 million from the Lenders (the "Related Party Loan") that was used to repay the $25.0 million of term loans outstanding, the $5.0 million of revolving debt outstanding, loan fees, premiums and expenses incurred in connection with this transaction and provided net proceeds to us (after payments of outstanding debt, unpaid accrued interest, and expenses) of approximately $27.0 million. Interest on the new loan is payable each month and the principal outstanding matures and is due on December 31, 2026. To reduce cash obligations, we have elected for interest to be capitalized and added to the principal amount of the loan. The loan bears interest at a rate equal to (i) the secured overnight financing rate plus 0.10%, with a floor of 3.5% per annum, plus (ii) 8.25% per annum (or, because Purple LLC has elected to pay interest in kind to reduce its cash obligations, 10.25% per annum). Any prepayments of principal on or after August 7, 2024 but before August 7, 2025 are subject to a prepayment penalty of 1.25%, and any prepayments of principal on or after August 7, 2025 are subject to a prepayment penalty of 2.50%. We may request an additional term loan from the Lenders in an aggregate amount not to exceed $19.0 million on terms requested by us to the extent agreed to by the Lenders at their discretion. The Amended and Restated Credit Agreement also removed restrictions and requirements typically associated with an asset-based loan. In connection with our execution of the Amended and Restated Credit Agreement, all obligations under the previously outstanding term loans and revolving credit facility were paid in full and the respective related agreements (collectively, the "2023 Credit Agreement") were terminated.

On March 12, 2025, we entered into the 2025 Amendment, pursuant to which the 2025 Term Loan Lenders (as defined in the 2025 Amendment) agreed to provide us with an incremental term loan of $19.0 million. The 2025 Amendment also amended the Amended and Restated Credit Agreement to (i) provide for an additional term loan from the 2025 Term Loan Lenders in an aggregate amount not to exceed $20.0 million, subject to the approval of the Required Lenders in their discretion, (ii) provide for the payment of substantial make-whole payments in the event we prepay the loans prior to their maturity, and (iii) provide that the incremental term loan will be senior in right of repayment to the initial term loan.

Warrants

In connection with the Amended and Restated Credit Agreement, we issued to the Lenders the 2024 Warrants to purchase 20.0 million shares of our Class A Stock. Each 2024 Warrant entitles the registered holder to purchase one share of our Class A Stock at a price of $1.50 per share, subject to adjustment. The 2024 Warrants will expire on the 10-year anniversary of issuance, or earlier upon redemption. A holder of the 2024 Warrants will not have the right to exercise them, to the extent that after giving effect to such exercise, the holder (together with its affiliates) would beneficially own in excess of 49.9% of the shares of Class A Stock outstanding immediately after giving effect to such exercise. The 2024 Warrants contain certain provisions that do not meet the criteria for equity classification and therefore were recorded as liabilities. The liability for the 2024 Warrants was recorded at a fair value of $19.6 million on the date of issuance with the offset included in debt issuance costs. This liability is subsequently re-measured to fair value at each reporting date or exercise date with changes in the fair value included in earnings. During 2024, we recognized a gain of $3.5 million in our consolidated statement of operations for a decrease in the fair value of the 2024 Warrants outstanding at December 31, 2024.

In connection with the 2025 Amendment, we issued to the Lenders the 2025 Warrants to purchase 6.2 million shares of our Class A Stock . The 2025 Warrants have the same terms as the 2024 Warrants, except that they expire on March 12, 2035 and certain adjustments to the exercise price are subject to a floor of $0.6979.

Registration Rights Agreements

In connection with the issuance of the Warrants, we entered into the Registration Rights Agreement with holders of the Warrants (the "Holders"), providing for the registration of Registrable Securities, subject to customary terms and conditions. We are responsible for the payment of the Holders' expenses in connection with any offering or sale of Registrable Securities by the Holders, including underwriting discounts or selling commissions, placement agent or broker fees or similar discounts, commissions or fees relating to the sale of certain Registrable Securities.

NOL Rights Plan

On June 27, 2024, our Board of Directors ("Board") adopted and we entered into a limited-duration stockholder rights agreement (the "NOL Rights Plan") with a stated expiration date of June 30, 2025. Our Board approved the NOL Rights Plan to protect stockholder value by attempting to safeguard our ability to use our June 30, 2024 estimated $238 million of net operating losses (the "Current NOLs") to reduce potential future federal income tax obligations from becoming substantially limited by future ownership of our common stock. Upon adopting the NOL Rights Plan, 0.3 million shares of our authorized shares of preferred stock were designated as Series C Preferred Shares. Pursuant to the NOL Rights Plan, our Board authorized and declared a dividend of one right for each outstanding share of common stock to stockholders of record at the close of business on July 26, 2024. Upon a stockholder acquiring greater than a 4.9% ownership percentage threshold (or, if a stockholder has beneficial ownership of in excess of 4.9%, then the ownership percentage that is one-half of one percentage point greater than their current beneficial ownership percentage), the rights will become exercisable to significantly dilute any stockholder who violates the ownership limitations of the NOL Rights Plan. The NOL Rights Plan was ratified at a special meeting of our stockholders on October 15, 2024 (the "Special Meeting"). The NOL Rights Plan will automatically expire by its terms on June 30, 2025.

NOL Protective Charter Amendment

In connection with the NOL Rights Plan, our Board adopted a NOL Protective Charter Amendment that adds an additional layer of protection to our Current NOLs until June 30, 2025 by voiding any transfer of common stock that results in a stockholder acquiring beyond a 4.9% ownership percentage threshold (or, if a stockholder has current beneficial ownership of in excess of 4.9%, then the ownership percentage that is one-half of one percentage point greater than their current beneficial ownership percentage). The NOL Protective Charter Amendment was approved by our stockholders at the Special Meeting. The NOL Protective Charter Amendment will automatically expire by its terms on June 30, 2025.

Review of Strategic Alternatives

We regularly engage in dialogue with market participants regarding potential business combinations, partnerships and other strategic alternatives. Based on certain recent preliminary inquiries, the Board has formed a special committee of independent directors and we have engaged a financial advisor to support them in evaluating any indications of interest and exploring other potential strategic alternatives. If we are unsuccessful in engaging in a favorable strategic alternative, then our ability to grow our business and compete with larger, including combined, competitors may be adversely affected.

Executive Summary – Results of Operations

Net revenues decreased $22.7 million, or 4.4%, to $487.9 million in 2024 compared to $510.5 million in 2023. This decrease was primarily driven by industry-wide demand softness for home-related products coupled with a reduction in advertising spend to focus on more profitable marketing. From a sales channel perspective in 2024, e-commerce net revenues decreased $17.3 million, or 7.7%, Purple showroom net revenues increased $4.3 million, or 5.8% and wholesale net revenues decreased $9.6 million, or 4.5%, as compared to 2023. The growth in Purple showroom net revenues was primarily due to an increase in average selling prices related to both strategic price adjustments and a sizeable shift in product mix to our higher priced Rejuvenate Products. Net revenues also benefited in 2024 from a full year's impact of five new Purple showrooms that opened in 2023. In addition to demand softness, our wholesale channel net revenues were negatively impacted in 2024 by intentionally exiting our relationship with certain customers.

Gross profit increased $9.3 million, or 5.4%, to $181.1 million in 2024 compared to $171.8 million in 2023 and our gross profit percentage improved to 37.1% in 2024 from 33.7% in 2023. These increases reflected improved production effectiveness in 2024 coupled with the negative impact in 2023 of non-recurring costs associated with the transition to our new product lineup. The improved production effectiveness in 2024 was largely attributable to supply chain initiatives and operational efficiency improvements implemented over the last 12 months. Gross profit and the related percentage were both negatively impacted by $15.4 million of charges recorded pursuant to the Restructuring Plan. Although $1.6 million of additional restructuring related charges are projected to be recorded in cost of revenues through the second quarter of 2025, we expect the Restructuring Plan will further streamline our manufacturing operations and provide increased gross profits going forward.

Operating expenses decreased $12.2 million, or 4.3% to $273.3 million in 2024 compared to $285.5 million in 2023. This decrease was driven by an $11.1 million decrease in marketing and sales costs due primarily to a decline in advertising spend, a $15.3 million decrease in general and administrative expense due largely to non-recurring legal and professional costs incurred by the Board's special committee in 2023 and a $6.9 loss on impairment of goodwill recorded in 2023. This decrease was offset in part by $20.0 million in charges related to the Restructuring Plan.

Other expense, net was $5.9 million in 2024 compared to $7.5 million in 2023. Other expense, net in 2024 included interest expense of $17.5 million associated primarily with the Related Party Loan, offset in part by other income of $11.5 million related to two payments received in full settlement of a previously filed business interruption claim.

Net loss attributable to Purple Inc. was $97.9 million in 2024 compared to a net loss of $120.8 million in 2023. The $22.9 million decrease in net loss was primarily due to a $9.3 million increase in gross profit and a $12.2 million decrease in operating expenses. Excluding the impact of the $35.4 million in restructuring, impairment and other related charges recorded in 2024, gross profit would have increased $24.7 million and operating expenses would have decreased $32.2 million.

Outlook for Growth

We believe, given the Restructuring Plan and our new grid innovation, that we are well positioned to grow our business in this challenging market. We are focused on the following three key initiatives to drive sustainable and profitable market share:

- ***Focus on pioneering new technologies to maintain our competitive advantage.*** Our strategy focuses on offering a differentiated product that provides unique benefits and higher customer satisfaction, all fueled by our proprietary flexible gel technology. Advancements and innovation in our grid technology has led to a new grid technology marking a significant advancement in our product lineup. Our new DreamLayer grid, stacked with our original grid, creates a unique combination that continues to differentiate us in the market while driving superior comfort and support for an even more premium sleep experience. This upgrade will result in a refresh of our current Rejuvenate line. The new Rejuvenate 2.0 collection launches in the second quarter 2025 through our direct-to-consumer channels, followed by a full wholesale roll-out expected to be complete by the third quarter 2025. In addition, we significantly expanded our distribution of pillows by launching our renowned DreamLayer and Freeform pillows into our wholesale channel.

- ***Drive sales by promoting our product differentiation.*** We started as a brand built on differentiation. In recent years, the category has relied extensively on discount messaging to attract customers, with less focus on product benefits. Our goal is to refocus our messaging to lead with our product differentiation. We intend to effectively articulate the unique qualities of sleeping on our gel grid layer to be more effective and reach more consumers. In our selling channels, we expect refocusing our messaging on promoting our differentiation will drive more and better quality traffic while improving conversion both online and in stores, and increase our share of retailer sales in our wholesale channel.

- ***Prioritize gross margin improvements.*** We expect continued gross margin gains to come from driving cost savings through plant consolidation efficiency gains, supplier diversification efforts and , improved scrap and yield results from continuous improvements efforts. We are also ramping up in-house pillow production, changing vendors for key mattress components like coils and mattress covers and improving our delivery program to drive cost improvements and better deliveries. These savings will enable us to reinvest in innovation and marketing to drive growth.

There is no guarantee that we will be able to effectively execute on these initiatives, which are subject to risks, uncertainties, and assumptions that are difficult to predict, including the risks described under "Part I, Item 1A. Risk Factors" and elsewhere herein. Therefore, actual results may differ materially and adversely from those described above. In addition, we may, in the future, adapt these focuses in response to changes in the market or our business.

Critical Accounting Policies and Estimates

In connection with the preparation of our consolidated financial statements in conformity with United States generally accepted accounting principles ("GAAP"), we are required to make estimates and assumptions about future events and apply judgments that affect the reported amounts of assets, liabilities, sales, expenses and the related disclosures. Predicting future events is inherently an imprecise activity and as such requires the use of judgment. We base our assumptions, estimates and judgments on historical experience, current trends and other factors that management believes to be relevant at the time our consolidated financial statements are prepared. On a regular basis, management reviews the accounting policies, assumptions, estimates and judgments to ensure that our consolidated financial statements are presented fairly and in accordance with GAAP. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material.

Management believes the accounting estimates discussed below are the most critical because they require management's most difficult, subjective or complex judgments, resulting from the need to make estimates about the effect of matters that are inherently uncertain.

Revenue Recognition

Our revenue recognition accounting methodology contains uncertainties because it requires management to make assumptions and to apply judgment to estimate the amount and timing of future sales returns, uncollectible accounts and variable consideration. Our estimates of the amount and timing of sales returns, uncollectible accounts and variable consideration are based primarily on historical trends, product return rates and current contract terms. Accrued sales returns increased from $5.4 million at December 31, 2023 to $6.5 million as of December 31, 2024. Our allowance for credit losses increased from a de minimis amount at December 31, 2023 to $1.1 million as of December 31, 2024. We do not believe there is a reasonable likelihood that there will be any material changes in our accounting methodology, future estimates or assumptions used to measure our estimated liability for sales returns and exchanges, our allowance for credit losses or variable consideration. However, if actual results are not consistent with our estimates or assumptions, we may be exposed to losses or gains that could be material.

Impairment

We review our long-lived assets and definite-lived intangible assets for impairment as of December 31 and whenever events or changes in circumstances indicate the carrying amount may not be recoverable. If there are any indications of impairment, we perform a recoverability test by comparing the carrying value of the assets to the estimated future cash flows (undiscounted and without interest charges - plus proceeds expected from disposition, if any). If the estimated undiscounted cash flows are less than the carrying value of the assets, the Company calculates an impairment loss. The impairment loss calculation compares the carrying value of its assets to the assets' estimated fair value. When the Company recognizes an impairment loss, the carrying amount of the impaired assets are reduced to estimated fair value based on discounted cash flows, quoted market prices or other valuation techniques. Assets to be disposed of are reported at the lower of the carrying amount of the asset or fair value less costs to sell. Cash flow models are reliant on various assumptions, including projected business results and long-term growth factors. The Company determined there were indicators of impairment that existed at December 31, 2024 and a recoverability test was required. Based on the results of this recoverability test, the Company concluded its long-lived and definite-lived assets were not impaired as of December 31, 2024 and no resultant impairment charges were recorded.

In conjunction with the Restructuring Plan initiated by us in August 2024, we recorded impairment charges of $2.5 million on various long-lived assets associated with entering into a sublease on one of the Utah manufacturing facilities that is expected to close during the first quarter of 2025.

The Restructuring Plan initiated by us in August 2024 was determined to be a triggering event for potential impairment of intellectual property that was being accounted for as an indefinite-lived intangible asset. The resultant impairment assessment performed by us determined this asset no longer had any supportable value and an $8.5 million impairment charge to write off the entire balance of the asset was recorded in 2024.

Accrued Warranty Liabilities

We provide a limited warranty on most of the products we sell. Our warranty liability assessment methodology includes estimates in both our DTC and wholesale channels. The estimated warranty costs associated with products sold through DTC channels are expensed at the time of sale and included in cost of revenues. The estimated warranty costs associated with products sold through the wholesale channel are recorded at the time of sale and included as an offset to net revenues. Estimates for warranty costs are based primarily on historical trends and warranty claim rates incurred. We regularly assess and adjust the estimate of accrued warranty claims by updating claims rates for any current or expected trends and changes in projected claim costs. We expect the estimated warranty liability to continue to increase as we have not yet reached the full 10 years of history on our 10-year mattress warranty. We classify as non-current those estimated warranty costs expected to be paid out in greater than one year. As of December 31, 2024, the current and non-current portions of our warranty liabilities were $6.1 million and $26.1 million, respectively, compared to $9.8 million and $25.8 million, respectively, at December 31, 2023. We do not believe there is a reasonable likelihood that a material change in the estimates or assumptions we use to calculate our warranty liability will occur. However, if actual results are not consistent with our estimates or assumptions, we may be exposed to losses or gains that could be material.

Results of Operations

A discussion regarding our financial condition and results of operations for the year ended December 31, 2024 compared to the year ended December 31, 2023 is presented below. A separate discussion regarding our financial condition and results of operations for the year ended December 31, 2023 compared to the year ended December 31, 2022 can be found under Item 7 of Part II of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, filed with the SEC on March 12, 2024.

Results of Operations for the Year Ended December 31, 2024 compared to the year ended December 31, 2023

The following table sets forth for the periods indicated, our results of operations and the percentage of total net revenues represented by each line item in our consolidated statements of operations:

	Years Ended December 31,			
	2024	% of Net Revenues	2023	% of Net Revenues
Revenues, net	$ 487,877	100.0%	$ 510,541	100.0%
Cost of revenues:				
Cost of revenues	291,303	59.7	338,716	66.3
Cost of revenues - restructuring related charges	15,442	3.2	—	—
Total cost of revenues	306,745	62.9	338,716	66.3
Gross profit	181,132	37.1	171,825	33.7
Operating expenses:				
Marketing and sales	171,263	35.1	182,313	35.7
General and administrative	69,117	14.2	84,446	16.5
Research and development	12,962	2.7	11,898	2.3
Restructuring, impairment and other related charges	19,973	4.1	—	—
Loss on impairment of goodwill	—	—	6,879	1.3
Total operating expenses	273,315	56.0	285,536	55.9
Operating loss	(92,183)	(18.9)	(113,711)	(22.3)
Other income (expense):				
Interest expense	(17,510)	(3.6)	(1,967)	(0.4)
Other income (expense), net	11,548	2.4	(1,198)	(0.2)
Loss on extinguishment of debt	(3,394)	(0.7)	(4,331)	(0.8)
Change in fair value – warrant liabilities	3,504	0.7	—	—
Total other expense, net	(5,852)	(1.2)	(7,496)	(1.5)
Net loss before income taxes	(98,035)	(20.1)	(121,207)	(23.7)
Income tax expense	(63)	—	(8)	—
Net loss	(98,098)	(20.1)	(121,215)	(23.7)
Net loss attributable to noncontrolling interest	(201)	—	(458)	(0.1)
Net loss attributable to Purple Innovation, Inc.	$ (97,897)	(20.1)	$ (120,757)	(23.7)

Revenues, Net

Net revenues decreased $22.7 million, or 4.4%, to $487.9 million in 2024 compared to $510.5 million in 2023. This decrease was primarily driven by macroeconomic pressures impacting U.S. consumer behavior that fueled the ongoing impact of industry-wide demand softness for home-related products, a reduction in advertising spend to focus on more profitable marketing, and the lapping effect on 2024 net revenues associated with the successful launch of our new premium mattress products in 2023. Also, our wholesale channel net revenues were negatively impacted by intentionally exiting our relationship with certain customers. From a sales channel perspective in 2024, DTC net revenues decreased $13.0 million, or 4.4%, and wholesale net revenues decreased $9.6 million, or 4.5%, as compared to 2023. Within DTC in 2024, e-commerce net revenues decreased $17.3 million, or 7.7%, while Purple showroom net revenues increased $4.3 million, or 5.8%, as compared to 2023. The growth in Purple showroom net revenues was driven by an increase in average selling prices related to both strategic price adjustments and a sizeable shift in product mix to our higher priced Rejuvenate Products. Net revenues also benefited in 2024 from a full year's impact of five new Purple showrooms that opened in 2023.

Cost of Revenues

Total cost of revenues decreased $32.0 million, or 9.4%, to $306.7 million in 2024 compared to $338.7 million in 2023. This decrease was due to lower sales volume coupled with lower production costs that were largely attributable to supply chain initiatives and operational efficiency improvements implemented over the last 12 months. This decrease was offset in part by $15.4 million of charges associated with the Restructuring Plan. Our gross profit percentage, which increased to 37.1% of net revenues in 2024 from 33.7% in 2023, reflected improved production effectiveness in 2024 coupled with the negative impact in 2023 of non-recurring costs associated with the transition to our new product lineup. These savings were offset in part by the restructuring-related charges mentioned above. Although $1.6 million of additional restructuring related charges are projected to be recorded in cost of revenues through the second quarter of 2025, we expect the Restructuring Plan will further streamline our manufacturing operations and provide increased gross profits going forward. These future charges incorporate certain estimates that are provisional and include management judgments and assumptions that could change materially as we complete the execution of our plan. Actual results may differ from these estimates and the completion of our plan could result in additional restructuring, impairment or other related charges not currently anticipated.

Marketing and Sales

Marketing and sales expense decreased $11.1 million, or 6.1%, to $171.3 million in 2024 compared to $182.3 million in 2023. This decrease was primarily due to a $7.2 million decrease in advertising spend and a $2.9 million decrease in wholesale marketing and sales costs compared to the corresponding amounts in the prior year when we invested heavily to support the launch of our new product lineups. As a percentage of net revenues, advertising spend was 13.4% in 2024 compared to 14.2% in 2023. The lower percentage of revenues reflected the impact of using more efficient advertising techniques in 2024 as compared to the use of expanded marketing efforts in 2023.

General and Administrative

General and administrative expense decreased $15.3 million, or 18.2%, to $69.1 million in 2024 compared to $84.4 million in 2023. This decrease was primarily due to $11.3 million of non-recurring legal and professional costs incurred by the Board's special committee in 2023 coupled with a $4.9 million reduction in other professional fees in 2024. These reductions were partially offset by a $2.0 million increase in compensation and benefits expense related to the special recognition bonus and severance costs associated with the Restructuring Plan. There will be no additional severance cost associated with the Restructuring Plan recorded in general and administrative expense.

Research and Development

Research and development costs increased $1.1 million, or 8.9%, to $13.0 million in 2024 compared to $11.9 million in 2023. This increase was primarily due to a loss incurred on the write off of a software development project coupled with increased investment in new research and development initiatives.

Restructuring, Impairment and Other Related Charges

In August 2024, we initiated a Restructuring Plan to permanently close our two Utah manufacturing facilities and consolidate mattress production in our Georgia plant. The Restructuring Plan also provided for a headcount reduction at our Utah headquarters to drive additional operating efficiencies. Of the $36.4 million total costs in 2024 relating to the Restructuring Plan, $20.0 million were recorded as restructuring, impairment and other related charges which included $3.1 million of employee-related costs, $0.1 million of accelerated depreciation, $5.2 million related to write-downs of long-lived assets to be disposed of or equipment in progress that will not be put in service, $11.0 million of impairment charges which included $2.5 million associated with entering into a sublease for one of the Utah manufacturing facilities to be closed and $8.5 million for the write-off of an indefinite-lived intangible asset, and $0.6 million for other related charges. We expect to record additional restructuring and other related charges of $3.0 million through the second quarter of 2025. These charges incorporate certain estimates that are provisional and include management judgments and assumptions that could change materially as we complete the execution of our plan. Actual results may differ from these estimates and the completion of our plan could result in additional restructuring, impairment or other related charges not currently anticipated.

Loss on Impairment of Goodwill

We recorded a $6.9 million loss on impairment of goodwill in the third quarter of 2023 because of an impairment assessment performed that determined goodwill was impaired. An ongoing decline in our market capitalization, along with other qualitative considerations, was determined to be a triggering event for potential goodwill impairment. The Company, considered as a single reporting unit, estimated the implied fair value of its goodwill using a variety of valuation methods, including both the income and market approaches.

Operating Loss

Operating loss decreased $21.5 million, or 18.9%, to $92.2 million in 2024 compared to $113.7 million in 2023. The smaller operating loss primarily resulted from an increase in gross profit, a decrease in advertising spend, a decrease in general and administrative expense and a loss on impairment of goodwill in 2023. These decreases in operating loss were partially offset by restructuring and impairment charges recorded in 2024 related to the Restructuring Plan. We expect to record additional $4.6 million of costs relating to the Restructuring Plan through the second quarter of 2025. These charges include certain estimates that are provisional and incorporate management judgments and assumptions that could change materially as we complete the execution of our plan. Actual results may differ from these estimates, and the completion of our plan could result in additional restructuring, impairment or other related charges not currently expected.

Interest Expense

Interest expense totaled $17.5 million in 2024 compared to $2.0 million in 2023. This increase was primarily due to $16.8 million of interest incurred on the Related Party Loan that was entered into in January 2024 to refinance the term loan and revolving line of credit associated with the 2023 Credit Agreements. We elected for interest to be capitalized to the outstanding loan balance in accordance with the terms of the Amended and Restated Credit Agreement which resulted in $9.7 million of interest expense being added to the Related Party Loan during 2024. In addition, interest expense in 2024 included $7.2 million of debt issuance cost amortization associated with the Related Party Loan. Interest expense in 2023 was primarily comprised of $2.1 million related to the 2023 Credit Agreements entered into in August 2023 and $1.3 million related to the 2020 Credit Agreement that was terminated upon entering into the 2023 Credit Agreements. Interest expense in 2023 was reduced by capitalized interest of $1.5 million.

Other Income (Expense), Net

Other income was $11.5 million in 2024 compared to other expense of $1.2 million in 2023. Other income in 2024 was primarily comprised of two payments totaling $11.6 million received in full settlement of a previously filed business interruption claim. Other expense in 2023 consisted of a $1.7 million loss on the disposal of property and equipment, partially offset by other income of $0.5 million.

Loss on Extinguishment of Debt

Loss on extinguishment of debt totaled $3.4 million in 2024 compared to $4.3 million in 2023. In January 2024, we entered into the Amended and Restated Credit Agreement that terminated and paid off the outstanding borrowings under our 2023 Credit Agreement. This termination was accounted for as an extinguishment of debt and $3.4 million of unamortized debt issuance costs were recorded as loss on extinguishment of debt. In February 2023, we accounted for an amendment to the 2020 Credit Agreement as an extinguishment of debt and $1.2 million of unamortized debt issuance costs were recorded as loss on extinguishment of debt in 2023. In connection with the execution of the 2023 Credit Agreements in August 2023, the Company terminated its 2020 Credit Agreement. While the Company had no outstanding borrowings under the 2020 Credit Agreement at that time, the termination was accounted for as an extinguishment of debt and $3.1 million of unamortized debt issuance costs were recorded as loss on extinguishment of debt in 2023.

Change in Fair Value – Warrant Liabilities

In January 2024, in connection with the Amended and Restated Credit Agreement, we issued to the Lenders Warrants to purchase 20.0 million shares of our Class A Stock. These Warrants contain certain provisions that do not meet the criteria for equity classification and therefore are recorded as liabilities. The initial liability for these Warrants was recorded at a fair value of $19.6 million on the date of issuance with the offset included in debt issuance costs. This liability is being re-measured to fair value at each reporting date or exercise date with changes in the fair value included in earnings. At December 31, 2024, the Warrants had a fair value of $16.1 million. We recognized a gain of $3.5 million related to a decrease in the fair value of the Warrants outstanding at the end of the period compared to the fair value of the Warrants on the date of issuance.

Income Tax Expense

We had income tax expense of $0.1 million in 2024 compared to a de minimis amount of income tax expense in 2023. Income tax expense in 2024 was related to various state taxes.

Noncontrolling Interest

We calculate net income or loss attributable to noncontrolling interests on a quarterly basis using their weighted average ownership percentage. Net loss attributed to noncontrolling interests was $0.2 million and $0.5 million for 2024 and 2023, respectively.

Liquidity and Capital Resources

Our principal sources of funds are cash inflows generated from operations and cash and cash equivalents on hand, supplemented with borrowings made pursuant to our credit agreements and proceeds received from offerings of our equity capital. Principal uses of funds consist of capital expenditures, working capital needs, and operating lease payment obligations. In accordance with the terms of the Amended and Restated Credit Agreement and to manage our cash obligations, we have elected to pay interest in kind and have it added to the principal amount of the loan. Our working capital needs depend largely upon the timing of cash receipts from product sales, payments to vendors and others, changes in inventories, and operating lease payment obligations. Our cash and cash equivalents and working capital positions were $29.0 million and $25.4 million, respectively, as of December 31, 2024 compared to $26.9 million and $30.8 million, respectively, as of December 31, 2023. Cash used for capital expenditures decreased from $15.2 million in 2023 to $7.4 million in 2024. Our capital expenditures in 2024 have primarily consisted of additional investments made in our manufacturing operations and showroom facilities. Additional details regarding our current debt are described above under "*Recent Developments in our Business – Debt Financing*"

Our financial statements have been prepared on a going concern basis of accounting, which contemplates continuity of operations, realization of assets and liabilities and commitments in the normal course of business. In connection with our preparation of our consolidated financial statements for the year ended December 31, 2024, we conducted an evaluation as to whether there were conditions and events, considered in the aggregate, which raised substantial doubt as to our ability to continue as a going concern within one year after the date of the issuance of such financial statements. We had cash and cash equivalents of approximately $29.0 million and an accumulated deficit of $573.9 million at December 31, 2024, and a net loss of $97.9 million and net cash used in operating and investing activities of $25.4 million for the year ended December 31, 2024. We entered into the 2025 Amendment, pursuant to which we received $19.0 million on March 12, 2025, in additional term loan proceeds from the 2025 Term Loan Lenders.

We have also taken a number of other actions to increase cash flow. In August 2024, we implemented the Restructuring Plan to consolidate manufacturing operations to create efficiencies and cost savings. We have realized and plan to continue to realize direct material cost savings through supply chain initiatives and supplier diversification efforts. We have taken additional cost-saving initiatives in 2025 to maintain liquidity to support our operations and strategies.

Accordingly, we concluded that we will have sufficient liquidity to fund our operations for at least one year from the date of this Annual Report on Form 10-K.

Although we currently expect our sources of capital to be sufficient to meet our near-term liquidity needs, there can be no assurance that such sources will be sufficient to satisfy our liquidity requirements in the future. If we cannot generate or obtain needed funds, we might be forced to make substantial reductions in our operating and capital expenses or pursue restructuring plans, which could adversely affect our business operations and ability to execute our current business strategy.

Other Contractual Obligations

Other material contractual obligations primarily include operating lease payment obligations. Refer to Note 9 of our consolidated financial statements for additional information on leases.

Cash Flows for the year ended December 31, 2024 compared to the year ended December 31, 2023

The following summarizes our cash flows for the years ended December 31, 2024 and 2023 as reported in our consolidated statements of cash flows (in thousands):

	Years Ended December 31,	
	2024	2023
Net cash used in operating activities	$ (17,850)	$ (54,662)
Net cash used in investing activities	(7,530)	(16,061)
Net cash provided by financing activities	27,534	55,826
Net decrease in cash	2,154	(14,897)
Cash, beginning of the period	26,857	41,754
Cash, end of the period	$ 29,011	$ 26,857

Net cash used in operating activities was $17.9 million in 2024 compared to $54.7 million in 2023. Operating activities in 2024 reflected a net loss of $98.1 million offset in part by non-cash adjustments of $75.9 million and working capital changes of $4.3 million. The non-cash adjustments primarily consisted of depreciation and amortization totaling $35.3 million, non-cash restructuring, impairment and other related charges of $20.2 million, paid-in-kind interest on the Related Party Loan of $9.7 million, non-cash interest from amortization of debt issuance costs of $7.2 million, and losses on the extinguishment of debt of $3.4 million. The working capital changes were primarily comprised of a $4.7 million decrease in accounts receivable and a $6.0 million decrease in inventories, offset in part by a $6.4 million decrease in accounts payable. Operating activities in 2023 reflected a net loss of $121.2 million offset in part by non-cash adjustments of $44.1 million and working capital changes of $22.4 million. The non-cash adjustments primarily consisted of depreciation and amortization totaling $25.1 million, an impairment charge to write off $6.9 million of goodwill, stock-based compensation of $4.9 million, and losses on the extinguishment of debt of $4.3 million. The working capital changes were primarily comprised of an $11.1 million increase in accrued warranties, a $4.4 million increase in accounts payable accounts and a $5.9 million decrease in inventories.

Net cash used in investing activities was $7.5 million in 2024 compared to $16.1 million in 2023. Capital expenditures of $7.5 million and $15.2 million in 2024 and 2023, respectively, consisted primarily of additional investments made to our manufacturing operations and showroom facilities.

Net cash provided by financing activities totaled $27.5 million in 2024 compared to $55.8 million in 2023. Financing activities in 2024 included $61.0 million of proceeds received from the Related Party Loan, offset in part by a $25.0 million payment to pay off the term loan from the 2023 Credit Agreement, $5.0 million in repayments against the revolving debt outstanding from the 2023 Credit Agreement, and $3.5 million in payments on debt issuance costs associated with entering into the Amended and Restated Credit Agreement. Financing activities during 2023 included $57.0 million of net proceeds received from a stock offering, $25.0 million from the Term Loan Agreement entered into in August 2023, and $17.0 million in draws on the revolving debt pursuant to the 2023 Credit Agreement. These cash proceeds were partially offset by a $24.7 million payment to pay off the term loan from the 2020 Credit Agreement, $12.0 million in repayments against the revolving debt outstanding from the 2023 Credit Agreement, $6.1 million in payments on debt issuance costs, and $0.4 million of other payments.

Recent Accounting Pronouncements

For a description of accounting standards recently issued or adopted, including the respective dates of adoption and expected effects on our results of operations and financial condition, refer to Note 2 of our consolidated financial statements included in this Annual Report on Form 10-K.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

Our results of operations are subject to risk from interest rate fluctuations on our outstanding borrowings. Interest rate risk is highly sensitive due to many factors, including U.S. monetary and tax policies, U.S. and international economic factors and other factors beyond our control. The Related Party Loan entered into in January 2024 bears interest at a variable rate which exposes us to market risks relating to changes in interest rates. As of December 31, 2024, we had $70.7 million of variable rate debt associated with the Related Party Loan. Based on this debt level, an increase of 100 basis points in the effective interest rate on the outstanding debt amount would result in an increase in interest expense of approximately $0.7 million over the next 12 months.

We do not use derivative financial instruments for speculative or trading purposes, but this does not preclude our adoption of specific hedging strategies in the future.

Item 8. Financial Statements and Supplementary Data

Reference is made to Pages F-1 through F-49 comprising a portion of this Annual Report on Form 10-K.

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

None.

Item 9A. Controls and Procedures

As a non-accelerated filer, 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.

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO" and together with the CEO, the "Certifying Officers"), 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 Exchange Act). Our disclosure controls and procedures are designed to provide reasonable assurance that the 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. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance of achieving their control objectives. 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 Certifying Officers concluded that the Company's disclosure controls and procedures were effective as of December 31, 2024.

Management's Annual Report on Internal Controls Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) of the Exchange Act).

The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external reporting purposes in accordance with GAAP. The Company's internal control over financial reporting includes those policies and procedures that:

- Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions of the Company;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company are being made only in accordance with authorization of management and the directors of the Company; and,
- Provide reasonable assurance regarding prevention or timely detection of unauthorized use or disposition of the Company's assets that could have a material effect on the financial statements.

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

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis.

Under the supervision and with the participation of our management, including our Certifying Officers, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2024, based on the criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2024.

Previously Reported Material Weakness

As previously reported, we identified a material weakness related to the review and evaluation of wholesale customer contracts, specifically as it relates to variable consideration, including wholesale warranty obligations. Specifically, we did not design and maintain effective controls over the review and evaluation of the accounting relating to contract terms agreed upon with our wholesale customers and the identification and calculation of the related wholesale accrued warranty liabilities.

In response to this material weakness, management, with oversight of the Audit Committee of the Board, designed and effectively implemented a control over the review of all wholesale customer contracts to ensure the terms contained therein are appropriately evaluated and recorded. This control includes increased rigor and participation among our legal and accounting personnel regarding the appropriate consideration and application of contractual terms. We also implemented new controls over credit memo review and approval and the evaluation and review of accrued wholesale warranty liabilities. Based on these measures, management has tested the new controls, found them effective, and concluded that the previously reported material weakness described above has been remediated as of June 30, 2024**.**

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended December 31, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

10b5-1 Trading Arrangements

During the quarter ended December 31, 2024, none of our directors or executive officers adopted, modified or terminated a "Rule 10b5-1 trading arrangement" or a "non-Rule 10b5-1 trading arrangement" as such terms are defined under Item 408 of Regulation S-K.

Special Incentive Bonus Equity Grants

On March 12, 2025, the Board unanimously approved special incentive bonus equity grants to certain members of the Company's senior leadership team, including, among others, Todd Vogensen, Chief Financial Officer, John J. Roddy, Chief Human Resources Officer, and Eric S. Haynor, Chief Operating Officer. Mr. Vogensen, Mr. Roddy, and Mr. Haynor will receive grants of 450,000, 175,000, and 350,000 restricted stock units, respectively, pursuant to the terms of restricted stock unit grant agreements and the Company's 2017 Equity Incentive Plan. Such restricted stock units will vest at the sooner of (a) a change in control, as defined in the award agreements, or (b) March 12, 2028, provided that if the recipient's employment with the Company is involuntarily terminated other than for cause, a pro rata number of restricted stock units will vest as of such termination date. The foregoing summary of the restricted stock units does not purport to be complete and is qualified in its entirety by reference to the full text of the form of restricted stock unit grant agreement, a copy of which will be filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ending March 31, 2025.

Amendment to Senior Leadership Team Special Recognition Bonus

On January 26, 2024, the Board unanimously approved a special recognition bonus payment to certain members of the Company's senior leadership team, including, among others, Todd Vogensen, Chief Financial Officer, John J. Roddy, Chief People Officer, and Eric S. Haynor, Chief Operating Officer. Each participant is eligible to earn a special recognition bonus payment equal to 15 months of their regular salary. The special recognition bonus payment is payable, subject to the employee's continued employment with the Company, 10% on August 1, 2024, 20% on February 1, 2025, and 70% on August 1, 2025.

On March 12, 2025, the Board amended the special recognition bonus payments and entered into letter agreements (the "Letter Agreements") with the participants to provide that if a change in control occurs prior to August 1, 2025 and the participant remains employed with the Company until the consummation of the change in control, then 100% of the remaining special recognition bonus payment for such participant shall vest and become payable upon the consummation of such change in control. The foregoing description of the Letter Agreements does not purport to be complete and is qualified in its entirety by reference to the full text of the form of Letter Agreements, a copy of which will be filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ending March 31, 2025.

Amendment to Chief Executive Officer Special Recognition Bonus

On January 26, 2024, the Board unanimously approved an amendment to the amended and restated employment agreement of Robert T. DeMartini, the Company's Chief Executive Officer (the "2024 CEO Amendment"). Under the 2024 CEO Amendment, the Company agreed that, among other things, Mr. DeMartini will be eligible to earn an incremental aggregate cash bonus equal to $850,000 that will vest 10% on August 1, 2024, 20% on February 1, 2025, and 70% on August 1, 2025, provided he continues to be employed by the Company and subject to Mr. DeMartini's obligation to repay any such bonus actually received in the event his employment is terminated other than by the Company without cause prior to June 30, 2026, subject to certain conditions.

On March 12, 2025, the Board adopted an amendment (the "2025 CEO Amendment") to Mr. DeMartini's amended and restated employment agreement, as amended by the 2024 CEO Amendment (the "Amended and Restated Employment Agreement"), to provide that if a change in control occurs prior to August 1, 2025 and Mr. DeMartini remains employed by the Company until the consummation of the change in control, then 100% of the unpaid cash bonus payment for Mr. DeMartini shall vest and become payable upon the consummation of such change in control and the bonus repayment condition tied to his employment with the Company until June 30, 2026 shall no longer be applicable. Other than the changes provided by the 2025 CEO Amendment, no other changes were made to Mr. DeMartini's Amended and Restated Employment Agreement. The foregoing description of the 2025 CEO Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the 2025 CEO Amendment, a copy of which will be filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ending March 31, 2025.

Departure of Chief Marketing Officer

On March 7, 2025, Keira Krausz, the Company's Chief Marketing Officer, and the Company agreed that Ms. Krausz' last day of employment with the Company was March 11, 2025. Because Ms. Krausz's departure is the result of a termination without cause, the Company expects to pay approximately $237,865.57 in termination payments to Ms. Krausz, subject to the Company and Ms. Krausz entering into a mutually agreeable release.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Information concerning our executive officers is included in Part I of this report under the caption "Information About Our Executive Officers."

We have adopted a Code of Ethics that applies to all officers, directors, employees and contractors. The Code of Ethics is posted on our website at https://investors.purple.com/governance. We intend to disclose on our website any amendments, or waiver from, a provision to the Code of Ethics by posting the information on our website at the address specified above.

The remaining information required under this item will be included under the captions "Directors and Corporate Governance" and "Delinquent Section 16(a) Reports" in the Company's definitive proxy statement pursuant to Regulation 14A, which proxy statement will be filed with the SEC not later than 120 days after the close of the Company's year ended December 31, 2024, and is incorporated herein by reference thereto.

Item 11. Executive Compensation

The information required under this item is incorporated herein by reference to the Company's definitive proxy statement pursuant to Regulation 14A, which proxy statement will be filed with the SEC not later than 120 days after the close of the Company's year ended December 31, 2024.

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

The information required under this item is incorporated herein by reference to the Company's definitive proxy statement pursuant to Regulation 14A, which proxy statement will be filed with the SEC not later than 120 days after the close of the Company's year ended December 31, 2024.

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

The information required under this item is incorporated herein by reference to the Company's definitive proxy statement pursuant to Regulation 14A, which proxy statement will be filed with the SEC not later than 120 days after the close of the Company's year ended December 31, 2024.

Item 14. Principal Accountant Fees and Services

The information required under this item is incorporated herein by reference to the Company's definitive proxy statement pursuant to Regulation 14A, which proxy statement will be filed with the SEC not later than 120 days after the close of the Company's year ended December 31, 2024.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are filed as part of this Report:

(1) Financial Statements

The following financial statements are included in Part II, Item 8 of this Form 10-K:

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(2) Financial Statements Schedule

All other financial statement schedules are omitted because they are not applicable or the amounts are immaterial and not required, or the required information is presented in our consolidated financial statements and notes thereto in Item 15 of Part IV below.

(3) Exhibits

We hereby file as part of this report the exhibits listed in the attached Exhibit Index.

EXHIBIT INDEX

Exhibit No.	Description
2.5#	Merger Agreement, dated as of August 31, 2022, by and among Purple Innovation, Inc., Gelato Intermediate, LLC, Gelato Merger Sub, Inc., Advanced Comfort Technologies, Inc., and D. Scott Peterson (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on September 1, 2022).
3.1	Second Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on November 6, 2019).
3.2	Third Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the Commission on April 21, 2023).
3.3	Certificate of Designation of the Preferred Stock of the Company, dated September 26, 2022 (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on September 27, 2022).
3.4	Certificate of Designation of Proportional Representation Preferred Linked Stock of the Company, dated February 14, 2023 (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 14, 2023).
3.6	Certificate of Elimination of the Series A Junior Participating Preferred Stock, dated April 27, 2023 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed April 27, 2023).
3.7	Certificate of Elimination of the Proportional Representation Preferred Linked Stock, dated April 27, 2023 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed April 27, 2023).
3.8	Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on October 16, 2024).
3.9	Certificate of Designation of the Preferred Stock of the Company, dated June 28, 2024 (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on June 28, 2024).
4.1	Form of Class A Common Stock certificate (incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on October 16, 2024).
4.2*	Description of Registered Securities.
4.3	Stockholder Rights Agreement, dated June 27, 2024, by and between the Company and Pacific Stock Transfer Company, as rights agent (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on June 28, 2024).
10.1+	Form of Option Award Agreement (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018).
10.2+	Form of Restricted Stock Award Agreement (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018).
10.3+	Form of Restricted Stock Unit Award Agreement (incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018).
10.4+	Form of Stock Appreciation Right Award Agreement (incorporated by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018).
10.5+	Form of Stock Bonus Award Agreement (incorporated by reference to Exhibit 10.5 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018).
10.6	Subscription Agreement, dated February 1, 2018, between Global Partner Acquisition Corp., Global Partner Sponsor I LLC, Coliseum Capital Partners, L.P. and Blackwell Partners LLC – Series A (incorporated by reference to Exhibit 10.15 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018).
10.7	Exchange Agreement, dated February 2, 2018, by and between Purple Innovation, Inc., Purple Innovation, LLC and InnoHold, LLC (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018).

10.8	Registration Rights Agreement, dated February 2, 2018, between Global Partner Acquisition Corp., Coliseum Capital Partners, L.P., Blackwell Partners, LLC and Coliseum Co-Invest Debt Fund, L.P. (incorporated by reference to Exhibit 10.18 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018).
10.9	Tax Receivable Agreement, dated February 2, 2018, by and between Purple Innovation, Inc. and InnoHold, LLC (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018).
10.10+	Purple Innovation, Inc. Amended and Restated 2017 Equity Incentive Plan (incorporated by reference to Exhibit 99.1 to the S-8 (File No. 333-272712) filed with the SEC on June 16, 2023).
10.11+	Form of Restricted Share Unit Agreement pursuant to the Purple Innovation, Inc. 2017 Incentive Plan (incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on April 19, 2023).
10.12†	Second Amended and Restated Confidential Assignment and License Back Agreement between the Company and EdiZONE (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on November 14, 2018).
10.13	Master Retailer Agreement dated September 18, 2018 by and between Purple Innovation LLC and Mattress Firm, Inc. (incorporated by reference to Exhibit 10.10 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 7, 2019).
10.14+	Restated and Amended Purple Innovation, Inc. 2019 Long-Term Equity Incentive Plan dated July 12, 2021 (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on July 13, 2021).
10.15	Lease Agreement dated June 10, 2019 between Purple Innovation, LLC and North Slope One, LLC (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on August 13, 2019).
10.16	First Amendment to Lease dated November 19, 2019 between the Company and North Slope One, LLC (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on November 25, 2019).
10.17	Amendment to TNT Holdings Amended and Restated Lease Agreement dated April 23, 2020 (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 11, 2020).
10.18	Lease Agreement between Purple Innovation, LLC and PNK S2, LLC dated July 21, 2020 (incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on August 14, 2020).
10.19	License Transfer and IP Assignment Agreement between Purple Innovation, LLC and EdiZONE, LLC dated August 14, 2020 (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on November 10, 2020).
10.20	Amendment to Lease Agreement between Purple Innovation, LLC and PNK S2, LLC dated March 4, 2021 (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 17, 2021).
10.21	Second Amendment to Lease Agreement between Purple Innovation, LLC and PNK S2, LLC dated March 26, 2021 (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 17, 2021).
10.22+	Form of Restricted Share Unit Agreement (incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on July 13, 2021).
10.23+	Amended and Restated Restricted Share Unit Agreement dated March 15, 2023, between the Company and Robert T. DeMartini (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed March 21, 2023).
10.24+	Amended and Restated Restricted Share Unit Agreement (Reissued) dated March 15, 2023, between the Company and Robert T. DeMartini (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed March 21, 2023).
10.25+	Amended and Restated Restricted Share Unit Agreement (Reissued Excess Subject to Approval) dated March 15, 2023, between the Company and Robert T. DeMartini (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed on March 21, 2023).
10.26+	Purple Innovation, Inc. 2021 Short-Term Cash Incentive Plan dated July 12, 2021 (incorporated by reference to Exhibit 99.5 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on July 13, 2021).
10.27+	Amended and Restated Employment Agreement, dated as of March 19, 2022, by and among Robert T. DeMartini and Purple Innovation, Inc. (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on March 22, 2022).
10.28+	Offer letter dated as of April 29, 2022, signed by Eric Haynor (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on May 3, 2022).

10.29+	Amended and Restated Option Grant Agreement dated March 15, 2023, between the Company and Robert T. DeMartini (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed March 21, 2023).
10.30+	Amended and Restated Option Grant Agreement (Reissued Excess Subject to Approval) dated March 15, 2023, between the Company and Robert T. DeMartini (incorporated by reference to exhibit 10.6 to the Company's Current Report on Form 8-K filed on March 21, 2023).
10.31+	Purple Innovation, Inc. 2023 Short-Term Cash Incentive Plan, dated as of April 13, 2023 (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on April 19, 2023).
10.32+	Form of Performance-Based Share Unit Agreement (incorporated by reference to Exhibit 99.3 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on April 19, 2023).
10.33	Cooperation Agreement between Purple Innovation, Inc. and Coliseum Capital Management, LLC, dated April 19, 2023 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed April 21, 2023).
10.34	Amended and Restated Credit Agreement, dated January 23, 2024, by and among Purple Innovation, Inc., Purple Innovation, LLC, Intellibed, LLC, Coliseum Capital Partners, L.P., Blackwell Partners LLC – Series A, Harvest Small Cap Partners Master, Ltd., Harvest Small Cap Partners, L.P., HSCP Strategic IV, L.P., and Delaware Trust Company (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on January 23, 2024).
10.35+	Offer Letter Entered into between Purple Innovation, LLC and Todd E. Vogensen dated September 19, 2023 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on September 21, 2023).
10.36	Form of Warrant (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on January 23, 2024).
10.37	Amended and Restated Registration Rights Agreement, dated January 23, 2024, by and among Purple Innovation, Inc., Coliseum Capital Partners, L.P., Blackwell Partners LLC – Series A, Coliseum Capital Co-Invest III, L.P., Harvest Small Cap Partners Master, Ltd., Harvest Small Cap Partners, L.P., and HSCP Strategic IV, L.P. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on January 23, 2024).
10.38	Amended and Restated Pledge and Security Agreement, dated January 23, 2024, by and among Purple Innovation, Inc., Purple Innovation, LLC, Intellibed, LLC, and Delaware Trust Company (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on January 23, 2024).
10.39+	Amendment to the Amended and Restated Employment Agreement dated January 26, 2024, between the Company and Robert T. DeMartini (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-37523) filed on January 26, 2024).
10.40+	Offer Letter, dated as of September 21, 2023, between Purple Innovation, LLC and Tricia McDermott, dated September 21, 2023 (incorporated by reference to Exhibit 99.1 to the Company's Registration Statement on Form S-8 (File No. 001-37523) filed with the SEC on March 14, 2024).
10.41‡*	Amendment to Amended and Restated Credit Agreement, dated as of March 12, 2025, by and among Purple Innovation, Inc., Purple Innovation, LLC, Intellibed, LLC, Coliseum Capital Partners, L.P., Blackwell Partners LLC – Series A, and CSC Delaware Trust Company.
10.42*	Form of Warrant.
10.43‡*	Second Amended and Restated Registration Rights Agreement, dated as of March 12, 2025, by and among Purple Innovation, Inc., Coliseum Capital Partners, L.P., Blackwell Partners LLC – Series A and Coliseum Capital Co-Invest III, L.P.
19.1*	Insider Trading Policy.
21.1*	List of Subsidiaries of the Registrant.
23.1*	Consent of Independent Registered Public Accounting Firm
24.1*	Power of Attorney (included on signature page)
31.1*	Certification of the Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a)
31.2*	Certification of the Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a)
32.1*	Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350
32.2*	Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350
97.1	Compensation Clawback Policy (incorporated by reference to Exhibit 97.1 to the Company's Annual Report on Form 10-K (File No. 001-37523) filed with the SEC on March 12, 2024).
101.INS	Inline XBRL Instance Document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith

\# Schedules and exhibits to the Merger Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby undertakes to furnish supplementally a copy of any omitted schedules and exhibits to the Securities and Exchange Commission upon request.

\+ Indicates management contract or compensatory plan.

† Confidential treatment of certain provisions has been granted by the Securities and Exchange Commission.

‡ Certain schedules and exhibits to this agreement have been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of any omitted exhibit or schedule will be furnished supplementally to the SEC or its staff upon request.

Item 16. Form 10-K Summary

PURPLE INNOVATION, INC.

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Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors
Purple Innovation, Inc.
Lehi, Utah

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Purple Innovation, Inc. (the "Company") as of December 31, 2024 and 2023, the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2024, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2024 and 2023, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2024**,** in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

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

Accrued Warranty Liabilities

As of December 31, 2024, the Company's accrued warranty liabilities were $32.2 million. As discussed in Note 2 to the consolidated financial statements, the Company provides a limited warranty on the majority of its products sold. Accrued warranty liabilities are estimated based on the results of historical trends and warranty claim rates incurred, and are adjusted for any current or expected trends. Estimated warranty costs for the Company's direct to consumer customers are recognized at the time of sale in cost of revenues and warranty costs for the Company's wholesale customers are recognized at the time of sale as an offset to net revenues.

We identified the estimate of accrued warranty liabilities as a critical audit matter because of certain assumptions used by management to estimate warranty costs at the time of sale, specifically, estimated future warranty claims and estimated costs to remedy warranty claims. The principal consideration for our determination was the subjective judgment required to determine the future warranty claim rate used to estimate warranty claims through the end of the warranty period and an increased extent of audit effort to address this matter.

The primary procedures we performed to address this critical audit matter included:

- Evaluating management's ability to estimate future warranty claims by comparing management's prior-year assumption of expected claims to actuals claims incurred during the year.

- Testing management's process used to estimate accrued warranty liabilities, including the appropriateness of the methodology, the mathematical accuracy of the calculation, and the sources of data from which the assumptions were derived.

- Evaluating the reasonableness of estimated future warranty claims and the estimated costs to remedy warranty claims by:

    - Testing the key inputs that served as the basis for the estimate, including the historical claims made, actual warranty costs incurred and costs expected to be reimbursed by the customer.

    - Inquiring of operational management regarding their knowledge of any existing product warranty claims or product issues and evaluating whether management appropriately considered these issues in the estimation of accrued warranty liabilities.

/s/ BDO USA, P.C.

We have served as the Company's auditor since 2017.

Salt Lake City, Utah
March 13, 2025

PURPLE INNOVATION, INC.
Consolidated Balance Sheets
(In thousands, except for par value)

	December 31,	
	2024	**2023**
Assets		
Current assets:		
Cash and cash equivalents	$ 29,011	$ 26,857
Accounts receivable, net	33,057	37,802
Inventories	56,863	66,878
Prepaid expenses	6,023	8,536
Other current assets	1,414	1,737
Total current assets	126,368	141,810
Property and equipment, net	93,874	128,661
Operating lease right-of-use assets	75,516	95,767
Intangible assets, net	8,890	22,196
Other long-term assets	3,197	2,191
Total assets	$ 307,845	$ 390,625
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 40,639	$ 49,831
Accrued compensation	9,415	5,064
Customer prepayments	6,411	5,718
Accrued rebates and allowances	10,013	13,243
Accrued warranty liabilities – current portion	6,114	9,793
Operating lease obligations – current portion	15,661	14,843
Other current liabilities	12,750	12,490
Total current liabilities	101,003	110,982
Related party debt	55,394	—
Long-term debt, net of current portion	—	26,909
Accrued warranty liabilities, net of current portion	26,091	25,798
Operating lease obligations, net of current portion	87,072	109,094
Warrant liabilities	16,067	—
Other long-term liabilities	2,009	2,235
Total liabilities	287,636	275,018
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Class A common stock; $0.0001 par value, 210,000 shares authorized; 107,545 and 105,507 issued and outstanding at December 31, 2024 and 2023, respectively	11	11
Class B common stock; $0.0001 par value, 90,000 shares authorized; 165 and 205 issued and outstanding at December 31, 2024 and 2023, respectively	—	—
Additional paid-in capital	594,053	591,380
Accumulated deficit	(573,866)	(475,969)
Total stockholders' equity attributable to Purple Innovation, Inc.	20,198	115,422
Noncontrolling interest	11	185
Total stockholders' equity	20,209	115,607
Total liabilities and stockholders' equity	$ 307,845	$ 390,625

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

PURPLE INNOVATION, INC.
Consolidated Statements of Operations
(In thousands, except per share amounts)

	Year Ended December 31,		
	2024	**2023**	**2022**
Revenues, net	$ 487,877	$ 510,541	$ 573,201
Cost of revenues:			
Cost of revenues	291,303	338,716	365,110
Cost of revenues – restructuring related charges	15,442	—	—
Total cost of revenues	306,745	338,716	365,110
Gross profit	181,132	171,825	208,091
Operating expenses:			
Marketing and sales	171,263	182,313	165,388
General and administrative	69,117	84,446	76,702
Research and development	12,962	11,898	8,755
Restructuring, impairment and other related charges	19,973	—	—
Loss on impairment of goodwill	—	6,879	—
Total operating expenses	273,315	285,536	250,845
Operating loss	(92,183)	(113,711)	(42,754)
Other (expense) income:			
Interest expense	(17,510)	(1,967)	(3,536)
Other income (expense), net	11,548	(1,198)	423
Loss on extinguishment of debt	(3,394)	(4,331)	—
Change in fair value – warrant liabilities	3,504	—	4,343
Tax receivable agreement income	—	—	161,970
Total (expense) other income, net	(5,852)	(7,496)	163,200
Net (loss) income before income taxes	(98,035)	(121,207)	120,446
Income tax expense	63	8	213,169
Net loss	(98,098)	(121,215)	(92,723)
Net loss attributable to noncontrolling interest	(201)	(458)	(253)
Net loss attributable to Purple Innovation, Inc.	$ (97,897)	$ (120,757)	$ (92,470)
Net loss per share:			
Basic	$ (0.91)	$ (1.17)	$ (1.13)
Diluted	$ (0.91)	$ (1.17)	$ (1.13)
Weighted average common shares outstanding:			
Basic	107,139	103,602	81,779
Diluted	107,324	103,936	81,779

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

PURPLE INNOVATION, INC.
Consolidated Statements of Stockholders' Equity (Deficit)
(In thousands)

	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity attributable to Purple Innovation, Inc.	Noncontrolling Interest	Total Equity
	Shares	Par Value	Shares	Par Value					
Balance — December 31, 2021	66,493	$ 7	448	$ —	$ 407,591	$ (262,742)	$ 144,856	$ 762	$ 145,618
Net loss	—	—	—	—	—	(92,470)	(92,470)	(253)	(92,723)
Stock-based compensation	—	—	—	—	3,366	—	3,366	—	3,366
Exercise of stock options	20	—	—	—	166	—	166	—	166
Issuance of stock upon underwritten offering, net of costs	16,100	1	—	—	92,865	—	92,866	—	92,866
Issuance of stock for Intellibed acquisition	8,613	1	—	—	26,105	—	26,106	—	26,106
Accrued distributions	—	—	—	—	(228)	—	(228)	—	(228)
Issuance of stock under equity compensation plans	154	—	—	—	—	—	—	—	—
Impact of transactions affecting NCI	—	—	—	—	(399)	—	(399)	399	—
Balance – December 31, 2022	91,380	$ 9	448	$ —	$ 529,466	$ (355,212)	$ 174,263	$ 908	$ 175,171
Net loss	—	—	—	—	—	(120,757)	(120,757)	(458)	(121,215)
Stock-based compensation	—	—	—	—	4,875	—	4,875	—	4,875
Exchange of stock	243	—	(243)	—	—	—	—	—	—
Proportional Representation Preferred Linked Stock redemption fee	—	—	—	—	(105)	—	(105)	—	(105)
Issuance of stock upon underwritten offering, net of costs	13,400	2	—	—	56,997	—	56,999	—	56,999
Escrow shares cancelled in connection with Intellibed acquisition	(41)	—	—	—	(118)	—	(118)	—	(118)
Issuance of stock under equity compensation plans	525	—	—	—	—	—	—	—	—
Impact of transactions affecting NCI	—	—	—	—	265	—	265	(265)	—
Balance – December 31, 2023	105,507	$ 11	205	$ —	$ 591,380	$ (475,969)	$ 115,422	$ 185	$ 115,607
Net loss	—	—	—	—	—	(97,897)	(97,897)	(201)	(98,098)
Stock-based compensation	—	—	—	—	2,815	—	2,815	—	2,815
Exchange of stock	40	—	(40)	—	—	—	—	—	—
Issuance of stock for Intellibed acquisition	1,500	—	—	—	—	—	—	—	—
Issuance of stock under equity compensation plans	498	—	—	—	(115)	—	(115)	—	(115)
Impact of transactions affecting NCI	—	—	—	—	(27)	—	(27)	27	—
Balance – December 31, 2024	107,545	$ 11	165	$ —	$ 594,053	$ (573,866)	$ 20,198	$ 11	$ 20,209

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

PURPLE INNOVATION, INC.
Consolidated Statements of Cash Flows
(In thousands)

	Years Ended December 31,		
	2024	**2023**	**2022**
Cash flows from operating activities:			
Net loss	$ (98,098)	$ (121,215)	$ (92,723)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	35,355	25,106	17,487
Non-cash interest	7,229	1,237	1,072
Paid-in-kind interest	9,679	—	—
Non-cash restructuring, impairment and other related charges	20,238	—	—
Loss on impairment of goodwill	—	6,879	—
Loss on extinguishment of debt	3,394	4,331	—
Loss on disposal of property and equipment	770	1,680	620
Change in fair value – warrant liabilities	(3,504)	—	(4,343)
Tax receivable agreement income	—	—	(161,970)
Stock-based compensation	2,815	4,875	3,366
Gain from effective settlement of preexisting relationship	—	—	(1,421)
Deferred income taxes	—	—	213,548
Changes in operating assets and liabilities:			
Accounts receivable	4,745	(3,651)	(4,112)
Inventories	5,989	5,903	28,956
Prepaid expenses and other assets	2,345	1,574	1,757
Operating leases, net	(2,412)	1,404	7,709
Accounts payable	(6,376)	4,382	(33,609)
Accrued compensation	4,351	(1,627)	(2,892)
Customer prepayments	693	1,266	(6,456)
Accrued rebates and allowances	(3,230)	3,439	(365)
Accrued warranty liabilities	(3,386)	11,128	6,854
Other accrued liabilities	1,553	(1,373)	(2,251)
Net cash used in operating activities	(17,850)	(54,662)	(28,773)
Cash flows from investing activities:			
Cash, cash equivalents and restricted cash acquired from acquisition, net of cash paid	—	—	3,660
Excess restricted cash returned to acquiree	—	(826)	—
Purchase of property and equipment	(7,244)	(14,391)	(35,376)
Investment in intangible assets	(286)	(844)	(2,785)
Net cash used in investing activities	(7,530)	(16,061)	(34,501)
Cash flows from financing activities:			
Proceeds from term loan	—	25,000	—
Proceeds from revolving line of credit	—	17,000	—
Proceeds from related party loan	61,000	—	—
Payments on term loan	(25,000)	(24,656)	(17,531)
Payments on revolving line of credit	(5,000)	(12,000)	(55,000)
Payments for debt issuance costs	(3,466)	(6,143)	(1,242)
Proceeds from stock offering	—	60,300	98,210
Payments for stock offering costs	—	(3,301)	(5,344)
Proceeds from exercise of stock options	—	—	166
Proportional Representation Preferred Linked Stock redemption fee	—	(105)	—
Tax receivable agreement payments	—	(269)	(5,847)
Net cash provided by financing activities	27,534	55,826	13,412
Net increase (decrease) in cash, cash equivalents and restricted cash	2,154	(14,897)	(49,862)
Cash, cash equivalents and restricted cash, beginning of the year	26,857	41,754	91,616
Cash, cash equivalents and restricted cash, end of the year	$ 29,011	$ 26,857	$ 41,754
Supplemental disclosures of cash flow information:			
Cash paid during the year for interest, net of amounts capitalized	$ 159	$ 189	$ 2,693
Cash paid during the year for income taxes	$ 317	$ 385	$ 303
Supplemental schedule of non-cash investing and financing activities:			
Property and equipment included in accounts payable	$ 416	$ 3,232	$ 4,162
Issuance of stock for acquisition	$ —	$ —	$ 26,106
Escrow shares cancelled in connection with Intellibed acquisition	$ —	$ 118	$ —
Accrued distributions	$ —	$ —	$ 228

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

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 an omni-channel Company that began as 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 e-commerce channels, retail brick-and-mortar wholesale partners, Purple showrooms, and third-party online retailers.

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"). 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.

On August 31, 2022, the Company acquired all the issued and outstanding stock of Advanced Comfort Technologies, Inc., dba Intellibed ("Intellibed") pursuant to an Agreement and Plan of Merger (the "Merger Agreement"), in which Gelato Merger Sub, Inc., a wholly owned subsidiary of Purple Inc., merged with and into Intellibed, with Intellibed continuing as a wholly owned subsidiary of Purple Inc. On October 3, 2022, Purple Inc. contributed 100% of the membership interest in Intellibed to Purple LLC and Intellibed became a wholly owned subsidiary of Purple LLC. Refer to Note 4 — *Acquisition* for more information.

2. Summary of Significant Accounting Policies

This summary of significant accounting policies is presented to assist in understanding the Company's consolidated financial statements. The consolidated financial statements and notes are representations of the Company's management, which is responsible for their integrity and objectivity.

Basis of Presentation and Principles of Consolidation

The consolidated financial statements include the accounts of Purple Inc., its controlled subsidiary Purple LLC, and Intellibed, Purple LLC's wholly owned subsidiary, from the date of acquisition. All intercompany balances and transactions have been eliminated in consolidation. As of December 31, 2024, Purple Inc. held 99.8% of the common units of Purple LLC and other Purple LLC Class B Unit holders held 0.2% of the common units in Purple LLC. The Company's consolidated financial statements did not include consolidated statements of comprehensive income since it had no items of other comprehensive income in any of the periods presented.

Liquidity

The accompanying financial statements have been prepared on a going concern basis of accounting, which contemplates continuity of operations, realization of assets and liabilities and commitments in the normal course of business. In connection with the preparation of the consolidated financial statements for the year ended December 31, 2024, the Company conducted an evaluation as to whether there were conditions and events, considered in the aggregate, which raised substantial doubt as to its ability to continue as a going concern within one year after the date of the issuance of such financial statements. The Company had cash and cash equivalents of approximately $29.0 million and an accumulated deficit of $573.9 million at December 31, 2024, and a net loss of $97.9 million and net cash used in operating and investing activities of $25.4 million for the year ended December 31, 2024. The Company entered into an Amendment to the Amended and Restated Credit Agreement (the "2025 Amendment"), pursuant to which it received $19.0 million on March 12, 2025 in additional term loan proceeds from the 2025 Term Loan Lenders pursuant to the 2025 Amendment (see Note 23— *Subsequent Events*).

The Company has also taken a number of other actions to increase cash flow. In August 2024, the Company implemented the Restructuring Plan to consolidate manufacturing operations to create efficiencies and cost savings. The Company has realized and plans to continue to realize direct material cost savings through supply chain initiatives and supplier diversification efforts. The Company has taken additional cost-saving initiatives in 2025 to maintain liquidity to support our operations and strategies.

Accordingly, the Company has concluded that it will have sufficient liquidity to fund its operations for at least one year from the date these consolidated financial statements are issued.

Although the Company currently expects its sources of capital to be sufficient to meet its near-term liquidity needs, there can be no assurance that such sources will be sufficient to satisfy its liquidity requirements in the future. If the Company cannot generate or obtain needed funds, it might be forced to make substantial reductions in its operating and capital expenses or pursue restructuring plans, which could adversely affect its business operations and ability to execute its current business strategy.

Variable Interest Entities

Purple LLC is a variable interest entity. 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 December 31, 2024, Purple Inc. had a 99.8% economic interest in Purple LLC and consolidated 100% of Purple LLC's assets, liabilities and results of operations in the Company's consolidated financial statements contained herein. The holders of Class B Units held 0.2% of the economic interest in Purple LLC as of December 31, 2024. Refer to Note 17—*Stockholders' Equity* for more information.

Reclassification

Certain prior year amounts in the consolidated financial statements have been reclassified to conform to the current year presentation with no effect on previously reported net loss, cash flows or stockholders' equity. Accrued compensation, previously included in the consolidated balance sheets within other current liabilities, is now presented separately. Also, the change in accrued compensation, previously reflected in the consolidated statement of cash flows within the change in other accrued liabilities, is now presented separately.

Use of Estimates

The accompanying 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") and reflect the financial position, results of operations and cash flows of the Company. The preparation of consolidated financial statements in conformity with GAAP requires the Company to establish accounting policies and to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. 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. The Company regularly makes estimates and assumptions including, but not limited to, estimates that affect revenue recognition, accounts receivable and the allowance for credit losses, valuation of inventories, sales returns, warranty returns, fair value of assets acquired and liabilities assumed in a business combination, impairment reviews of long-lived assets and definite-lived intangible assets, warrant liabilities, stock based compensation, the recognition and measurement of loss contingencies, the recognition and measurement of restructuring and related charges, estimates of current and deferred income taxes, deferred income tax valuation allowances, and amounts associated with the Company's tax receivable agreement with InnoHold, LLC ("InnoHold"). Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. Actual results could differ materially from those estimates.

Restructuring

Restructuring actions may result in various costs, including employee-related costs, accelerated depreciation expense, write-downs of long-lived assets and inventory, impairment of long-lived and indefinite-lived assets, contract termination costs and other associated costs. Employee-related costs represent one-time termination benefits for severance and other post-employment costs that are recognized as incurred upon communication of the plan to the identified employees. If the employee must provide future service beyond a minimum retention period, the benefits are expensed ratably over the future service period. Accelerated depreciation expense represents additional expense resulting from shortening the useful lives of production and other assets to coincide with the end of production and other activities under an approved restructuring plan. Write-downs of long-lived assets represent losses on assets expected to be disposed of or equipment in progress that will not be put in service. Costs to terminate contracts are recognized upon entering a termination agreement with the provider. Other associated restructuring costs are expensed as incurred. Any impairment or write-down of assets resulting from restructuring activities are recognized immediately in the period the related plan is approved. Refer to Note 5–*Restructuring, Impairment and Other Related Charges* for more information.

Business Combinations

The Company accounts for business combinations using the acquisition method of accounting, in accordance with ASC *805, Business Combinations.* The Company records an acquisition based on the fair value of the consideration transferred and then allocates the purchase price to the identifiable assets acquired and liabilities assumed based on their respective preliminary estimated fair values as of the acquisition date. Goodwill on the acquisition date is measured as the excess of the fair value of consideration transferred over the net of the acquisition date fair values of the assets acquired and the liabilities assumed. While best estimates and assumptions are used to accurately value assets acquired and liabilities assumed at the acquisition date as well as contingent consideration, where applicable, the Company's estimates are inherently uncertain and subject to refinement. If the Company obtains new information within the measurement period (up to one year from the acquisition date) about facts and circumstances that existed as of the acquisition date that, if known, would have affected the measurement of the amounts recognized as of that date, the Company records adjustments to the assets acquired and liabilities assumed with the corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the values of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are reflected in the consolidated statement of operations.

In the event an acquisition involves an entity with which the Company has a preexisting relationship, the Company will generally recognize a gain or loss within the consolidated statement of operations to settle that relationship as of the acquisition date. Transaction costs associated with business combinations are expensed as incurred.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. The carrying value of cash and cash equivalents approximates fair value because of the short-term maturity of those instruments.

Accounts Receivable and Allowance for Credit Losses

Accounts receivable are recorded net of an allowance for expected losses and consist primarily of receivables from wholesale customers and receivables from third-party consumer financing partners and credit card processors. The allowance is recognized in an amount equal to anticipated future write-offs over the expected life of the receivables. Management estimates the allowance for credit losses based on historical experience, customer payment practices and current economic trends. Actual credit losses could differ from those estimates. Account balances are charged-off against the allowance when management believes it is probable the receivable will not be recovered.

The Company had the following activity in its allowance for credit losses (in thousands):

	Years Ended December 31,		
	2024	**2023**	**2022**
Balance at beginning of period	$ 26	$ 1	$ 20
Additions charged to expense	1,075	25	—
Reductions to allowance, net	(1)	—	(19)
Balance at end of period	$ 1,100	$ 26	$ 1

Inventories

Inventories are comprised of raw materials, work-in-process and finished goods and are stated at the lower of cost or net realizable value. Manufactured inventory consists of raw material, direct labor and manufacturing overhead costs. Inventory cost is calculated using a method that approximates average cost. The Company reviews the components of its inventory on a regular basis for excess and obsolete inventory and makes appropriate adjustments when necessary. Once established, the original cost of the inventory less the related inventory reserves represents the new cost basis of such products.

Property and Equipment

Property and equipment are stated at cost, net of depreciation. Property and equipment are depreciated using the straight-line method over the estimated useful lives of the respective assets, ranging from 1 to 17 years, as follows:

	Years
Equipment	5 - 10
Furniture and fixtures	2 - 7
Office equipment	3 - 5
Leasehold improvements	1 - 17

Major renewals and betterments that increase value or extend useful life are capitalized. The Company records depreciation and amortization in cost of sales for long-lived assets used in the manufacturing process, and within each line item of operating expenses for all other long-lived assets. Leasehold improvements are amortized over the shorter of the useful life of the leasehold improvements or the contractual term of the lease, with consideration of lease renewal options if exercise is reasonably certain. The cost and related accumulated depreciation of assets sold or retired is removed from the accounts with any resulting gain or loss included in the consolidated statement of operations. Estimated useful lives of property and equipment are periodically reviewed and, when appropriate, changes are made and accounted for prospectively. When certain events or changes in operating conditions occur, asset lives may be adjusted and an impairment assessment may be performed on the recoverability of the carrying amounts.

As a result of initiating closure of its two Utah manufacturing facilities in August 2024, the Company shortened the estimated useful lives of the production equipment at these two facilities to reflect the remaining period these assets will remain in service. Closure of these two facilities is expected to be completed during the first quarter of 2025. Reducing the estimated useful lives of these assets increased both depreciation expense and the Company's net loss in 2024 by $11.2 million. Refer to Note 5–*Restructuring, Impairment and Other Related Charges* for more information.

The Company capitalizes interest on borrowings during the active construction period of major capital projects. Interest capitalization ceases once a project is substantially complete or no longer undergoing construction activities to prepare it for its intended use. Capitalized interest is added to the cost of the underlying assets and is amortized over the useful lives of the assets. When no debt is specifically identified as being incurred in connection with a construction project, the Company capitalizes interest on amounts expended on the project using the weighted average cost of the Company's outstanding borrowings.

Leases

The Company determines if an agreement contains a lease at the inception of a contract. For leases with an initial term greater than 12 months, a related lease liability is recorded on the balance sheets at the present value of future payments discounted at the estimated fully collateralized incremental borrowing rate (discount rate) corresponding with the lease term. In addition, a right-of-use ("ROU") asset is recorded as the initial amount of the lease liability, plus any lease payments made to the lessor before or at the lease commencement date and any initial direct costs incurred, less any tenant improvement allowance incentives received. The Company elected not to separate lease and non-lease components for all real estate leases.

The Company calculates the present value of future payments using its incremental borrowing rate when the discount rate implicit in the lease is not known. The incremental borrowing rate is the rate of interest that a lessee would have to pay to borrow on a collateralized basis over a similar term at an amount equal to the lease payments in a similar economic environment. The Company determines the applicable incremental borrowing rate at the lease commencement date based on the rates of its secured borrowings, which is then adjusted for the appropriate lease term and risk premium. In determining the Company's ROU assets and corresponding lease liabilities, the Company applies these incremental borrowing rates to the minimum lease payments within each lease agreement.

Lease expense is recognized on a straight-line basis over the lease term. Tenant incentive allowances received from the lessor are amortized through the ROU asset as a reduction of rent expense over the lease term. Any variable lease costs are expensed as incurred. Leases with an initial term of 12 months or less (short-term leases) are not recorded as ROU assets and corresponding lease liabilities. Short-term lease expense is recognized on a straight-line basis over the lease term. ROU assets are assessed for impairment as part of long-lived assets, which is performed whenever events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recoverable.

Goodwill

The Company accounts for goodwill in a business combination as the excess of the cost over the fair value of net assets acquired and is assigned to the reporting unit in which the acquired business will operate. The Company does not amortize goodwill but tests it for impairment each fiscal year or whenever events or changes in circumstances indicate the carrying amount may not be recoverable.

The recoverability of goodwill is measured at the reporting unit level by comparing the reporting unit's carrying amount, including goodwill, to the fair value of the reporting unit. The Company may elect to perform a qualitative assessment to determine whether it is more likely than not that a reporting unit is impaired. If the qualitative assessment is not performed or if the Company determines that it is not more likely than not that the fair value of the reporting unit exceeds the carrying value, the Company determines the fair value of its reporting units based on an average weighting of both projected discounted future results and the use of comparative market multiples. If the carrying amount of the reporting unit exceeds its fair value, goodwill is considered impaired and a loss recognized in the amount equal to that excess. During the year ended December 31, 2023, the Company determined goodwill was impaired and recorded an impairment charge to write off the entire $6.9 million balance of goodwill. Refer to Note 4—*Acquisition* for more information.

Intangible Assets

Intangible assets include a customer relationship intangible associated with the Intellibed acquisition, developed technologies by Purple and Intellibed, trade names and trademarks, internal-use software, domain name costs, intellectual property and other patent and trademark related costs. Definite-lived intangible assets are being amortized using the straight-line method over their estimated lives, ranging from two to 15 years.

For software developed or obtained for internal use, the Company capitalizes direct external costs associated with developing or obtaining internal-use software. In addition, the Company capitalizes certain payroll and payroll-related costs for employees who are directly involved with the development of such applications. Capitalized costs related to internal-use software under development are treated as construction-in-progress until the program, feature or functionality is ready for its intended use, at which time amortization commences. Capitalized software costs are amortized on a straight-line basis over three years.

Asset Impairment Charges

Long-Lived Assets and Definite-lived Intangible Assets – The Company reviews its long-lived assets and definite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. When evaluating long-lived assets and definite-lived intangible assets for potential impairment, the Company first determines if there are any indicators of impairment and if the carrying amount of the long-lived assets and definite-lived intangible assets might not be recoverable. If there are indicators of impairment, then the Company performs a recoverability test by comparing the carrying value of the assets to the estimated future cash flows (undiscounted and without interest charges - plus proceeds expected from disposition, if any). If the estimated undiscounted cash flows are less than the carrying value of the assets, the Company calculates an impairment loss. The impairment loss calculation compares the carrying value of its assets to the assets' estimated fair value. When the Company recognizes an impairment loss, the carrying amount of the impaired assets are reduced to estimated fair value based on discounted cash flows, quoted market prices or other valuation techniques. Assets to be disposed of are reported at the lower of the carrying amount of the asset or fair value less costs to sell. If the Company recognizes an impairment loss for a depreciable long-lived asset, the adjusted carrying amount of the asset becomes its new cost basis and will be depreciated (amortized) over the remaining useful life of that asset. The Company concluded there were indicators of impairment that existed at December 31, 2024 and a recoverability test was required. Based on the results of this recoverability test, the Company determined its long-lived and definite-lived assets were not impaired as of December 31, 2024 and no resultant impairment charges were recorded. There were no impairment charges realized on long-lived assets and definite-lived intangible assets during the years ended December 31, 2023 and 2022.

In conjunction with a restructuring action initiated in August 2024, the Company recorded impairment charges of $2.5 million on various long-lived assets associated with entering into a sublease on one of the Utah manufacturing facilities that is expected to close during the first quarter of 2025. Refer to Note 5–*Restructuring, Impairment and Other Related Charges* for more information.

Indefinite-lived Intangible Assets – Intangible assets that have indefinite lives are not amortized but are reviewed for impairment annually or when events or changes in circumstances indicate the carrying value of these assets might exceed their current fair values. Impairment testing is based upon the best information available including estimates of fair value which incorporate assumptions marketplace participants would use in making their estimates of fair value. Accounting guidance provides for the performance of either a quantitative assessment or a qualitative assessment before calculating the fair value of an asset. If events or market conditions affect the estimated fair value to the extent that an indefinite-lived intangible asset is impaired, the Company will adjust the carrying value of these assets in the period in which impairment occurs.

The restructuring action initiated by the Company in August 2024 was determined to be a triggering event for potential impairment of intellectual property that was being accounted for as an indefinite-lived intangible asset. The resultant impairment assessment performed by the Company determined this asset no longer had any supportable value and an $8.5 million impairment charge to write off the entire balance of the asset was recorded in 2024.

Revenue Recognition

The Company markets and sells its products through the DTC channel, which includes Purple.com (direct-to-consumer e-commerce), Purple showrooms, their customer contact center and online marketplaces, and the wholesale channel through retail brick-and-mortar and online wholesale partners. Revenue is recognized when the Company satisfies its performance obligations under the contract which involves transferring the promised products to the customer. This principle is achieved in the following steps:

Identify the contract with the customer. A contract 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 goods. 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 e-commerce channel and Purple showrooms 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, wholesale warranty returns, 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 shipped or when it is delivered to the wholesale partner's warehouse. The Company does not have service revenue.

Sales Returns

The Company's policy provides customers up to 100-days to return a mattress, pet bed or pillow and up to 30-days to return all other products (except power bases) for a full refund. Estimated sales returns, which are recorded as a reduction of revenue at the time of sale and recorded in other current liabilities on the consolidated balance sheets, are based on historical trends and product return rates and are adjusted for any current or expected trends as appropriate. Actual sales returns could differ from these estimates. The Company regularly assesses and adjusts the estimate of accrued sales returns by updating the return rates for actual trends and projected costs. The Company classifies the estimated sales returns as a current liability as they are expected to be paid out in less than one year.

The Company had the following activity for accrued sales returns (in thousands):

	Years Ended December 31,		
	2024	**2023**	**2022**
Balance at beginning of period	$ 5,404	$ 5,107	$ 7,116
Additions that reduced net revenue	38,913	34,090	35,479
Deduction from reserves for current year returns	(37,802)	(33,793)	(37,488)
Balance at end of period	$ 6,515	$ 5,404	$ 5,107

Accrued Warranty Liabilities

The Company provides a limited warranty on most of the products it sells. The estimated warranty costs associated with products sold through DTC channels are expensed at the time of sale and included in cost of revenues. The estimated warranty return costs associated with products sold through the wholesale channel are recorded at the time of sale and included as an offset to net revenues. Estimates for warranty costs are based on the results of historical trends and warranty claim rates incurred, and are adjusted for any current or expected trends as appropriate. Actual warranty claim costs could differ from these estimates. The Company regularly assesses and adjusts the estimate of accrued warranty claims by updating claims rates for actual trends and projected claim costs. The Company expects the estimated warranty liability to continue to increase as the Company has not reached a full 10 years of history on its 10-year mattress warranty. The Company classifies estimated warranty costs expected to be paid beyond a year as a long-term liability.

The Company had the following activity for accrued warranty liabilities (in thousands):

	Years Ended December 31,		
	2024	**2023**	**2022**
Balance at beginning of period	$ 35,591	$ 24,463	$ 16,241
Additions charged to cost of sales	3,291	5,866	9,856
Additions that reduced net revenue	6,288	11,996	3,453
Deduction from reserves for current year claims	(12,965)	(6,734)	(5,087)
Balance at end of period	$ 32,205	$ 35,591	$ 24,463

Cost of Revenues

Costs associated with net revenues are recorded as cost of revenues in the same period in which related sales have been recorded. Cost of revenues includes the costs of receiving, producing, inspecting, warehousing, insuring, and shipping goods during the period, as well as depreciation and amortization of long-lived assets used in these processes. Cost of sales also includes shipping and handling costs associated with the delivery of goods to customers.

In conjunction with a restructuring action initiated in August 2024, the Company recorded restructuring charges of $15.4 million in cost of revenues for accelerated depreciation of production equipment and inventory write-downs. Refer to Note 5–*Restructuring, Impairment and Other Related Charges* for more information.

Cooperative Advertising, Rebate and Other Promotion Programs

The Company enters into programs with certain wholesale partners to provide funds for advertising and promotions as well as volume and other rebate programs. When sales are made to these customers, the Company records liabilities pursuant to these programs. The Company periodically assesses these liabilities based on actual sales to determine whether all the cooperative advertising earned will be used by the customer or whether the customer will meet the requirements to receive rebate funds. Estimates are required at any point in time regarding the ultimate reimbursement to be claimed by the customers. Subsequent revisions to the estimates are recorded and charged to earnings in the period in which they are identified. Rebates and certain cooperative advertising amounts are classified as a reduction of revenue and presented within net revenues in the accompanying consolidated statements of operations. Cooperative advertising expenses that can be identified as a distinct good or service and for which fair value can be reasonably estimated are recorded, when incurred, as components of marketing and sales expense in the accompanying consolidated statements of operations. Marketing and sales expense in 2024, 2023 and 2022 included $2.3 million, $2.0 million and $4.1 million, respectively, related to shared advertising costs that the Company incurred under its cooperative advertising programs.

Advertising Costs

The Company incurs advertising costs associated with print, digital and broadcast advertisements. Advertising costs are expensed when the advertisements are run for the first time and included in marketing and selling expenses in the accompanying consolidated statements of operations. Advertising expense was $65.2 million, $72.4 million and $66.6 million for the years ended December 31, 2024, 2023 and 2022, respectively.

Debt Issuance Costs and Discounts

Debt issuance costs and discounts that relate to borrowings are presented in the consolidated balance sheets as a direct reduction 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. Debt issuance costs that relate to revolving lines of credit are carried as an asset in the consolidated balance sheets and amortized to interest expense on a straight-line basis over the term of the related line of credit facility. Refer to Note 12– *Debt* for more information.

Warrant Liabilities

The Company issued warrants to purchase 20.0 million shares of the Company's Class A common stock to the lenders associated with a related party credit agreement entered into in January 2024. These warrants contain a repurchase provision which, upon the 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 lead to a reduction in the exercise price of the warrants. The fundamental transaction provisions of the warrants resulted in them being recorded as a liability at fair value on their issue date, with the corresponding offset included in debt issuance costs. The initial liability is subsequently re-measured to fair value at each reporting date or exercise date with changes in the fair value included in earnings. The Company uses a Monte Carlo Simulation model to determine the fair value of the liability associated with these warrants. The model uses various key assumptions and inputs, including exercise price of the warrants, fair market value of the Company's common stock, risk free interest rate, warrant life, expected volatility and the probability of a warrant re-price event. Refer to Note 12– *Debt* and Note 13– *Warrant Liabilities* for more information.

The Company issued 12.8 million sponsor warrants pursuant to a private placement conducted simultaneously with its initial public offering. The Company recorded its sponsor warrants as liabilities since they did not meet the criteria for equity classification. Because the sponsor warrants met the definition of a derivative, these warrants were measured at fair value at inception and at each reporting date thereafter with changes in fair value recognized in earnings in the period of change. The Company used the Black-Scholes model to determine the fair value of the liability associated with the sponsor warrants. The model used key assumptions and inputs such as exercise price, fair market value of common stock, risk free interest rate, warrant life and expected volatility. Unexercised sponsor warrants totaling 1.9 million expired in February 2023 and were cancelled pursuant to the terms of the warrant agreement. These sponsor warrants had no fair value on the date of expiration.

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.

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, cash equivalents and restricted cash, receivables, accounts payable, and the Company's debt obligations. The carrying amounts of cash, cash equivalents and restricted cash, accounts receivable and accounts payable approximate fair value because of the short-term nature of these accounts.

The estimated fair value of the Company's debt arrangements are based on Level 2 inputs, which include observable inputs estimated using discounted cash flows and market-based expectations for interest rates, credit risk and the contractual terms of debt instruments is shown in the table below (in thousands):

		December 31,	
	Level	2024	2023
2023 Credit Agreement	2	$ —	$ 30,000
2024 Credit Agreement	2	56,617	—

The warrants issued in 2024 and the sponsor warrants (refer to Note 12– *Warrant Liabilities* for more information.) are Level 3 instruments and use internal models to estimate fair value based on certain significant unobservable inputs which require 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 generally 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 generally increase (decrease) in value if the expected average life or expected volatility increases (decreases).

The following table presents information about the Company's liabilities that are measured at fair value on a recurring basis and indicates the fair value hierarchy of the valuation inputs the Company utilized to determine such fair value (in thousands):

	Level	December 31, 2024
Warrants	3	$ 16,067

Unexercised sponsor warrants totaling 1.9 million expired in February 2023 and were cancelled pursuant to the terms of the warrant agreement. These sponsor warrants had no fair value on the date of expiration.

The following table summarizes the Company's total Level 3 liability activity for the years ended December 31, 2024, 2023 and 2022 (in thousands):

	Sponsor Warrants	Warrants	Total Level 3 Liabilities
Fair value as of December 31, 2021	$ 4,343	$ —	$ 4,343
Change in valuation inputs[(1)]	(4,343)	—	(4,343)
Fair value as of December 31, 2022	$ —	$ —	$ —
Change in valuation inputs[(1)]	—	—	—
Fair value as of December 31, 2023	$ —	$ —	$ —
Initial measurement at time of issuance	—	19,571	19,571
Change in valuation inputs[(1)]	—	(3,504)	(3,504)
Fair value as of December 31, 2024	$ —	$ 16,067	$ 16,067

(1) Changes in valuation inputs are recognized as the change in fair value – warrant liabilities in the consolidated statement of operations.

Stock Based Compensation

The Company accounts for stock-based compensation under the provisions of ASC 718, *Compensation—Stock Compensation*. This standard requires the Company to record an expense associated with the fair value of stock-based compensation over the requisite service period.

During 2023 and 2022, the Company granted stock options under the Company's 2017 Equity Incentive Plan (the "2017 Equity Incentive Plan") to certain officers, executives and employees of the Company. The fair value for these awards was determined using the Black-Scholes option valuation model at the date of grant. Stock based compensation on these awards is expensed on a straight-line basis over the vesting period. Option pricing models require the input of subjective assumptions including the expected term of the stock option, the expected price volatility of the Company's common stock over the period equal to the expected term of the grant, and the expected risk-free rate. Changes in these assumptions can materially affect the fair value estimate. The Company recognizes forfeitures of stock option awards as they occur. There were no stock options granted in 2024.

During 2023 and 2022, the Company granted stock awards under the 2017 Equity Incentive Plan to independent directors on the Company's board of directors (the "Board") for services performed. Since all of these awards vested immediately, stock-based compensation was recorded on the grant date using the publicly quoted closing price of the Company's common stock on that date as fair value. There were no stock awards granted to independent directors in 2024.

During 2024, 2023 and 2022, the Company granted restricted stock units under the Company's 2017 Equity Incentive Plan to certain employees of the Company. A portion of the restricted stock units granted included a market vesting condition. The estimated fair value of the restricted stock units that do not have the market vesting condition is recognized on a straight-line basis over the vesting period. The estimated fair value of the stock units that included a market vesting condition was measured on the grant date using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model and incorporated the probability of vesting occurring. The estimated fair value of these awards is recognized over the derived service period (as determined by the valuation model), with such recognition occurring regardless of whether the market condition is met.

Income Taxes

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. The Company's effective tax rate is primarily impacted by changes in its 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.

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.

Tax Receivable Agreement

In connection with the Business Combination, the Company entered into a tax receivable agreement 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 agreement.

As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of its Class B Units, a liability under the tax receivable agreement may be 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 liability to be recorded will depend on the price of the Company's Class A common stock at the time of the relevant redemption or exchange. The estimation of liability under the agreement is imprecise and subject to significant assumptions regarding the amount and timing of future taxable income.

Segment Information

Operating segments are defined as components of an enterprise for which separate financial information is evaluated regularly by the chief operating decision maker ("CODM"). The role of the CODM is to make decisions about allocating resources and assessing performance. The Company's operations are based on an omni-channel distribution strategy that allows the Company to offer a seamless shopping experience to its customers across multiple sales channels. The Company concluded its business operates in one operating segment as all the Company's sales channels are complementary and analyzed in the same manner. Also, the CODM reviews financial information presented on a consolidated basis for the purpose of allocating resources and evaluating financial performance as the Company does not accumulate discrete financial information with respect to separate divisions and does not have distinct operating or reportable segments. Since the Company operates in one operating segment, most of the required financial segment information can be found throughout the consolidated financial statements. The Company's chief executive officer has been identified as its CODM. Refer to Note 21– *Segment Information and Concentrations* for more information.

Net Loss Per Share

Basic net loss per common share is calculated by dividing net loss attributable to common stockholders by the weighted average number of shares of Class A common stock outstanding during each period. Diluted net loss per share reflects the weighted-average number of common shares outstanding during the period used in the basic net loss computation plus the effect of common stock equivalents that are dilutive. The Company uses the "if-converted" method to determine the potential dilutive effect of conversions of its outstanding Class B common stock, and the treasury stock method to determine the potential dilutive effect of its outstanding warrants and share-based payment awards.

Recent Accounting Pronouncements

Disclosure Improvements

In October 2023, the Financial Accounting Standards Board (the "FASB") issued ASU 2023-06 *Disclosure Improvements: Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative*. This ASU amends the disclosure or presentation requirements related to various subtopics in the FASB Accounting Standards Codification. For SEC registrants, the effective date for each amendment will be the date on which the SEC's removal of that related disclosure requirement from Regulation S-X or Regulation S-K becomes effective, with early adoption prohibited. The Company will monitor the removal of various requirements from the current regulations in order to determine when to adopt the related amendments but does not anticipate the adoption of the new guidance will have a material impact on the Company's Consolidated Financial Statements. The Company will continue to evaluate the impact of this guidance on its consolidated financial statements.

Enhanced Segment Disclosures

In November 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures,* which requires public entities, including those that have a single reportable segment, to provide enhanced disclosures about significant expenses. The ASU requires disclosure to include significant segment expenses that are regularly provided to the CODM, a description of other segment items by reportable segment, and any additional measures of a segment's profit or loss used by the CODM when deciding how to allocate resources. The ASU also requires all annual disclosures currently required by Topic 280 to be included in interim periods. The update is effective for fiscal years beginning after December 15, 2023 and interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted and requires retrospective application to all prior periods presented in the financial statements. This standard was adopted by the Company beginning with its 2024 consolidated financial statements. The adoption of this standard resulted in the addition of required segment disclosures for 2024 and all prior periods included in these consolidated financial statements.

Improvements to Income Tax Disclosures

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures.* The ASU amends existing income tax disclosure guidance, primarily requiring more detailed disclosures for income taxes paid and the effective tax rate reconciliation. This ASU is effective for fiscal years beginning after December 15, 2024, may be applied prospectively or retrospectively, and allows for early adoption. The Company is currently evaluating the impact this update will have on the income tax disclosures in its consolidated financial statements.

Expense Disaggregation Disclosures

In November 2024, the FASB issued ASU No. 2024-03, *Income Statement — Reporting Comprehensive Income — Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses*, which requires disclosure of certain costs and expenses on an interim and annual basis in the notes to the consolidated financial statements. The prescribed cost and expense categories requiring disaggregated disclosures include purchases of inventory, employee compensation, depreciation and intangible asset amortization, along with certain other expense disclosures already required by GAAP that would need to be integrated within the new tabular disaggregated expense disclosures. Additionally, the amendments also require the disclosure of total selling expenses and an entity's definition of those expenses. The guidance is effective for annual reporting periods beginning after December 15, 2026 and interim periods within annual reporting periods beginning after December 15, 2027. Early adoption is permitted. The guidance is to be applied either (1) prospectively to financial statements issued for reporting periods after the effective date or (2) retrospectively to any or all prior periods presented in the financial statements. The Company is currently evaluating the potential impact this update will have on its expense disclosures in the notes to the consolidated financial statements.

3. Underwritten Offerings of Class A Common Stock

In February 2023, the Company completed an underwritten offering of 13.4 million shares of Class A common stock at a price of $4.50 per share. The underwriters did not exercise their over-allotment option. The aggregate net proceeds received by the Company from the offering, after deducting offering fees and expenses of $3.3 million, totaled $57.0 million.

In March 2022, the Company completed an underwritten offering of 16.1 million shares of Class A common stock, which included the underwriters exercising their over-allotment option in full to purchase an additional 2.1 million shares. The underwriters purchased the Class A common stock from the Company at a price of $5.65 per share, except that any shares sold by the underwriters to Coliseum Capital Partners, L.P. ("CCP") and Blackwell Partners LLC – Series A ("Blackwell"), up to an aggregate of 29.81% of the shares of Class A common stock pursuant to the offering, were purchased from the Company by the underwriters at a price of $6.10 per share. The aggregate net proceeds received by the Company from the offering, after deducting offering fees and expenses of $5.3 million, totaled $92.9 million.

4. Acquisition

On August 31, 2022, pursuant to the Merger Agreement, the Company acquired Intellibed, a premium sleep and health wellness company, offering gel-based mattresses scientifically designed for maximum back support, spinal alignment and pressure point relief. The addition of Intellibed increased product offerings to customers, expanded market opportunities, capitalized on synergies of the combined companies, and increased opportunities for innovation. In addition, the acquisition allowed the Company to consolidate ownership of its intellectual property licensed to Intellibed and more fully capitalize on growing demand for products with gel technologies.

The acquisition date fair value of the consideration transferred for Intellibed was $28.2 million, which consisted of the following (in thousands):

Fair value of Class A common stock issued at closing	$	23,069
Fair value of Class A common stock held in escrow		1,349
Fair value of contingent consideration		1,471
Fair value of effective settlement of preexisting relationships		1,672
Transaction expenses paid on behalf of Intellibed		546
Due to seller		75
Fair value of total purchase consideration	$	28,182

The fair value of common stock issued at closing consisted of approximately 8.1 million shares of Class A common stock valued using the acquisition date closing price of $2.86. The fair value of common stock held in escrow consisted of 0.5 million shares of Class A common stock valued using the acquisition date closing price of $2.86. These shares were originally held in escrow pending resolution of net working capital adjustments and certain indemnification matters.

Contingent consideration represents the fair value of 1.5 million shares of Class A common stock issuable to Intellibed security holders if the closing price of the Company's stock did not equal or exceed certain thresholds during the period beginning on the six-month anniversary of the closing date and ending on the 18-month anniversary of the closing date. The contingent shares were valued using a Monte-Carlo simulation model. Because the contingent consideration was payable with a fixed number of shares of the Company's Class A common stock, it was classified as equity and did not require remeasurement in subsequent periods. During March 2024, the Company issued 1.5 million shares of Class A common stock to Intellibed security holders since the Company's stock price did not meet any of the indicated thresholds during the contingency period.

The fair value of effective settlement of preexisting relationships included $1.4 million related to the fair value of a preexisting legal matter with Intellibed that was effectively settled on the acquisition date and $0.3 million related to the fair value of a preexisting royalty liability owed by Intellibed to the Company that was also effectively settled on the acquisition date. As a result of effectively settling the preexisting legal matter with Intellibed, the Company recorded a gain of $1.4 million as other income (expense), net in the consolidated statement of operations for the year ended December 31, 2022. As a result of effectively settling the preexisting royalty liability, the Company and Intellibed recorded a corresponding receivable and payable, respectively, for the same $0.3 million amount that was then eliminated in consolidation.

During the measurement period that ended August 31, 2023, the Company finalized the determination of the working capital adjustments and the fair values allocated to various assets and liabilities, income tax provision, intangible assets and the residual amount allocated to goodwill. The table below reflects final measurement period adjustments made to various assets acquired and liabilities assumed based on updated information, and revisions to reflect the final fair value analysis associated with the two intangible assets. The corresponding offsets for these final measurement period adjustments was goodwill. The $0.1 million decrease in the acquisition date fair value of net assets acquired and liabilities assumed reflected the impact of certain Class A common shares initially held in escrow being returned to the Company upon final determination of the working capital adjustments. The following table summarizes the preliminary fair value of the assets acquired and liabilities assumed as of the date of acquisition, the final measurement period adjustments and the final adjusted balances (in thousands):

Net tangible assets (liabilities):	At Date of Acquisition	Measurement Period Adjustments	Final Adjusted Balances
Cash, cash equivalents and restricted cash	$ 4,194	$ (418)	$ 3,776
Accounts receivable	5,051	(443)	4,608
Inventory	4,182	(1,135)	3,047
Other current assets	126	200	326
Property and equipment	7,000	—	7,000
Operating lease right-of-use assets	5,491	—	5,491
Other long-term assets	68	—	68
Accounts payable	(2,285)	(460)	(2,745)
Other current liabilities	(2,818)	(313)	(3,131)
Operating lease obligations	(4,373)	—	(4,373)
Deferred tax liabilities	(3,868)	(416)	(4,284)
Net tangible assets (liabilities)	12,768	(2,985)	9,783
Goodwill	6,441	438	6,879
Customer relationships	8,476	2,400	10,876
Developed technology	615	29	644
Net assets acquired and liabilities assumed	$ 28,300	$ (118)	$ 28,182

The amount of goodwill that resulted from the purchase price allocation was attributed to expected synergies from the assembled workforce, an increase in development capabilities, increased offerings to customers, expanded market opportunities, and enhanced opportunities for growth and innovation. Goodwill was not being amortized but instead tested for impairment at least annually or more frequently if certain indicators of impairment were present. The goodwill recorded was not deductible for income tax purposes.

The ongoing decline in the Company's market capitalization, along with other qualitative considerations was determined to be a triggering event for potential goodwill impairment. Accordingly, the Company performed a goodwill impairment analysis as of September 30, 2023. The Company, considered as a single reporting unit, estimated the implied fair value of its goodwill using a variety of valuation methods, including both the income and market approaches. As a result of the impairment assessment performed, the Company determined goodwill was impaired and recorded an impairment charge to write off the entire $6.9 million balance of goodwill. The impairment charge was recorded in the 2023 consolidated statement of operations as a loss on impairment of goodwill.

The two identified definite lived intangible assets, comprised of customer relationships and developed technology, are being amortized over their estimated useful lives of 10 and two years, respectively. The customer relationships intangible asset represents the estimated fair value of the underlying relationships with Intellibed customers, valued utilizing the multi-period excess earnings method. The developed technology intangible represents the fair value of Intellibed industry-specific cloud and mobile software and related technologies, valued using the cost to recreate method.

The acquired cash, cash equivalents and restricted cash balance included $1.7 million of cash deposited by Intellibed in a separate account pursuant to an escrow agreement with the Company. The purpose of the escrow cash amount was to cover Intellibed's estimated state income tax liabilities, sales tax liabilities and related filing expenses that existed prior to the acquisition date. If the actual liabilities were less than estimated, any excess cash was to be returned to the previous shareholders of Intellibed. If payments for these items exceeded the escrow balance, the Company would have been required to pay the excess. The Company recorded the escrow account balance of $1.7 million as an acquired restricted cash balance on the date of acquisition and used $0.9 million of the escrow account balance for actual expenses incurred. The excess escrow balance of $0.8 million was returned by the Company to the previous shareholders of Intellibed during the third quarter of 2023.

The Company included the financial results of Intellibed in its consolidated financial statements from the date of acquisition and recorded net revenues and pre-tax income of $9.7 million and $1.6 million, respectively, for the period from August 31, 2022 through December 31, 2022. The $3.9 million of transaction costs associated with the acquisition were recorded as general and administrative expense in the consolidated statement of operations for the year ended December 31, 2022.

The following table provides unaudited pro forma financial information as if Intellibed had been acquired by the Company as of January 1, 2022. The unaudited pro forma information reflects adjustments for transaction and litigation expenses, immediate restructuring savings and additional depreciation and amortization resulting from the fair value adjustments to assets acquired. The pro forma results do not include any other anticipated cost synergies or effects of the combined companies. Accordingly, the following pro forma amounts for the year ended December 31, 2022 are not necessarily indicative of the results to be expected had the acquisition been completed on the date indicated, nor is it indicative of the future results of operations of the combined company (in thousands):

Net revenues	$ 603,739
Net (loss) income	(86,119)

The unaudited pro forma amounts above include the following adjustments:

- A $4.4 million decrease in operating expenses to eliminate costs directly related to the acquisition that do not have a continuing impact on results of operations.
- A $1.5 million decrease in operating expenses to eliminate costs directly related to immediate restructuring that do not have a continuing impact on results of operations.
- A $2.2 million increase in operating expenses to reflect the additional depreciation and amortization expense related to the increase in property and equipment assets and definite lived intangible assets.
- The combined pro forma results were tax effected using the Company's effective tax rate for the period.

5. Restructuring, Impairment and Other Related Charges

In August 2024, the Company initiated a restructuring plan to strategically realign the Company's focus on the achievement of operational efficiencies that are expected to improve profitability and provide for reinvesting in technology and marketing initiatives (the "Restructuring Plan"). The Company's Restructuring Plan includes the permanent closure of its Grantsville and Salt Lake City, Utah manufacturing facilities to consolidate mattress production in its Georgia plant, and a headcount reduction at the Company's Utah headquarters to drive additional operating efficiencies. Closure of the two Utah manufacturing facilities will be completed by the end of the first quarter of 2025 while consolidation into the Georgia facility was finalized in December 2024. The reduction in workforce at the Utah headquarters was completed in August 2024.

The following table summarizes the restructuring, impairment and other related charges the Company recognized in the 2024 consolidated statement of operations (in thousands):

	Cost of Revenues	Operating Expenses	Restructuring, Impairment and Other Related Charges	Total
Cash charges:				
Employee-related costs	$ 241	$ 942	$ 3,098	$ 4,281
Other costs	—	—	528	528
Total cash charges	241	942	3,626	4,809
Non-cash charges:				
Accelerated depreciation	11,175	—	135	11,310
Inventory write-downs	4,026	—	—	4,026
Write-down of long-lived assets	—	—	5,245	5,245
Impairment of assets	—	—	10,967	10,967
Total non-cash charges	15,201	—	16,347	31,548
Total restructuring, impairment and other related charges	$ 15,442	$ 942	$ 19,973	$ 36,357

Accelerated depreciation primarily represents $11.2 million of increased depreciation expense associated with shortening the useful lives of the production equipment at the two Utah manufacturing facilities that are being closed to reflect the remaining period these assets will remain in service.

The $5.2 million write-down of long-lived assets represents the write-down to salvage value of other property and equipment located at the two Utah manufacturing facilities that are being closed.

Impairment of assets included impairment charges of $2.5 million associated with entering into a sublease for the Salt Lake City, Utah manufacturing facility that is being closed and related impairment charges associated with certain leasehold improvements of the property. The fair values of the impaired assets were determined by the Company to be Level 3 under the fair value hierarchy (refer to Note 2— *Fair Value Measurements* for the definition of Level 3 inputs) and were estimated based on internal expertise related to current marketplace conditions and estimated future discounted cash flows. These assets were adjusted to their estimated fair values at the time of impairment. If estimated fair values subsequently decline, the carrying values of the assets will be adjusted accordingly.

Impairment of assets also included the write-off of an $8.5 million indefinite-lived intangible asset. Initiating the Restructuring Plan was determined to be a triggering event for potential impairment of this asset. As a result of the impairment assessment performed, the Company determined this indefinite-lived intangible asset was impaired and recorded an impairment charge to write off the entire $8.5 million balance.

The lease for the Company's Grantsville, Utah manufacturing facility included a five-year renewal option that was reasonably certain of being exercised and included in the lease term when the ROU asset and lease liability were originally measured. Because of the expected closure of this facility as part of the Restructuring Plan, the renewal option was no longer deemed reasonably certain of being exercised and a reassessment of the lease terms was completed. As a result, the original lease term was shortened and the Company recorded a $10.5 million reduction to the ROU asset and corresponding lease liability in the 2024 consolidated balance sheet, using the applicable discount rate at the effective date of the reassessment.

The following table summarizes 2024 activity associated with employee-related and other costs recorded pursuant to the Restructuring Plan, as presented in the indicated line item of the consolidated statement of operations, that will be settled in cash and are included in accounts payable or accrued compensation on the condensed consolidated balance sheets (in thousands):

Balance at December 31, 2023	$ —
Employee-related costs – cost of revenues	241
Employee-related costs – operating expenses	942
Employee-related costs – restructuring charges	3,098
Other costs – restructuring charges	528
Cash paid	(3,816)
Balance at December 31, 2024	$ 993

The following table summarizes the estimated restructuring and other related charges associated with the Restructuring Plan to be recognized in the future (in thousands):

	Cost of Revenues	Operating Expenses	Restructuring, Impairment and Other Related Charges	Total
Cash charges	$ —	$ —	$ 2,926	$ 2,926
Non-cash charges	1,592	—	64	1,656
Total estimated charges to be recognized in future [(a)]	$ 1,592	$ —	$ 2,990	$ 4,582

(a) These charges include certain estimates that are provisional and include management judgments and assumptions that could change materially as the Company completes the execution of the Restructuring Plan. Actual results may differ from these estimates, and the completion of the plan could result in additional restructuring, impairment or other related charges not reflected above.

6. Revenue from Contracts with Customers

The Company markets and sells its products through direct-to-consumer e-commerce channels, retail brick-and-mortar wholesale partners, Purple showrooms, and third-party online retailers. Revenue is recognized when the Company satisfies its performance obligations under the contract which involves transferring the promised products to the customer, subject to shipping terms, as described in Note 2 – *Summary of Significant Accounting Policies*.

Disaggregated Revenue

The Company classifies revenue into two categories: DTC and wholesale. The DTC category is comprised of the e-commerce channel that sells directly to consumers who purchase online and through the contact center, online marketplaces, and the Purple showrooms channel that sells directly to consumers who purchase at a Company showroom location. The wholesale channel includes all product sales to the Company's retail brick and mortar and online wholesale partners where consumers make purchases at their retail locations or through their online channels.

The following tables present the Company's revenue disaggregated by sales channel (in thousands):

	Years Ended December 31,		
Channel	**2024**	**2023**	**2022**
e-commerce	$ 206,300	$ 223,607	$ 267,370
Wholesale	204,214	213,843	242,698
Showrooms	77,363	73,091	63,133
Revenues, net	$ 487,877	$ 510,541	$ 573,201

Contract Balances

Payments for the sale of products through the direct-to-consumer e-commerce channel, Purple showrooms and our contact center are collected at point of sale in advance of shipping the products. The amounts received for unshipped products are recorded as customer prepayments. Customer prepayments totaled $6.4 million and $5.7 million at December 31, 2024 and 2023, respectively. During 2024, 2023 and 2022, the Company recognized all of the revenue that was deferred in customer prepayments at December 31, 2023, 2022 and 2021, respectively.

7. Inventories

Inventories consisted of the following (in thousands):

	As of December 31,	
	2024	**2023**
Raw materials	$ 20,193	$ 23,232
Work-in-process	6,602	5,962
Finished goods	30,068	37,684
Inventories	$ 56,863	$ 66,878

8. Property and Equipment

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

	As of December 31,	
	2024	**2023**
Equipment	$ 70,900	$ 72,424
Equipment in progress	13,130	15,077
Leasehold improvements	57,936	60,563
Furniture and fixtures	32,699	31,084
Office equipment	1,611	2,737
Total property and equipment	176,276	181,885
Accumulated depreciation	(82,402)	(53,224)
Property and equipment, net	$ 93,874	$ 128,661

Equipment in progress reflects equipment, primarily related to mattress manufacturing, which is being constructed and was not in service at December 31, 2024 or 2023. Interest capitalized on borrowings during the active construction period of major capital projects totaled $1.1 million, $1.5 million and $0.7 million during the years ended December 31, 2024, 2023 and 2022, respectively. Depreciation expense was $31.0 million, $19.7 million and $16.2 million for the years ended December 31, 2024, 2023 and 2022, respectively. Included in depreciation expense for the year ended December 31, 2024 was $11.3 million of accelerated depreciation recorded in conjunction with the Restructuring Plan. Refer to Note 5— *Restructuring and Impairment Charges* for more information.

9. Leases

The Company leases its manufacturing and distribution facilities, corporate offices, Purple showrooms and certain equipment under non-cancelable operating leases with various expiration dates through 2036. The Company's office and manufacturing leases provide for initial lease terms up to 16 years, while Purple showrooms have initial lease terms of up to 10 years. Certain leases may contain options to extend the term of the original lease. The exercise of lease renewal options is at the Company's discretion. Any lease renewal options are included in the lease term if exercise is reasonably certain at lease commencement. The Company also leases vehicles and other equipment under both operating and finance leases with initial lease terms of three to five years. The ROU asset for finance leases was $1.0 million and $0.7 million as of December 31, 2024 and 2023, respectively.

The following table presents the Company's lease costs (in thousands):

	Years Ended December 31,		
	2024	**2023**	**2022**
Operating lease costs	$ 19,460	$ 19,466	$ 15,743
Variable lease costs	4,338	4,121	2,311
Short-term lease costs	—	—	11
Total lease costs	$ 23,798	$ 23,587	$ 18,065

The table below reconciles the undiscounted cash flows for each of the first five years and total remaining years to the operating lease liabilities recorded on the consolidated balance sheet at December 31, 2024 (in thousands):

Year ended December 31,	
2025	$ 21,361
2026	20,623
2027	18,012
2028	17,661
2029	14,502
Thereafter	33,215
Total operating lease payments	125,374
Less – lease payments representing interest	(22,641)
Present value of operating lease payments	$ 102,733

As of December 31, 2024 and 2023, the weighted-average remaining term of operating leases was 6.8 years and 8.0 years, respectively, and the weighted-average discount rate was 6.09% and 5.77%, respectively, for operating leases recognized on the consolidated balance sheets.

The following table provides supplemental information related to the Company's consolidated statement of cash flows (in thousands):

	Years Ended December 31,		
	2024	2023	2022
Cash paid for amounts included in present value of operating lease liabilities [(b)]	$ 23,033	$ 20,817	$ 15,109
ROU assets obtained in exchange for operating lease liabilities	8,516	8,435	38,599

(b) – Operating cash flows paid for operating leases are included within the change in operating leases, net within the Consolidated Statements of Cash Flows offset by non-cash ROU asset amortization and lease liability accretion.

10. Intangible Assets

The following table provides the components of intangible assets (in thousands, except useful life):

		As of December 31, 2024				As of December 31, 2023		
	Useful life (years)	Gross Cost	Accumulated Amortization	Impairment	Net Carrying Value	Gross Cost	Accumulated Amortization	Net Carrying Value
Indefinite-lived non-amortizing:								
Intellectual property		$ 8,456	$ —	$ (8,456)	$ —	$ 8,456	$ —	$ 8,456
Trademarks		30	—	—	30	30	—	30
Definite-lived amortizing:								
Internet domain	15	900	(430)	—	470	900	(370)	530
Customer relationships	10	10,876	(4,492)	—	6,384	10,876	(2,286)	8,590
Developed technology	2	644	(644)	—	—	644	(429)	215
Internal-use software	3	7,746	(5,740)	—	2,006	8,423	(4,048)	4,375
Intangible assets, net		$ 28,652	$ (11,306)	$ (8,456)	$ 8,890	$ 29,329	$ (7,133)	$ 22,196

Amortization expense for intangible assets was $4.2 million, $5.3 million and $1.2 million for the years ended December 31, 2024, 2023 and 2022, respectively.

Estimated amortization expense for definite-lived intangible assets is expected to be as follows for the next five years (in thousands):

Year ended December 31,	
2025	$ 3,035
2026	2,111
2027	1,391
2028	791
2029	570
Thereafter	962
Total future amortization for definite-lived intangible assets	$ 8,860

11. Other Current Liabilities

The Company's other current liabilities consisted of the following (in thousands):

	As of December 31,	
	2024	2023
Accrued sales returns	$ 6,515	$ 5,404
Accrued sales and use tax	2,994	1,949
Long-term debt and unamortized issuance costs - current portion	—	2,129
Asset retirement obligation	1,440	—
Insurance financing	1,328	1,079
Accrued interest	—	506
Other	473	1,423
Total other current liabilities	$ 12,750	$ 12,490

12. Debt

Debt consisted of the following (in thousands):

	As of December 31,	
	2024	2023
Related party loan	$ 70,679	$ —
Term loan	—	25,000
Revolving line of credit	—	5,000
Less: unamortized debt issuance costs	(15,285)	(962)
Total debt	55,394	29,038
Current portion of debt and unamortized issuance costs [(c)]	—	(2,129)
Debt, net of current portion	$ 55,394	$ 26,909

(c) – Amount is included in other current liabilities in the consolidated balance sheets.

2024 Credit Agreement

On January 23, 2024, Purple LLC, Purple Inc. and Intellibed (collectively, the "Loan Parties") entered into an amended and restated credit agreement (the "Amended and Restated Credit Agreement"), which amended and restated the then existing term loan agreement ("Term Loan Agreement"), with CCP and other lenders (collectively, the "Lenders") and Delaware Trust Company, as administrative agent. The Lenders agreed to assume the Loan Parties' obligations under the Term Loan Agreement and refinance their existing obligations. A term loan in the amount of $61.0 million (the "Related Party Loan") was funded by the Lenders that repaid in full the $25.0 million of term loans outstanding, repaid in full the $5.0 million of asset based lending loans outstanding, paid fees, premiums and expenses incurred in connection with this transaction, and provided net proceeds to the Company (after payments of outstanding debt, unpaid accrued interest and expenses) equal to approximately $27.0 million. Interest on the Related Party Loan is payable each month and the principal outstanding matures and is due on December 31, 2026. The Related Party Loan bears interest at a rate equal to (i) the secured overnight financing rate as administered by the Federal Reserve Bank of New York plus 0.10%, with a floor of 3.5% per annum, plus (ii) 8.25% per annum (or, if Purple LLC elects to pay interest in kind to reduce it cash obligations, 10.25% per annum). Any prepayments of principal on or after August 7, 2024 but before August 7, 2025 are subject to a prepayment penalty of 1.25%, and any prepayments of principal on or after August 7, 2025 are subject to a prepayment penalty of 2.50%. The Loan Parties may request an additional term loan from the Lenders in an aggregate amount not to exceed $19.0 million on terms requested by them to the extent agreed to by the Lenders at their discretion. The Amended and Restated Credit Agreement also removed restrictions and requirements typically associated with an asset-based loan. The Amended and Restated Credit Agreement and agreements ancillary thereto provide for certain remedies to the Lenders in the event of customary events of default. There were no events of default at December 31, 2024 and therefore the debt is classified as long-term in the consolidated balance sheets.

In connection with the Amended and Restated Credit Agreement, the Company issued to the Lenders warrants to purchase 20.0 million shares of the Company's Class A common stock (Refer to Note 13 – *Warrant Liabilities* for more information) and incurred fees and expenses of $3.5 million that were recorded as debt issuance costs in the first quarter of 2024. The Company has elected for interest to be capitalized and added to the principal amount of the loan. For the year ended December 31, 2024, interest expense under the Related Party Loan consisted of paid-in-kind interest of $9.7 million and debt issuance cost amortization of $7.2 million. There was no interest expense incurred under the Amended and Restated Credit Agreement in 2023 and 2022.

The Amended and Restated Credit Agreement granted a security interest to the Lenders in substantially all of the assets (subject to certain limited exceptions) of the Loan Parties to secure the Loan Parties' loans and other obligations under the Amended and Restated Credit Agreement, including a security interest in the intellectual property owned by the Loan Parties.

The Loan Parties (other than Purple LLC) provided an unconditional guaranty of the payment of all obligations and liabilities of Purple LLC under the Amended and Restated Credit Agreement.

The Amended and Restated Credit Agreement also provides for standard indemnification of the Lenders and contains representations, warranties and certain covenants of the Loan Parties. While any amounts are outstanding under the Amended and Restated Credit Agreement, the Loan Parties are subject to a number of affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness and transactions with affiliates, among other customary covenants. The Loan Parties are also restricted from paying dividends or making other distributions or payments on their capital stock, subject to limited exceptions. As of December 31, 2024, the Company was in compliance with all covenants under the Amended and Restated Credit Agreement.

2023 Credit Agreements

On August 7, 2023, the Loan Parties entered into the Term Loan Agreement. Also, on August 7, 2023, the Loan parties entered into a separate financing arrangement with a group of financial institutions (collectively the "ABL Lenders") that provided for a revolving asset-based credit facility (the "ABL Agreement"). Pursuant to entering into these agreements (collectively, the "2023 Credit Agreements"), the Company incurred fees and expenses of $3.1 million that were recorded as debt issuance costs in the third quarter of 2023.

The Term Loan Agreement provided for up to $25.0 million of term loans, with up to $5.0 million of incremental term loans available, subject to certain conditions (collectively, the "Term Loans"). Proceeds from the Term Loans were used for general corporate purposes. The borrowing rates under the Term Loan Agreement were based on SOFR, plus a credit spread adjustment of 0.15% per annum, plus 8.5% per annum, with a SOFR floor of 2.0% per annum. The Term Loans were to be repaid at the earlier of (a) a three-year amortization schedule ending on August 7, 2026 or (b) the payment in full of the ABL Agreement. The Term Loans could be prepaid in whole or in part at any time, but subject to a prepayment premium. There were also potential mandatory prepayment obligations based on certain asset dispositions, casualty events and extraordinary receipts. Once repaid, no portion of the Term Loans could be reborrowed.

The ABL Agreement provided for up to $50.0 million of revolving loans subject to a borrowing base calculation and minimum availability requirements (with sub-facilities for swing line loans and the issuance of letters of credit), with incremental increases available up to $20.0 million (the "ABL Loans"), subject to certain conditions, availability reserves, minimum availability requirements, borrowing base calculations, and restrictive covenants. In October 2023, the ABL Lenders implemented an availability reserve of $5.0 million, which reduced the amount available under the borrowing base. Outstanding principal and accrued interest on the ABL Loans were to be repaid on August 7, 2026.

Term loans totaling $25.0 million were fully drawn at closing and, subsequent to the closing in August 2023, the Company executed $17.0 million in ABL loan draws and then repaid $12.0 million of those borrowings prior to the end of 2023. The outstanding balance of ABL Loans totaled $5.0 million at December 31, 2023. In connection with the Amended and Restated Credit Agreement, all obligations under the 2023 Credit Agreements were paid in full and the agreements were terminated. The termination was accounted for as an extinguishment of debt and $3.4 million of unamortized debt issuance costs related to the 2023 Credit Agreements were recorded as a loss on extinguishment of debt in the first quarter of 2024. Interest expense under the 2023 Credit Agreements was $0.4 million and $2.1 million for the years ended December 31, 2024 and 2023, respectively. There was no interest expense incurred under the 2023 Credit Agreements in 2022.

2020 Credit Agreement

On September 3, 2020, Purple LLC entered into a financing arrangement with a group of financial institutions (the "2020 Credit Agreement"). The 2020 Credit Agreement provided for a $45.0 million term loan and a $55.0 million revolving line of credit. The term loan was to be repaid in accordance with a five-year amortization schedule or prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. The revolving credit facility had a term of five years and carried the same interest provisions as the term debt. A commitment fee was due quarterly based on the applicable margin applied to the unused total revolving commitment. In connection with the Company's execution of the 2023 Credit Agreements, the Company terminated its 2020 Credit Agreement. The Company had no outstanding borrowings under the 2020 Credit Agreement at the time of termination.

On February 17, 2023, the Company entered into a fifth amendment to the 2020 Credit Agreement. The amendment, among other things, revised various covenants associated with the 2020 Credit Agreement. As a condition of entering into the amendment, the Company repaid the $24.7 million outstanding balance on the term loan plus accrued interest. Pursuant to this amendment, the Company incurred fees and expenses of $2.9 million that were recorded as debt issuance costs in the consolidated balance sheets. The amendment was accounted for as an extinguishment of debt and $1.2 million of unamortized debt issuance costs related to the term loan were recorded as loss on extinguishment of debt in the 2023 consolidated statement of operations.

Interest expense under the 2020 Credit Agreement totaled $1.3 million and $4.1 million for the years ended December 31, 2023 and 2022, respectively. There was no interest expense incurred under the 2020 Credit Agreement in 2024.

As of December 31, 2024, the scheduled maturities of debt outstanding for each of the next five years and thereafter are as follows (in thousands):

Year ended December 31,	**Total**
2025	$ —
2026	70,679
2027	—
2028	—
2029	—
Thereafter	—
Total	$ 70,679

13. Warrant Liabilities

On January 23, 2024, in connection with the Amended and Restated Credit Agreement, the Company issued to the Lenders warrants to purchase 20.0 million shares of the Company's Class A common stock (the "Warrants"). Each Warrant entitles the registered holder to purchase one share of the Company's Class A common stock at a price of $1.50 per share, subject to adjustment. The Warrants will expire on the 10-year anniversary of issuance, or earlier upon redemption. The holders do not have the rights or privileges of holders of Class A common stock or any voting rights until they exercise their Warrants. After the issuance of shares of Class A common stock upon exercise of the Warrants, each holder will be entitled to one vote for each share of Class A common stock held on all matters to be voted on by stockholders generally. A holder of the Warrants will not have the right to exercise its Warrants, to the extent that after giving effect to such exercise, the holder (together with its affiliates) would beneficially own in excess of 49.9% of the shares of Class A common stock outstanding immediately after giving effect to such exercise. The Warrants contain a repurchase provision which, upon the 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 lead to a reduction in the exercise price of the Warrants. The Warrants also include full-ratchet anti-dilution protections, subject to certain conditions, which could result in the Warrants becoming exercisable for a significantly greater number of shares if we engage in a dilutive financing. The Company determined 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 in the period of change. As a result, the liability for these Warrants was recorded at fair value on the date of issuance with the offset included in debt issuance costs. This liability is subsequently re-measured to fair value at each reporting date or exercise date with changes in the fair value included in earnings.

The Company used a Monte Carlo Simulation model to determine the fair value of the liability associated with the Warrants. The model used 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 a warrant re-price event. The following are the assumptions used in calculating fair value of the Warrants on the date of issuance:

Trading price of common stock on measurement date	$	0.82
Exercise price	$	1.50
Risk free interest rate		4.14%
Warrant life in years		10.0
Expected volatility		88.62%
Expected dividend yield		—
Probability of an event causing a warrant re-price		25.0%

The following are the assumptions used in calculating fair value of the Warrants on December 31, 2024:

Trading price of common stock on measurement date	$	0.78
Exercise price	$	1.50
Risk free interest rate		4.45%
Warrant life in years		9.1
Expected volatility		88.00%
Expected dividend yield		—
Probability of an event causing a warrant re-price		25.0%

The Warrants had a fair value of $16.1 million as of December 31, 2024. The Company recognized a gain of $3.5 million in its consolidated statement of operations for the year ended December 31, 2024 related to a decrease in the fair value of the Warrants outstanding at the end of the period compared to the fair value of the Warrants on the date of issuance.

The Company issued 12.8 million sponsor warrants pursuant to a private placement conducted simultaneously with its initial public offering. Each of these warrants entitled the registered holder to purchase one-half of one share of the Company's Class A common 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. These sponsor warrants contained certain provisions that did not meet the criteria for equity classification and therefore were recorded as liabilities. The liability for these warrants was recorded at fair value on the date of the Business Combination and subsequently re-measured to fair value at each reporting date or exercise date with changes in the fair value included in earnings.

Unexercised sponsor warrants totaling 1.9 million expired in February 2023 and were cancelled pursuant to the terms of the warrant agreement. These sponsor warrants had no fair value on the date of expiration. The 1.9 million sponsor warrants outstanding at December 31, 2022 had a negligible fair value and no sponsor warrants were exercised in 2022.

The Company determined the fair value of the sponsor warrants on December 31, 2022 using a Black-Scholes model with the following assumptions:

Trading price of common stock on measurement date	$	4.79
Exercise price	$	5.75
Risk free interest rate		4.04%
Warrant life in years		0.1
Expected volatility		80.59%
Expected dividend yield		—

During the year ended December 31, 2022, the Company recognized a gain of $4.3 million in its consolidated statement of operations related to a decrease in the fair value of the sponsor warrants that were outstanding at the end of the period.

14. Other Long-Term Liabilities

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

	December 31, 2024	December 31, 2023
Asset retirement obligations	$ 1,098	$ 2,230
Other	911	5
Total other long-term liabilities	$ 2,009	$ 2,235

The Company's asset retirement obligations ("ARO") relate to two manufacturing facilities that are leased. One of the properties is the Company's manufacturing facility in Grantsville, Utah which is expected to be closed in the first quarter of 2025 (For further discussion see Note 5— *Restructuring, Impairment and Other Related Charges*). The ARO liabilities represent future estimated costs associated with the restoration of the facilities to their original state at the end of the respective lease terms. The fair value of a liability for an ARO is recorded in the period in which it is incurred, discounted to its present value using a credit-adjusted-risk-free interest rate, with a corresponding amount capitalized by increasing the carrying amount of the related long-lived asset. These liabilities are accreted each period, and the capitalized cost is depreciated over the useful life of the related asset. Revisions to estimated ARO liabilities result in an adjustment to the related capitalized asset and corresponding liability. Because the Company utilizes unobservable inputs in the estimation of its ARO liabilities, the fair values were determined to be Level 3 under the fair value hierarchy (For further discussion regarding the definition of Level 3 inputs see Note 2— *Fair Value Measurements*).

The Company had the following activity for its ARO liabilities (in thousands):

	Years Ended December 31,	
	2024	2023
Balance at beginning of period	$ 2,230	$ 2,099
Revisions in estimated retirement obligations	277	—
Accretion expense	133	131
Payments	(102)	—
Balance at end of period	2,538	2,230
ARO liability classified as other current liabilities	(1,440)	—
ARO liability classified as other long-term liabilities	$ 1,098	$ 2,230

15. Commitments and Contingencies

Chief Executive Officer Cash Bonus Award

On January 26, 2024, the Board approved an amendment to the Chief Executive Officer's employment agreement. Under the amendment, the Company agreed that, among other things, the Chief Executive Officer will be eligible to earn a cash payment of up to $5.0 million, less tax and other required withholdings, based on the volume weighted average price per share of the Company's Class A common stock on NASDAQ during the period from March 16, 2026 through June 30, 2026 subject to his continued employment with the Company. The amount earned will be payable in quarterly installments commencing with the first payroll period following June 30, 2026. The Company determined the provisions surrounding the future bonus payment require it to be accounted for as a liability at fair value on the date of the transaction, with changes in fair value recognized in earnings in the period of change. The Company recorded a de minimis amount of compensation expense in its 2024 consolidated statement of operations related to the fair value of the future bonus payment.

Senior Leadership Team Special Recognition Bonus

On January 26, 2024, the Board unanimously approved a special recognition bonus payment to certain members of the Company's senior leadership team. The bonus was awarded to incentivize retention and continued engagement with the Company during these challenging times in the bedding industry. Each participant is eligible to earn a special recognition bonus payment equal to 15 months of their regular salary. The special recognition bonus payment is paid as follows, subject to the employee's continued employment with the Company: 10% was paid in August 2024, 20% is to be paid in February 2025, and the remaining 70% is to be paid in August 2025. The Company recorded compensation expense of $3.1 million in its 2024 consolidated statement of operations related to this special recognition bonus.

Performance Cash Long-Term Incentive Award

On June 20, 2024, the Board unanimously approved a performance cash long-term incentive award to those employees eligible to participate in the Company's Long-Term Incentive Plan. The incentive award payment is based on a performance goal of the volume weighted average price per share of the Company's Class A common stock on NASDAQ on March 31, 2027. The Company determined the provisions surrounding the performance cash long-term incentive award require it to be accounted for as a liability at fair value at each reporting period, with changes in fair value recognized in earnings in the period of change. The Company recorded a de minimis amount of compensation expense in the 2024 consolidated statement of operations related to this future award payment.

Settlement of Insurance Claim

In 2024, the Company received two payments totaling $11.6 million for full settlement of a previously filed business interruption claim which was recorded as other income, net in the 2024 consolidated statement of operations.

Rights of Securities Holders

On January 23, 2024, in connection with the issuance of the 2024 Warrants, the Company entered into an amended and restated registration rights agreement with holders of the Warrants (the "Holders"), providing for the registration under the Securities Act of 1933, as amended, of the 2024 Warrants, the shares issuable upon the exercise of the 2024 Warrants and Class A common stock held by the Holders as of such date, subject to customary terms and conditions. On March 12, 2025 in connection with the issuance of the 2025 Warrants, the Company entered into a Second Amended and Restated Registration Rights Agreement (the "Registration Rights Agreement") with the Holders, providing for the registration of the Warrants, the shares of Common Stock issuable upon the exercise of the Warrants, and the Class A Common Stock held by the Holders as of such date (the "Registrable Securities"). The Registration Rights agreement entitles the Holders to demand registration of the Registrable Securities and to piggyback on the registration of securities by the Company and other Company securityholders. The Company will be responsible for the payment of the Holders' expenses in connection with any offering or sale of Registrable Securities by the Holders, including underwriting discounts or selling commissions, placement agent or broker fees or similar discounts, commissions or fees relating to the sale of certain Registrable Securities.

NOL Rights Plan

On June 27, 2024, the Board adopted and the Company entered into a limited-duration stockholder rights agreement (the "NOL Rights Plan") with a stated expiration date of June 30, 2025. The Board adopted the NOL Rights Plan to protect stockholder value by attempting to safeguard the Company's ability to use its June 30, 2024 estimated $238 million of net operating losses (the "Current NOLs") to reduce potential future federal income tax obligations from becoming substantially limited by future ownership changes in the Company's common stock under Code Section 382. On October 15, 2024, at a special meeting of stockholders (the "Special Meeting"), the Company's stockholders ratified the NOL Rights Plan. Refer to Note 17 – *Stockholders' Equity – NOL Rights Plan* for more information.

NOL Protective Charter Amendment

To further safeguard the Company's ability to use its Current NOLs, on July 27, 2024, the Board adopted and recommended that the Company's stockholders approve an amendment to the Company's Certificate of Incorporation (the "NOL Protective Charter Amendment") that adds an additional layer of protection of the Current NOLs until June 30, 2025 by voiding certain transfers of common stock that could result in an ownership change under Code Section 382. At the Special Meeting, the Company's stockholders approved the NOL Protective Charter Amendment. Refer to Note 17 – *Stockholders' Equity – NOL Protective Charter Amendment* for more information.

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. The Company 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 the Company's business, in particular, sales taxes, value-added tax 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 the Company's 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 the Company conducts or will conduct business.

Legal Proceedings

On December 16, 2022, Purple's founders filed a complaint against Purple Inc. in the Fourth Judicial District Court in the State of Utah. In that suit, the plaintiffs alleged that they each entered into employment agreements with Purple LLC in February 2018. The plaintiffs contended that certain corporate transactions reduced their "ownership interest and voting power in Purple" and that, as a result, they should have continued to be paid a salary when they retired from Purple LLC. The plaintiffs calculated that they were each owed "no less than $500,000" in unpaid salary. In October 2023, the Court granted Purple Inc.'s motion and ordered that the claims brought by the plaintiffs be dismissed in full, with prejudice. The Court entered a final judgment dismissing the case in January 2024. The plaintiffs have filed an appeal to the Utah Court of Appeals. The parties argued before the Utah Court of Appeals on January 23, 2025. The Court's decision is anticipated in the second quarter of 2025. The Company maintains insurance to cover the costs of defending against claims of this nature and intends to continue to vigorously defend against these claims in the course of the plaintiffs' appeal.

On April 3, 2023, Purple's founders filed a complaint against Purple LLC in the Delaware Court of Chancery. The complaint alleges that Purple LLC breached the limited liability company agreement of Purple LLC by failing to pay the full amount of tax distributions owed under the agreement. The plaintiffs seek damages of approximately $3.0 million in allegedly unpaid tax distributions as well as legal fees and expenses incurred in connection with the litigation. On June 13, 2023, Purple LLC filed an answer to the complaint denying the plaintiffs' allegations, setting forth its affirmative defenses, and requesting dismissal of all claims and entry of judgment in Purple LLC's favor. The outcome of the litigation cannot be predicted at this early stage in the proceedings. Purple LLC denies all allegations and intends to vigorously defend against these claims.

On January 17, 2024, two customers filed a punitive class action lawsuit (the "Class Action Lawsuit") against Purple LLC in California Superior Court in the County of San Francisco alleging unlawful marketing and pricing practices, fraud and unjust enrichment. The suit sought damages and other relief on behalf of all persons who purchased Purple LLC products during the applicable statutory periods in California. On July 15, 2024, the Company entered into a settlement agreement (the "Settlement Agreement") with the plaintiffs in connection with the Class Action Lawsuit. On August 16, 2024 the United States District Court for the Northern District of California dismissed the Class Action Lawsuit and approved the Settlement Agreement. Upon receipt of the executed release of all claims by the plaintiffs, the Company made a cash payment pursuant to the Settlement Agreement.

On April 16, 2024, Purple's founders, in their capacity as a former landlord of Purple LLC, brought a lawsuit against Purple LLC, as lessee, for amounts allegedly owed under a real estate lease which the parties terminated effective September 30, 2023. In the suit, the plaintiffs allege approximately $2.5 million in damages, based primarily on a dispute regarding whether Purple LLC left the premises in the condition required by the lease. The plaintiffs further claim approximately $0.8 million in holdover rent, as well as unspecified amounts in interest, late fees, liquidated damages, attorney fees and costs. Purple LLC denies all allegations and intends to vigorously defend against these claims.

On July 24, 2024, a former part-time employee filed a class action lawsuit against Purple LLC in California Superior Court in the County of Alameda alleging failure to pay all wages, failure to pay overtime pay rate, failure to provide all meal periods, and other employment-related causes of action. The suit seeks damages, interest, attorneys' fees, costs and other relief on behalf of all non-exempt California employees of Purple LLC during the applicable statutory periods. On September 30, 2024, the plaintiffs filed an amended complaint adding a claim for penalties under California's Private Attorneys General Act. Subsequent to this, Purple LLC and the plaintiffs agreed to mediate the claims and to stay formal discovery pending mediation, which is currently scheduled to take place on May 8, 2025. Purple LLC denies all allegations and intends to vigorously defend against these claims.

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.

16. Related-Party Transactions

The Company has engaged in 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 Board. Mr. Gray is a manager of Coliseum Capital, LLC, which is the general partner of CCP and Coliseum Co-Invest Debt Fund, L.P. ("CDF"), and he is also a managing partner of Coliseum Capital Management, LLC ("CCM"), which is the investment manager of Blackwell and also manages investment funds and accounts. Mr. Gray has voting and dispositive control over securities held by CCP, CDF and Blackwell. In April 2023, Adam Gray was appointed Chairman of the Board of the Company as part of an agreement to resolve litigation that had been brought by Coliseum against the Company. Refer to Note 12— *Debt—2024 Credit Agreement* for more information on the Related Party Loan.

Purple Founder Entities

Purple LLC began leasing its Alpine facility from entities controlled by the Purple Founders in 2010. On September 3, 2021, in accordance with the terms of that original lease, Purple LLC gave notice that it intended to exercise its right to an early termination of the lease to occur on September 30, 2022. On July 20, 2022, the Company entered into an amendment to its Alpine facility lease agreement that rescinded the Company's previous notice of termination and extended the lease term to remain in effect until September 30, 2023. The Company vacated the Alpine facility and returned the property back to its owner on September 30, 2023, in accordance with the terms of the lease agreement and notice of termination. In conjunction with leasing the Alpine facility, Purple LLC incurred rent expense of $0.8 million and $1.0 million for the years ended December 31, 2023 and 2022, respectively. Refer to Note 15—*Commitments and Contingencies—Legal Proceedings* for information regarding a complaint filed by Purple's founders regarding this matter.

17. Stockholders' Equity

Class A Common Stock

The Company has 210.0 million shares of Class A common stock authorized. Holders of the Company's Class A common stock are entitled to one vote for each share held on all matters to be voted on by the stockholders. Holders of Class A common stock and holders of Class B common 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. At December 31, 2024, 107.5 million shares of Class A common stock were outstanding.

Class B Common Stock

The Company has 90.0 million shares of Class B common stock authorized. Holders of the Company's Class B common stock will vote together as a single class with holders of the Company's Class A common stock on all matters properly submitted to a vote of the stockholders. Shares of Class B common stock may be issued only to InnoHold, their respective successors and assigns, as well as any permitted transferees of InnoHold. A holder may transfer their shares of Class B common stock to any transferee (other than the Company) only if such holder also simultaneously transfers an equal number of such holder's shares of Class B common stock to such transferee. The Class B common 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. At December 31, 2024, 0.2 million shares of Class B common stock were outstanding.

Preferred Stock

The Company has 5.0 million shares of preferred stock authorized. The preferred stock may be issued from time to time in one or more series. The Board is 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 December 31, 2024, there were no shares of preferred stock outstanding. On June 27, 2024, 0.3 million shares of the Company's authorized shares of preferred stock were designated as Series C Junior Participating Preferred Stock, par value $0.0001 per share ("Series C Preferred Shares").

NOL Rights Plan

On June 27, 2024, the Board adopted and the Company entered into the NOL Rights Plan, which is designed to preserve approximately $238 million of the Company's Current NOLs under Section 382 of the of the Internal Revenue Code of 1986, as amended ("Code Section 382"). At the Special Meeting, the Company's stockholders ratified the NOL Rights Plan. The Company's ability to use the Current NOLs to offset future taxable income may be significantly limited if the Company experiences an "ownership change" under Code Section 382, which occurs if one or more stockholders or groups of stockholders that is deemed to own at least 5% of the Company's common stock increases their aggregate ownership by more than 50 percentage points over its lowest ownership percentage within a rolling three-year period. The NOL Rights Plan is intended to prevent an ownership change by acting as a deterrent to any Person (as such term is defined in the NOL Rights Plan) acquiring 4.9% or more of the outstanding common stock of the Company (or, in the case of a Grandfathered Person (as such term is defined in the NOL Rights Plan), an additional one-half of one percentage point of the outstanding common Stock of the Company above their current ownership percentage). Any Person that acquires shares of the Company's common Stock in violation of the limitations of the NOL Rights Plan is known as an "Acquiring Person." For purposes of the NOL Rights Plan, "common stock" includes (i) the Class A common stock; (ii) the Class B common stock; and (iii) any interest that would be treated as "stock" of the Company pursuant to Treasury Regulation § 1.382-2T(f)(18). Notwithstanding the foregoing, the NOL Rights Plan allows for the exercise of currently outstanding conversion rights, exchange rights, warrants or options, or otherwise, without triggering the NOL Rights Plan. Refer to Note 13 – *Warrant Liabilities* for further discussion of the Company's outstanding warrants.

The NOL Rights Plan provided for the issuance of a dividend of one preferred share purchase right (a "Right") for each share of common stock outstanding on July 26, 2024. Each Right entitles the holder to purchase from the Company one one-thousandth of a share of Series C Preferred Share for a purchase price of $2.75, subject to adjustment as provided in the NOL Rights Plan. Each Series C Preferred Share is designed to be the economic equivalent of one share of common stock.

Unless the Board determines to effect an exchange (as discussed below), each Right will become exercisable on the "Distribution Time", which is the earlier to occur of (i) the tenth day following a public announcement, or the public disclosure of facts indicating, that a Person has become an Acquiring Person or (ii) the tenth business day (or such later date as may be determined by action of the Board prior to such time as any Person becomes an Acquiring Person) following the commencement of a tender offer or exchange offer the consummation of which would result in a Person becoming an Acquiring Person. After the Distribution Time, any Rights held by an Acquiring Person will be void and will not be exercisable. As a result, any Acquiring Person will be subject to significant dilution upon the occurrence of the Distribution Time. At any time after a Person becomes an Acquiring Person, but before such Acquiring Person holds more than 50% of the common stock, the Board, in its sole discretion, may instead extinguish the Rights by exchanging one share of Class A common stock for each Right, other than Rights held by the Acquiring Person.

The Rights will expire on the earliest to occur of (i) the close of business on June 30, 2025; (ii) the time at which the Rights are redeemed (as discussed below) or exchanged by the Company; (iii) the repeal of Code Section 382, if the Board determines that the NOL Rights Plan is no longer necessary for the preservation of the Current NOLs; or (v) the beginning of a taxable year of the Company to which the Board determines that no Current NOLs may be carried forward. At any time prior to the expiration of the NOL Rights Plan, the Company may redeem the Rights in whole, but not in part, at a price of $0.0001 per Right (subject to adjustment and payable in cash, Class A common stock or other consideration deemed appropriate by the Board). Immediately upon the action of the Board authorizing any redemption or at a later time as the Board may establish for the effectiveness of the redemption, the Rights will terminate and the only right of the holders of Rights will be to receive the redemption price.

The initial issuance of the Rights as a dividend had no tax, financial accounting or reporting impact. The fair value of the Rights is nominal, since the Rights were not exercisable when issued and no value is attributable to them. Additionally, the Rights do not meet the definition of a liability under GAAP and therefore are not being accounted for as a long-term obligation. Accordingly, unless the Rights become exercisable upon the occurrence of the Distribution Time as discussed above, the NOL Rights Plan and the Rights issued thereunder have no impact on the Company's consolidated financial statements.

NOL Protective Charter Amendment

On June 27, 2024, concurrently with the adoption of NOL Rights Plan, the Board adopted, and recommended that the Company's stockholders approve at the Special Meeting, the NOL Protective Charter Amendment that adds an additional layer of protection of the Current NOLs until June 30, 2025 by voiding any transfer of common stock that results in any Person holding 4.9% or more of the outstanding common stock of the Company (or, in the case of a Person already holding more than 4.9% of the outstanding common stock of the Company as of the date of the NOL Protective Charter Amendment, one-half of one percentage point of the outstanding common stock of the Company above their current ownership percentage). At the Special Meeting, the Company's stockholders approved the NOL Protective Charter Amendment.

Any acquisition of common stock in violation of the NOL Protective Charter Amendment will be void as of the date it is attempted. Upon the Company's written demand, the purported acquiring stockholder must transfer the excess acquired common stock to the Company's transfer agent (along with any dividends or other distributions paid with respect to such excess acquired common stock). The Company's transfer agent is then required to sell such excess acquired common stock in an arm's-length transaction (or series of transactions) that would not constitute a violation under the NOL Protective Charter Amendment. The net proceeds of the sale together with any other distributions with respect to such excess acquired common stock received by the Company's transfer agent, after deduction of all costs incurred by the transfer agent, will be transferred first to the purported transferee in an amount, if any, up to the cost (or in the case of gift, inheritance or similar transfer, the fair market value of the excess securities on the date of the prohibited transfer) incurred by the purported transferee to acquire such excess securities, and the balance of the proceeds, if any, will be transferred to a charitable beneficiary. Further, the Company may hold any stockholder liable, to the fullest extent of the law, for any intentional violation of the NOL Protective Charter Amendment.

Warrants

In connection with the Amended and Restated Credit Agreement, the Company issued to the Lenders Warrants to purchase 20.0 million shares of the Company's Class A common stock. Each Warrant entitles the registered holder to purchase one share of the Company's Class A common stock at a price of $1.50 per share, subject to adjustment. While the Warrants are exercisable, the Company may call the Warrants for redemption in whole and not in part at any time at a price of $0.01 per share of Class A common stock issuable upon exercise of the Warrants upon not less than 45 days' prior written notice of redemption to each holder, provided that this redemption right is only available if the reported last sale price of the Class A common stock equals or exceeds $24.00 per share on each of 20 trading days within a 30-trading day period ending three business days before the Company sends the notice of redemption to the holders. A holder of the Warrants will not have the right to exercise its Warrants, to the extent that after giving effect to such exercise, the holder (together with its affiliates) would beneficially own in excess of 49.9% of the shares of Class A common stock outstanding immediately after giving effect to such exercise.

Sponsor Warrants

There were 12.8 million sponsor warrants issued pursuant to a private placement simultaneously with the Company's initial public offering. Unexercised sponsor warrants totaling 1.9 million expired in February 2023 and were cancelled pursuant to the terms of the warrant agreement. These sponsor warrants had no fair value on the date of expiration.

Noncontrolling Interest

Noncontrolling interest ("NCI") is the membership interest in Purple LLC held by holders other than the Company. At both December 31, 2024 and 2023, the combined NCI percentage in Purple LLC was 0.2%. 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.

18. Net Loss Per Common Share

The following table sets forth the calculation of basic and diluted weighted average shares outstanding and loss per share for the periods presented (in thousands, except per share amounts):

	Years Ended December 31,		
	2024	2023	2022
Numerator:			
Net loss attributable to Purple Innovation, Inc. – basic	$ (97,897)	$ (120,757)	$ (92,470)
Less: Net loss attributable to noncontrolling interest	(201)	(458)	—
Net loss attributable to Purple Innovation, Inc. – diluted	$ (98,098)	$ (121,215)	$ (92,470)
Denominator			
Weighted average shares – basic	107,139	103,602	81,779
Add: Dilutive effect of Class B shares	185	334	—
Weighted average shares – diluted	107,324	103,936	81,779
Net loss per common share:			
Basic	$ (0.91)	$ (1.17)	$ (1.13)
Diluted	$ (0.91)	$ (1.17)	$ (1.13)

The Company excludes from the diluted net loss per common share computation potentially dilutive securities related to warrants, equity awards and convertible shares of Class B common stock when their exercise or performance vesting price is greater than the average market price of the Company's common stock or they are otherwise anti-dilutive. Potentially dilutive securities that have been excluded from the calculation of diluted net loss per common share are as follows (in thousands):

	Years Ended December 31,		
	2024	2023	2022
Warrants	20,000	—	—
Sponsor warrants	—	928	928
Restricted stock units	2,006	1,423	679
Stock options	529	863	819
Class B common stock	—	—	448

19. Equity Compensation Plans

2017 Equity Incentive Plan

The 2017 Equity 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 Equity Incentive Plan. The aggregate number of shares of common stock which may be issued or used for reference purposes under the 2017 Equity Incentive Plan or with respect to which awards may be granted may not exceed 7.9 million shares. As of December 31, 2024, 2.4 million shares remain available for issuance under the 2017 Equity Incentive Plan. During the years ended December 31, 2024, 2023 and 2022, stock-based compensation associated with equity awards issued under the 2017 Equity Incentive Plan totaled $2.8 million, $4.9 million and $3.4 million, respectively, while the related tax benefits recognized on these awards were $0.9 million, $1.5 million and $0.9 million, respectively.

Class A Common Stock Awards

There were no stock awards granted in 2024.

In June 2023, the Company granted stock awards under the 2017 Equity Incentive Plan to non-executive directors on the Board. The stock awards vested immediately and the Company issued 0.2 million shares of Class A common stock and recognized $0.6 million in expense during the year ended December 31, 2023, which represented the fair value of the stock awards on the grant date.

In May 2022, the Company granted stock awards under the 2017 Equity Incentive Plan to independent directors on the Board. The stock awards vested immediately and the Company issued 0.1 million shares of Class A common stock and recognized $0.6 million in expense during the year ended December 31, 2022, which represented the fair value of the stock awards on the grant date.

Amended and Restated Grant Agreements

On March 15, 2023, in accordance with the 2017 Equity Incentive Plan, the Company entered into amended and restated grant agreements relating to stock options and restricted stock unit awards previously granted to the Company's chief executive officer in March 2022 and June 2022. The amended agreements revised the vesting schedule of the awards included in each grant. Pursuant to these agreements, 0.3 million of restricted stock units and stock options fully vested on March 25, 2023, another 0.3 million of restricted stock units and stock options, which included conditionally granted awards that were approved by shareholders at the 2023 Annual Meeting, vested on March 25, 2024, and the remaining 0.3 million of conditionally granted awards approved by shareholders at the 2023 Annual Meeting will vest in full on March 25, 2025. These amendments resulted in the acceleration of $0.8 million of stock-based compensation expense into fiscal 2023 compared to the expense that would have been recorded based on vesting under the original agreements.

Employee Stock Options

There were no employee stock options granted in 2024.

In June 2023, the 0.3 million of conditionally granted stock options to the Company's chief executive officer were approved by shareholders. These stock options have an exercise price of $6.82 per option, expire in four years and vest over a two-year period. The fair value of this award, which was determined to be $0.1 million on the effective date, is being expensed over the vesting period on a straight-line basis.

In March and June 2022, the Company granted 0.5 million and 0.1 million stock options, respectively, under the 2017 Equity Incentive Plan to its chief executive officer at an exercise price of $6.82 per option. The stock options expire in five years and were to vest over a three-year period. In April 2022, with the chief executive officer's consent, the Company rescinded and cancelled 0.4 million of the stock options granted in March 2022 because of annual limits set forth in the 2017 Equity Incentive Plan. The Company determined the fair value of the net award of 0.2 million stock options to be $0.4 million which was expensed on a straight-line basis over the vesting period.

The following are the weighted average assumptions used in calculating the fair value of the total stock options granted in 2023 and 2022 using the Black-Scholes method:

	Year Ended December 31,	
	2023	2022
Weighted average grant date value	$ 0.22	$ 2.02
Risk free rate	4.48%	2.67%
Dividend yield	—	—
Expected volatility	44.98%	54.22%
Expected term in years	2.58	3.45

The following table summarizes the Company's total stock option activity for the year ended December 31, 2024:

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Intrinsic Value $ (in thousands)
Options outstanding as of December 31, 2023	863	$ 8.13	2.2	$ —
Granted	—	—	—	—
Forfeited	—	—	—	—
Expired	(334)	9.67	—	—
Options outstanding as of December 31, 2024	529	7.17	2.2	—

Outstanding and exercisable stock options as of December 31, 2024 are as follows:

	Options Outstanding		Options Exercisable		
Exercise Prices	Number of Options Outstanding (in thousands)	Weighted Average Remaining Life (Years)	Number of Options Exercisable (in thousands)	Weighted Average Remaining Life (Years)	Intrinsic Value (in thousands)
$ 6.82	500	2.3	333	2.3	$ —
13.12	29	0.4	29	0.4	—
	529	2.2	362	2.1	$ —

The following table summarizes the Company's unvested stock option activity for the year ended December 31, 2024:

	Options (in thousands)	Weighted Average Grant Date Fair Value
Nonvested options as of December 31, 2023	337	$ 0.41
Granted	—	—
Vested	(170)	0.59
Forfeited	—	—
Nonvested options as of December 31, 2024	167	0.22

The Company recognized $0.5 million and $0.7 million in stock-based compensation expense related to stock options during the years ended December 31, 2023 and 2022, respectively. For the year ended December 31, 2024, stock-based compensation expense related to stock options was de minimis.

For stock options outstanding as of December 31, 2024, there was a de minimis amount of unrecognized stock compensation cost with a remaining recognition period of 0.3 years.

Cash received and the total intrinsic value from the exercise of stock options in 2022 was $0.2 million and $0.1 million, respectively. There were no stock options exercised in 2024 and 2023. The tax benefit associated with the exercise of these stock options in 2022 was $0.4 million. There were no stock options exercised in 2024 and 2023. The fair value of stock options vested in 2024, 2023 and 2022 totaled $0.1 million, $0.6 million and $0.7 million, respectively.

Employee Restricted Stock Units

In 2024, 2023 and 2022, the Company granted 1.8 million, 2.4 million and 1.1 million, respectively, of restricted stock units under the 2017 Equity Incentive Plan to certain members of the Company's management team. Of the restricted stock units granted in those years, 0.4 million, 1.2 million and 0.6 million, respectively, included a market vesting condition. The restricted stock awards granted in 2024, 2023 and 2022 that did not have a market vesting condition had weighted average grant date fair values of $1.00, $2.75 and $5.53 per share, respectively. The estimated fair value of these awards is recognized on a straight-line basis over the vesting period.

The restricted stock awards granted in 2024, 2023 and 2022 that did have a market vesting condition had weighted average grant date fair values of $1.13, $1.92 and $3.71 per share, respectively. For these awards, the estimated fair value was measured on the grant date and incorporated the probability of vesting occurring. The estimated fair value is recognized over the derived service period (as determined by the valuation model), with such recognition occurring regardless of whether the market condition is met. The Company determined the weighted average grant date fair value of these awards using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model with the following weighted average assumptions:

	Year Ended December 31,		
	2024	2023	2022
Trading price of common stock on measurement date	$ 1.50	$ 2.72	$ 5.33
Risk free interest rate	4.46%	4.29%	2.89%
Expected life in years	3.0	2.7	2.9
Expected volatility	97.1%	89.9%	85.1%
Expected dividend yield	—	—	—

In March and June 2022, the Company granted 0.5 million and 0.1 million restricted stock units, respectively, under the 2017 Equity Incentive Plan to the Company's chief executive officer. These restricted stock awards had a grant date fair value of $6.32 and $4.81 per share, respectively. In April 2022, with the chief executive officer's consent, the Company rescinded and cancelled 0.4 million of the restricted stock units granted in March 2022 because of annual limits set forth in the 2017 Equity Incentive Plan. The Company determined the fair value of the net award of 0.2 million restricted stock units to be $1.2 million which is being expensed on a straight-line basis over the vesting period.

The following table summarizes the Company's restricted stock unit activity for the year ended December 31, 2024:

	Options (in thousands)	Weighted Average Grant Date Fair Value
Nonvested restricted stock units as of December 31, 2023	3,057	$ 2.97
Granted	1,828	1.03
Vested	(571)	3.57
Forfeited	(506)	3.31
Nonvested restricted stock units as of December 31, 2024	3,808	1.91

The Company recorded restricted stock unit expense of $2.8 million, $3.7 million and $2.1 million during the years ended December 31, 2024, 2023 and 2022, respectively.

For restricted stock units outstanding as of December 31, 2024, there was $3.3 million of total unrecognized stock compensation cost with a remaining recognition period of 1.6 years.

Aggregate Non-Cash Stock 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 compensation recognized in the statement of operations for stock awards, employee stock options and employee restricted stock units (in thousands).

	Years Ended December 31,		
	2024	2023	2022
Cost of revenues	$ 398	$ 285	$ 305
Marketing and sales	489	616	863
General and administrative	1,621	3,730	2,033
Research and development	307	244	165
Total non-cash stock compensation	$ 2,815	$ 4,875	$ 3,366

20. Employee Retirement Plan

In 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 the Company to match employee contributions up to 5% of eligible earnings. Company contributions immediately vest. The Company matching contribution expense was $3.9 million, $3.8 million and $3.6 million for the years ended December 31, 2024, 2023 and 2022, respectively.

21. Segment Information and Concentrations

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 has one reportable segment that operates an omni-channel distribution strategy which allows the Company to offer a seamless shopping experience to its customers across multiple sales channels. The Company's one segment markets and sells products through its direct-to-consumer e-commerce channels, retail brick-and-mortar wholesale partners, Purple showrooms, and third-party online retailers.

The accounting policies for the Company's one segment are the same as those described in Note 2, *Summary of Significant Accounting Policies*. The CODM assesses performance for the segment and decides how to allocate resources based on consolidated net income or loss as reported in the consolidated statement of operations. The measure of segment assets is reported on the consolidated balance sheets as total consolidated assets. The Company does not have intra-entity sales or transfers.

The CODM uses consolidated net income (loss) to evaluate earnings generated from segment assets (return on assets) in deciding whether to reinvest profits into its single reportable segment or into other parts of the entity, such as for acquisitions. Consolidated net income (loss) is also used to monitor budget versus actual results. The monitoring of budgeted versus actual results are used in assessing the segment's performance and in establishing management's compensation.

The following table summarizes segment revenue, significant segment expenses, other segment items and segment profit or loss (in thousands):

	Year Ended December 31,		
	2024	2023	2022
Revenues, net	$ 487,877	$ 510,541	$ 573,201
Reductions (additions):			
Cost of revenues	291,303	338,716	365,110
Cost of revenues – restructuring related charges	15,442	—	—
Advertising expense	65,198	72,372	66,645
Marketing sales expense	33,778	36,741	39,388
Wholesale marketing and sales expense	20,081	23,016	21,340
Showroom marketing and sales expense	52,206	50,184	38,015
General and administrative expense	69,117	84,446	76,702
Research and development expense	12,962	11,898	8,755
Restructuring, impairment and other related charges	19,973	—	—
Loss on impairment of goodwill	—	6,879	—
Other segment items, net [(d)]	5,852	7,496	(1,230)
Tax receivable agreement income	—	—	(161,970)
Income tax expense	63	8	213,169
Net loss attributable to noncontrolling interest	(201)	(458)	(253)
Segment net loss	$ (97,897)	$ (120,757)	$ (92,470)

(d) Other segment items, net include interest expense, other (income) expense, net, loss on extinguishment of debt, and change in fair value of warrant liabilities.

The Company classifies products into two major categories: sleep products and other. Sleep products include mattresses, platforms, adjustable bases, mattress protectors, pillows and sheets. Other products include cushions and various other products. In 2024, 2023 and 2022, sales of other products accounted for less than 3% of net revenues.

The Company defines international revenues as sales to customers located outside of the United States. In 2024, 2023 and 2022, international customers accounted for less than 2% of net revenues.

The Company had one individual customer that accounted for approximately 29% and 23% of accounts receivable at December 31, 2024 and 2023, respectively, and approximately 13%, 10% and 15% of net revenue during the years ended December 31, 2024, 2023 and 2022, respectively.

The Company currently obtains materials and components used in production from outside sources. As a result, the Company is dependent upon suppliers that in some instances, are the sole source of supply. The Company is continuing efforts to dual-source key components. The failure of one or more of the Company's suppliers to provide materials or components on a timely basis could significantly impact the results of operations. The Company believes that it can obtain these raw materials and components from other sources of supply in the ordinary course of business, although an unexpected loss of supply over a short period of time may not allow for the replacement of these sources in the ordinary course of business.

The Company maintains its cash balances in financial institutions based in the United States that are insured by the Federal Deposit Insurance Corporation (FDIC) up to $250,000 for each financial institution per entity. At times, the Company's cash balance deposited at financial institutions exceed the federally insured deposit limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk related to these deposits.

22. Income Taxes

The Company's (loss) income before income taxes of $(98.0) million, $(121.2) million and $120.4 million during the years ended December 31, 2024, 2023 and 2022, respectively, consisted entirely of income earned in the United States.

Income tax expense for the years ended December 31, 2024, 2023 and 2022 consist of the following (in thousands):

	Year ended December 31,		
	2024	**2023**	**2022**
Current:			
Federal	$ (114)	$ (167)	$ (1,030)
State	177	217	344
Total current	63	50	(686)
Deferred:			
Federal	—	(42)	169,180
State	—	—	44,675
Total deferred	—	(42)	213,855
Income tax expense	$ 63	$ 8	$ 213,169

Income tax expense differs from the amount computed at the federal statutory corporate income tax rate as follows (in thousands):

	Year ended December 31,		
	2024	**2023**	**2022**
Tax (provision) benefit at Federal statutory rate	$ (20,587)	$ (25,454)	$ 25,293
State income tax provision (benefit), net of federal benefit	(5,238)	(6,235)	292
Noncontrolling interest	44	96	59
Tax receivable agreement liability	—	—	(34,014)
Change in fair value – warrant liabilities	(736)	—	(912)
Change in valuation allowance	26,963	35,592	189,870
Remeasurement due to rate change	(586)	(31)	2,530
Research and development tax credits	(482)	(1,113)	(1,763)
Remeasurement of investment in Purple LLC	—	(4,028)	29,822
Nondeductible compensation	315	281	—
Stock-based compensation	699	605	2,303
Other	(329)	295	(311)
Income tax expense	$ 63	$ 8	$ 213,169

Deferred income taxes at December 31, 2024 and 2023 consisted of the following (in thousands):

	2024	2023
Basis difference in Purple LLC investment	$ 153,872	$ 156,521
Tax over book basis in capital contributions	79,400	78,158
Start-up costs	361	405
Stock-based compensation	635	999
Interest carryforwards	6,503	2,314
Research and development tax credits	3,590	2,712
Charitable contribution carryforwards	159	121
Net operating losses	82,137	62,550
Total net deferred income tax asset	326,657	303,780
Less: Valuation allowance	(326,657)	(303,780)
Net deferred income tax asset	$ —	$ —

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 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 primary factors impacting expected tax are tax exempt income from the tax receivable agreement, remeasurement of the deferred taxes associated with the investment in Purple LLC, and the impact of recording a valuation allowance.

During 2022, the Company entered into a three-year cumulative loss position and determined that it would not be able to generate sufficient taxable income to utilize its deferred tax assets. Based on this and other negative evidence, the Company concluded it was more likely than not that its deferred tax assets would not be realized and that a full valuation allowance for its deferred tax assets was required. At both December 31, 2024 and 2023, the Company continued to maintain a full valuation allowance on its deferred tax assets based on its three-year cumulative loss position.

In connection with the Business Combination, the Company entered into a tax receivable agreement 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 agreement.

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 liability may be 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 liability to be recorded will depend on the price of the Company's Class A common stock at the time of the relevant redemption or exchange.

During 2022, the Company concluded that the tax receivable agreement liability was not probable and correspondingly reduced its tax receivable agreement liability to zero. As a result, the Company recognized tax receivable agreement income of $162.0 million in the Company's consolidated statement of operations for the year ended December 31, 2022. There was no tax receivable agreement liability recorded during 2024 or 2023.

As of December 31, 2024, the Company estimates it will have approximately $65.2 million of tax-affected U.S. net operating loss carryforwards ("NOLs"), of which $64.7 million do not have an expiration date and $0.5 million expire in 2037. The Company also had approximately $16.9 million of tax-affected NOL carryforwards to reduce future state taxable income at December 31, 2024, which have various carryforward periods and begin to expire in 2026, if unused. Under Section 382 and related provisions of the Internal Revenue Code of 1986, as amended (the "Code"), if a corporation undergoes an "ownership change", the corporation's ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes to offset its post-change income may be limited. Generally, an ownership change is defined as a change in its equity ownership by certain stockholders over a three-year period of greater than 50 percentage points (by value). If finalized, Treasury Regulations currently proposed under Section 382 of the Code may further limit our ability to utilize our pre-change NOLs or other tax attributes if we undergo a future ownership change. Thus, our ability to utilize carryforwards of our net operating losses, including net operating losses acquired from the Intellibed acquisition, and other tax attributes to reduce future tax liabilities may be substantially restricted. As of December 31, 2024, we completed a study to assess whether an ownership change has occurred, as defined by IRC Section 382, or whether there have been ownership changes since the Company's formation. The results of this study indicate that we experienced one ownership change on December 31, 2021. We may also experience ownership changes in the future as a result of subsequent shifts in our stock ownership. As a result, if we generate taxable income, our ability to use our pre-change NOL and tax credits carryforwards to reduce U.S. federal and state taxable income may be subject to further limitations, which could result in increased future tax liabilities to us. Moreover, our federal NOLs from years prior to 2018 can be carried forward for a maximum of 20 years from the year in which the NOL was incurred, and our state NOLs are subject to carryforward limitations that vary from state to state; as a result, all or a portion of those carryforwards could expire before being available to reduce future income tax liabilities. Refer to Note 17 – *Stockholders' Equity – NOL Rights Plan* for information on plan adopted by the Board to preserve Current NOLs.

The Company estimates federal research and development ("R&D") tax credit carryforwards will be approximately $2.6 million as of December 31, 2024, which begin to expire in 2042, if unused. The Company also had approximately $1.8 million of state tax credit carryforwards to reduce future state tax liability at December 31, 2024, which have various carryforward periods and begin to expire in 2030, if unused.

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 sheets.

The following table summarizes the Company's unrecognized tax benefits for the years ended December 31, 2024, 2023 and 2022 (in thousands):

	Unrecognized Tax Benefits
Unrecognized tax benefits as of December 31, 2021	$ —
Increase due to current year tax positions	177
Increase due to prior year tax positions	264
Increase due to acquisition	152
Unrecognized tax benefits as of December 31, 2022	593
Increase due to current year tax positions	215
Increase due to prior year tax positions	291
Decrease due to lapse of statute of limitations	(153)
Unrecognized tax benefits as of December 31, 2023	946
Increase due to current year tax positions	111
Increase due to prior year tax positions	109
Decrease due to lapse of statute of limitations	(114)
Unrecognized tax benefits as of December 31, 2024	$ 1,052

The Company remains subject to income tax examinations for its U.S. federal income taxes for 2018 through 2024. The Company also remains subject to income tax examinations for U.S. state and local income taxes generally for 2018 through 2024.

23. Subsequent Events

New Lease Agreement

In January 2025, the Company entered into a new lease agreement for a distribution and fulfilment center located in West Valley City, Utah. The lease term commenced in January 2025 and will expire in May 2030. Using the applicable discount rate, the new lease resulted in an ROU asset of $6.3 million and an increase to operating lease liabilities of $6.8 million. The landlord provided the Company with a tenant improvement allowance of $0.6 million in connection with the new lease agreement, for which the related expenditures to be paid by the Company will be reimbursed by the landlord.

NASDAQ Listing Qualification Notice

On February 4, 2025, the Company received written notice from the Listing Qualifications Department of The NASDAQ Stock Market LLC ("Nasdaq") that it had regained compliance with Listing Rule 5550(a)(2) ("Bid Price Rule") since the closing bid price of the Company's common stock was at or above the $1.00 minimum price per share for a period of ten consecutive business days, from January 21, 2025, to February 3, 2025.

As previously reported, the Company was notified on November 11, 2024, that it had fallen out of compliance with the Bid Price Rule, because its common stock failed to maintain the required minimum bid price of $1.00 per share for a period of 30 consecutive business days.

Class Action Lawsuits

On February 10, 2025, a shareholder of the Company filed a class action lawsuit in the Court of Chancery of the State of Delaware against Purple Inc. and the individual members of the Board alleging that Section 29 of the NOL Rights Plan violates Delaware General Corporate Law Sections 102(b)(7) and 141(a). The suit seeks declaratory relief, attorneys' fees, costs, and other relief on behalf of the class. The Company denies all allegations and intends to vigorously defend against these claims.

On February 26, 2025, a consumer filed a class action lawsuit in the U.S. District Court, Eastern District of New York, against Purple LLC alleging website accessibility violations under the ADA and state law. The lawsuit seeks declaratory relief, class certification, attorneys' fees, costs, and other relief on behalf of the class. The Company denies all allegations and intends to vigorously defend against these claims.

Amendment to Amended and Restated Credit Agreement

On March 12, 2025, the Loan Parties entered into an Amendment to Amended and Restated Credit Agreement (the "Amendment") with the 2025 Term Loan Lenders (as defined in the Amendment), which amends the Amended and Restated Credit Agreement. The Amendment, among other things, provides for an increase in the initial principal amount of the senior secured term loan facility by $19.0 million (the "Incremental Loan") from an aggregate principal amount of up to $61.0 million (the "Initial Loan") to an initial aggregate principal amount of up to $80.0 million (the "Loan"), and allows the Loan Parties to request one or more additional term loans from the Lenders in an initial aggregate principal amount not to exceed $20.0 million on terms to be agreed to by the parties and subject to the approval of the Required Lenders (as defined in the Amended and Restated Credit Agreement). The Incremental Loan will bear interest at the same rate as the Initial Loan, which may be paid in cash or in kind at the Company's option.

The Amendment also provides that (i) the Incremental Loan shall be senior in right of repayment to the Initial Term Loan and (ii) in any voluntary or mandatory prepayment in part or in full of the Incremental Loan for any reason, the Company will be required to pay an amount equal to the greater of (i) the Make-Whole Premium (as defined below) and (ii) 2.50% of the aggregate principal amount of the Incremental Loan so prepaid, replaced or assigned. The "Make-Whole Premium" is determined as follows: on the date of prepayment, the excess of (A) (x) 100% of the principal amount of such Incremental Loan, plus (y) the present value at such date of all remaining scheduled interest payments due on such Incremental Loan from the prepayment date through the Maturity Date, assuming that all such interest accrues at the Make-Whole Premium Rate (as defined in the Amendment), computed using a discount rate equal to the Treasury Rate as of such prepayment date plus 50 basis points, over (B) the principal amount of such Incremental Loan on such prepayment date.

In addition, the Company also paid fees of (i) 2% of the outstanding principal and accrued and unpaid interest under the Initial Loan held by the 2025 Term Loan Lenders, paid in kind and (ii) 2% of the initial aggregate principal amount of the Incremental Loan paid to the 2025 Term Loan Lenders, deducted from the proceeds at closing.

In connection with the Amendment, the Company issued to the 2025 Term Loan Lenders warrants (the "Warrants") to purchase 6,229,508 shares of the Company's Class A Stock at a price of $1.50 per share, subject to certain adjustments. The warrants include full-ratchet anti-dilution protections, subject to a floor of $0.6979 with respect to adjustments to the exercise price. The Warrants expire on March 12, 2035. The foregoing summary of the Warrants does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Warrants, a form of which is attached as Exhibit 10.42 to this report and is incorporated by reference herein.

In connection with the issuance of the Warrants, on March 12, 2025, the Company entered into a Second Amended and Restated Registration Rights Agreement (the "Registration Rights Agreement") with CCP, Blackwell, and Coliseum Capital Co-Invest III, L.P., (the "Holders"), providing for the registration under the Securities Act of 1933, as amended (the "Securities Act") of the Warrants, the shares issuable upon the exercise of the Warrants, other warrants held by the Holders (and shares issuable upon exercise thereof) and the Class A Stock held by the Holders as of such date (the "Registrable Securities"), subject to customary terms and conditions. The Registration Rights Agreement entitles the Holders to demand registration of the Registrable Securities and also to piggyback on the registration of Company securities by the Company and other Company securityholders. The Company will be responsible for the payment of the Holders' expenses in connection with any offering or sale of Registrable Securities by the Holders, including underwriting discounts or selling commissions, placement agent or broker fees or similar discounts, commissions or fees relating to the sale of certain Registrable Securities.

The Registration Rights Agreement provides that on or prior to April 10, 2025, or May 25, 2025 if Form S-3 is not then available to the Company, the Company will be required to prepare and file with the SEC pursuant to Rule 415 of the Securities Act a registration statement to register the resale of the Registrable Securities.

Special Incentive Bonus Equity Grants

On March 12, 2025, the Board unanimously approved special incentive bonus equity grants to certain members of the Company's senior leadership team, including, among others, Todd Vogensen, Chief Financial Officer, John J. Roddy, Chief Human Resources Officer, and Eric S. Haynor, Chief Operating Officer. Mr. Vogensen, Mr. Roddy, and Mr. Haynor will receive grants of 450,000, 175,000, and 350,000 restricted stock units, respectively, pursuant to the terms of restricted stock unit grant agreements and the Company's 2017 Equity Incentive Plan. Such restricted stock units will vest at the sooner of (a) a change in control, as defined in the award agreements, or (b) March 12, 2028, provided that if the recipient's employment with the Company is involuntarily terminated other than for cause, a pro rata number of restricted stock units will vest as of such termination date.

Amendment to Senior Leadership Team Special Recognition Bonus

On January 26, 2024, the Board unanimously approved a special recognition bonus payment to certain members of the Company's senior leadership team, including, among others, Todd Vogensen, Chief Financial Officer, John J. Roddy, Chief People Officer, and Eric S. Haynor, Chief Operating Officer. Each participant is eligible to earn a special recognition bonus payment equal to 15 months of their regular salary. The special recognition bonus payment is payable, subject to the employee's continued employment with the Company, 10% on August 1, 2024, 20% on February 1, 2025, and 70% on August 1, 2025.

On March 12, 2025, the Board amended the special recognition bonus payments and entered into letter agreements (the "Letter Agreements") with the participants to provide that if a change in control occurs prior to August 1, 2025 and the participant remains employed with the Company until the consummation of the change in control, then 100% of the remaining special recognition bonus payment for such participant shall vest and become payable upon the consummation of such change in control.

Amendment to Chief Executive Officer Special Recognition Bonus

On January 26, 2024, the Board unanimously approved an amendment to the amended and restated employment agreement of Robert T. DeMartini, the Company's Chief Executive Officer (the "2024 CEO Amendment"). Under the 2024 CEO Amendment, the Company agreed that, among other things, Mr. DeMartini will be eligible to earn an incremental aggregate cash bonus equal to $850,000 that will vest 10% on August 1, 2024, 20% on February 1, 2025, and 70% on August 1, 2025, provided he continues to be employed by the Company and subject to Mr. DeMartini's obligation to repay any such bonus actually received in the event his employment is terminated other than by the Company without cause prior to June 30, 2026, subject to certain conditions.

On March 12, 2025, the Board adopted an amendment (the "2025 CEO Amendment") to Mr. DeMartini's amended and restated employment agreement, as amended by the 2024 CEO Amendment (the "Amended and Restated Employment Agreement"), to provide that if a change in control occurs prior to August 1, 2025 and Mr. DeMartini remains employed by the Company until the consummation of the change in control, then 100% of the unpaid cash bonus payment for Mr. DeMartini shall vest and become payable upon the consummation of such change in control and the bonus repayment condition tied to his employment with the Company until June 30, 2026 shall no longer be applicable. Other than the changes provided by the 2025 CEO Amendment, no other changes were made to Mr. DeMartini's Amended and Restated Employment Agreement.

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities 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.

March 13, 2025

By: /s/ Robert T. DeMartini
Name: Robert T. DeMartini
Title: Chief Executive Officer
(Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Robert T. DeMartini and Tricia S. McDermott-Spikes, jointly and severally, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her, and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises hereby ratifying and confirming all that said attorneys-in-fact and agents, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

Name	Position	Date
/s/ Robert T. DeMartini Robert T. DeMartini	Chief Executive Officer and Director *(Principal Executive Officer)*	March 13, 2025
/s/ Todd E. Vogensen Todd E. Vogensen	Chief Financial Officer *(Principal Financial Officer)*	March 13, 2025
/s/ George T. Ulrich George T. Ulrich	Vice President, Accounting and Financial Reporting *(Principal Accounting Officer)*	March 13, 2025
/s/ Adam L. Gray Adam L. Gray	Chairman of the Board of Directors	March 13, 2025
/s/ S. Hoby Darling S. Hoby Darling	Director	March 13, 2025
/s/ Gary T. DiCamillo Gary T. DiCamillo	Director	March 13, 2025
/s/ Claudia Hollingsworth Claudia Hollingsworth	Director	March 13, 2025
/s/ R. Carter Pate R. Carter Pate	Director	March 13, 2025
/s/ D. Scott Peterson D. Scott Peterson	Director	March 13, 2025
/s/ Erika Serow Erika Serow	Director	March 13, 2025

Exhibit 4.2

DESCRIPTION OF REGISTERED SECURITIES

As of December 31, 2024, Purple Innovation, Inc. (the "company," "we," "us" and "our") had two class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended: (i) our Class A Common Stock, par value of $0.0001 per share, and (ii) Series C Junior Participating Preferred Stock Purchase Rights (the "Rights"), both of which are listed on the NASDAQ Global Select Market..

Description of Class A Common Stock

The following description of the rights of the holders of our Class A Common Stock summarizes certain provisions of our Second Amended and Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), and our Third Amended and Restated Bylaws (the "Bylaws"). The description is intended as a summary, and is qualified in its entirety by reference to our Certificate of Incorporation and our Bylaws, copies of which have been included as exhibits to this Annual Report on Form 10-K.

General

Our authorized capital stock consists of: (a) 300 million shares of common stock, which consists of (i) 210 million shares of Class A Common Stock, par value of $0.0001 per share, and (ii) 90 million shares of Class B Common Stock, par value of $0.0001 per share; and (b) 5 million shares of undesignated preferred stock, $0.0001 par value per share.

Listing

Our Class A Common Stock is listed and principally traded on the NASDAQ Global Select Market under the symbol "PRPL."

Voting Rights

Holders of Class A Common Stock are entitled to one vote for each share held on all matters to be voted on by stockholders. Unless specified in our Second Amended and Restated Certificate of Incorporation or Amended and Restated Bylaws, or as required by applicable provisions of the Delaware General Corporation Law ("DGCL") or applicable stock exchange rules, the affirmative vote of a majority of our common shares that are voted is required to approve any such matter voted on by our stockholders. Directors are elected by a majority of the votes cast at an annual meeting of stockholders by holders of our common stock. There is no cumulative voting with respect to the election of directors, with the result that the holders of more than 50% of the shares voted for the election of directors can elect all of the directors.

Dividends

Holders of Class A Common Stock are entitled to receive ratable dividends when, as and if declared by the board of directors out of funds legally available therefor.

Liquidation

In the event of a liquidation, dissolution or winding up of the Company, holders of our Class A Common Stock are entitled to share ratably in all assets remaining available for distribution to them after payment of liabilities and after provision is made for each class of stock, if any, having preference over the common stock. Holders of our Class A Common Stock have no preemptive or other subscription rights, other than as described below in the section entitled "Preemptive or Other Rights." There are no sinking fund provisions applicable to the Class A Common Stock.

Preemptive or Other Rights

On February 1, 2018 the Company entered into a subscription agreement (the "Coliseum Subscription Agreement") with CCP and Blackwell (together the "Coliseum Investors"), pursuant to which CCP agreed to purchase from the Company 2,900,000 shares of Class A Common Stock of the Company at a purchase price of $10.00 per share and Blackwell agreed to purchase from the Company 1,100,000 shares of Class A Common Stock of the Company at a purchase price of $10.00 per share (the "Coliseum Private Placement"). The shares of the Company's common stock issued in the Coliseum Private Placement were not registered under the Securities Act in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act.

In connection with the Coliseum Private Placement, we granted to the Coliseum Investors preemptive rights for the future sale of Company securities. So long as the Coliseum Investors hold at least 50% of the shares of Class A Common Stock acquired in the Coliseum Private Placement, the Coliseum Investors are entitled to purchase up to their pro rata share of all equity securities issued by the Company, subject to certain exceptions.

In addition, the Coliseum Subscription Agreement provides the Coliseum Investors (and any other funds or accounts managed by Coliseum Capital Management, LLC) with a right of first refusal to provide all, but not less than all, of any of the following financings by the Company or any of its subsidiaries: (i) preferred equity financing with a preference to or over any of the terms of the Company's common stock and (ii) any debt financing with a principal amount outstanding (together with all other debt provided by lender or group of lenders) greater than or equal to $10 million, other than (x) the replacement or refinancing of existing indebtedness or (y) an asset based loan on customary terms with an all in interest rate of not greater than 5% per year, by the Company or any of its subsidiaries.

Other than the Coliseum Investors, stockholders will have no preemptive or other subscription rights and there will be no sinking fund or redemption provisions applicable to the Class A Common Stock and Class B Common Stock.

Registration Rights

On January 23, 2024, the Company entered into an Amended and Restated Registration Rights Agreement with CCP, Blackwell, Coliseum Capital Co-Invest III, L.P., Harvest Master, Harvest Partners, and HSCP (the "Warrant Holders"), providing for the registration under the Securities Act of 1933, as amended (the "Securities Act") of certain warrants issued to the Warrant Holders (the "2024 Warrants") , the shares issuable upon the exercise of the 2024 Warrants and the Class A Stock held by the Warrant Holders as of such date, subject to customary terms and conditions. On March 10, 2025, the Company entered into a Second Amended and Restated Registration Rights Agreement (the "Registration Rights Agreement") with the Warrant Holders, providing for the registration of the 2024 Warrants and certain additional warrants issued to the Warrant Holders (the "2025 Warrants" and, together with the 2024 Warrants, the "Warrants"), the shares of Common Stock issuable upon the exercise of the Warrants, and the Class A Common Stock held by the Warrant Holders as of such date (the "Registrable Securities"). The Registration Rights Agreement entitles the Warrant Holders to demand registration of the Registrable Securities and also to piggyback on the registration of Company securities by the Company and other Company securityholders. The Company will be responsible for the payment of the Warrant Holders' expenses in connection with any offering or sale of Registrable Securities by the Warrant Holders, including underwriting discounts or selling commissions, placement agent or broker fees or similar discounts, commissions or fees relating to the sale of certain Registrable Securities.

Transfer Agent

Pacific Stock Transfer, Inc is the transfer agent and registrar for our common stock.

Certain Anti-Takeover Provisions of Delaware Law and our Certificate of Incorporation and Bylaws

DGCL Provisions. We are subject to the provisions of Section 203 of the DGCL regulating corporate takeovers. This statute prevents certain Delaware corporations, under certain circumstances, from engaging in a "merger" with:

- a stockholder who owns 15% or more of our outstanding voting stock (otherwise known as an "interested stockholder");
- an affiliate of an interested stockholder; or
- an associate of an interested stockholder, for three years following the date that the stockholder became an interested stockholder.

A “merger” includes a merger or sale of more than 10% of our assets. However, the above provisions of Section 203 do not apply if:

- our board of directors approves the transaction that made the stockholder an “interested stockholder,” prior to the date of the transaction;
- after the completion of the transaction that resulted in the stockholder becoming an interested stockholder, that stockholder owned at least 85% of our voting stock outstanding at the time the transaction commenced, other than statutorily excluded shares of common stock; or
- on or subsequent to the date of the transaction, the merger is approved by our board of directors and authorized at a meeting of its stockholders, and not by written consent, by an affirmative vote of at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

Advance Notice Requirements for Stockholder Proposals and Director Nominations. Our Bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders and specify certain requirements regarding the form and content of a stockholder’s notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed.

Additional Authorized Shares of Capital Stock. The additional shares of authorized common stock and preferred stock available for issuance under our Certificate of Incorporation, could be issued at such times, under such circumstances and with such terms and conditions as to impede a change in control.

Issuance of Undesignated Preferred Stock. Our board of directors has the authority, without further action by the stockholders, to issue shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock would enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or other means.

Limitations on Stockholder Ability to Act by Written Consent or Call Special Meetings. The Certificate of Incorporation eliminates the right of stockholders to act by written consent without a meeting. Further, the Bylaws and Certificate of Incorporation provide that special meetings of stockholders may be called only by the Chairman of our board of directors, our Chief Executive Officer, or our board of directors acting pursuant to a resolution adopted by a majority of our board of directors.

Choice of Forum. Our Certificate of Incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the DGCL, our Certificate of Incorporation or our Bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine.

Description of Series C Junior Participating Preferred Stock Purchase Rights

General

On June 27, 2024, our board of directors adopted and we entered into a limited-duration stockholder rights agreement (the "NOL Rights Plan") by and between the Company and Pacific Stock Transfer Company, as rights agent, with a stated expiration date of June 30, 2025. Our board of directors adopted the the NOL Rights Plan to protect stockholder value by attempting to safeguard the Company's ability to use its June 30, 2024 estimated $238 million of net operating losses (the "Current NOLs") to reduce potential future federal income tax obligations from becoming substantially limited by future ownership changes in our common stock under under Section 382 of the Internal Revenue Code of 1986, as amended ("Code Section 382").

The NOL Rights Plan provided for the issuance of a dividend of Right for each share of common stock outstanding on July 26, 2024. Our stockholders ratified the NOL Rights Plan on October 15, 2024.

The following is a summary description of the Purchase Rights and the other material terms and conditions of the NOL Rights Plan. This summary is intended to provide a general description only, does not purport to be complete and is qualified in its entirety by reference to, and should be read in conjunction with, the complete text of the NOL Rights Plan. All capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the NOL Rights Plan.

Applicability of NOL Rights Plan

Under the NOL Rights Plan, since July 26, 2024, each share of our Common Stock has carried with it one Right, until the earlier of the the Distribution Time (as defined below) or expiration of the Rights, as described below. In general, any Person that, together with all Affiliates and Associates (each as defined in the NOL Rights Plan), acquires greater than 4.9% of our outstanding Common Stock after June 27, 2024 (the date of the board of directors' adoption of the NOL Rights Plan), will be subject to significant potential dilution. In addition, the NOL Rights Plan provides that stockholders that owned greater than 4.9% of our Common Stock on June 27, 2024 (such stockholders are referred to as "Grandfathered Persons" in the NOL Rights Plan) will not trigger the NOL Rights Plan as long as they do not (i) acquire additional shares of our Common Stock representing one-half of one percentage point or more of our outstanding shares of Common Stock at the time of such acquisition or (ii) fall under 4.9% ownership of our outstanding Common Stock and then re-acquire shares of our Common Stock that in the aggregate equal 4.9% or more of our outstanding Common Stock.

Any Person that acquires shares of our Common Stock in violation of these percentage ownership limitations is deemed an "Acquiring Person." The definition of "Acquiring Person" contains several exemptions, including for (i) the Company or any subsidiary of the Company, in each case including in its fiduciary capacity, or any employee benefit plan of the Company or of any subsidiary of the Company, or any entity or trustee holding (or acting in a fiduciary capacity in respect of) our Common Stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or of any subsidiary of the Company; (ii) any officer, director or employee of the Company or any subsidiary, solely in respect of such Person's status or authority as such (including any fiduciary capacity); and (iii) any other Person or group whose acquisition is determined by our board of directors, in our board of directors' sole discretion, to not jeopardize our Current NOLs or is otherwise in the Company's best interests.

The Rights

From the record date of July 26, 2024 until the Distribution Time or earlier expiration of the Rights, the Rights will trade with, and be inseparable from, our Common Stock. New Rights will also accompany any new shares of Common Stock that are issued after July 26, 2024, until the Distribution Time or earlier expiration of the Rights.

Exercise Price

Each Right will allow its holder (other than the Acquiring Person or its Affiliates or Associates) to purchase from our Company one one-thousandth of a share of Series C Junior Participating Preferred Stock (each, a "NOL Preferred Share") for $2.75, subject to adjustment (the "Exercise Price") once the Rights become exercisable. This fraction of a NOL Preferred Share will entitle the stockholder to approximately the same dividend, voting and liquidation rights as would one share of our Common Stock. Prior to exercise, the Rights do not entitle its holder any dividend, voting or liquidation rights.

Exercisability

Unless the NOL Rights Plan is terminated, the Rights are exchanged or the Rights are redeemed, the Rights will only be exercisable by holders (other than the Acquiring Person or its Affiliates or Associates) upon the earlier of (i) 10 days after the first public announcement that a Person or group of Persons has become an Acquiring Person and (ii) the close of business on the 10^{th} business day (or such later date as may be determined by the board of directors) after the date that a tender or exchange offer by any Person is first published, if such Person would become an Acquiring Person if such tender or exchange offer is completed.

We refer to the date when the Rights become exercisable as the "Distribution Time." Until that date or earlier expiration of the Rights, our Common Stock certificates will also evidence the Rights, and any transfer of shares of our Common Stock will constitute a transfer of Rights. After the Distribution Time, the Rights will separate from the Common Stock and be evidenced by book-entry credits or by Rights certificates that we will mail to all eligible holders of Common Stock. After the Distribution Time, any Rights held by an Acquiring Person, or any Affiliates or Associates of the Acquiring Person, will be void and will not be exercisable.

Consequences of a Person or Group Becoming an Acquiring Person

If a Person or group becomes an Acquiring Person, all holders of Rights, except the Acquiring Person, or any Affiliates or Associates of the Acquiring Person, may, upon payment of the Exercise Price, purchase NOL Preferred Shares with an aggregate market value of twice the Exercise Price, based on the "Current Market Price" (as defined in the NOL Rights Plan) of our Class A Stock on the Distribution Time.

Exchange

After a Person or group becomes an Acquiring Person, but before such Acquiring Person holds more than 50% of our Common Stock, our board of directors, in its sole discretion, may extinguish the Rights by exchanging one share of our Class A Stock for each Right, other than Rights held by the Acquiring Person or any Affiliates or Associates of the Acquiring Person.

Redemption

Our board of directors may redeem the Rights for $0.0001 per Right at any time before the Distribution Time. If our board of directors redeems any Rights, it must redeem all of the Rights. Once the Rights are redeemed, the only right of the holders of Rights will be to receive the redemption price of $0.0001 per Right. The redemption price will be adjusted if we have a stock split or stock dividends on our Common Stock.

Preferred Share Provisions

Each NOL Preferred Share, if issued:

- will not be redeemable;
- will entitle holders to quarterly dividends equal to the greater of $1.00 per share or 1,000 times the amount of all cash dividends (plus 1,000 times the amount of non-cash dividends or other distributions) paid on one share of our Common Stock;
- will entitle holders upon liquidation to receive $1,000 per share plus accrued and unpaid dividends per share; and
- will vote together with the Common Stock as one class on all matters submitted to a vote of stockholders of the Company and will have the same voting power as 1,000 shares of Common Stock.

Expiration

The Rights will expire on the earliest to occur of (i) the close of business on June 30, 2025; (ii) the time at which the Rights are redeemed (as discussed below) or exchanged by the Company; (iii) the repeal of Code Section 382, if our board of directors determines that the NOL Rights Plan is no longer necessary for the preservation of the Current NOLs; or (v) the beginning of a taxable year of the Company to which our board of directors determines that no Current NOLs may be carried forward.

Anti-Dilution Provisions

The Exercise Price payable, and the number of shares of Common Stock or NOL Preferred Shares or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution:

- in the event a stock dividend is declared on any outstanding (i) Common Stock payable in Class A Stock or (ii) NOL Preferred Shares payable in NOL Preferred Shares;

- in the event of any subdivision of (i) Common Stock or any combination of Common Stock into a smaller number of shares or (ii) NOL Preferred Shares or any combination of NOL Preferred Shares into a smaller number of shares; or

- upon the reclassification of (i) any Common Stock (including any such reclassification in connection with a consolidation or merger) or (ii) any NOL Preferred Shares (including any such reclassification in connection with a consolidation or merger).

Amendments

The terms of the NOL Rights Plan may be amended by our board of directors without the consent of the holders of the Rights. After the Distribution Time, our board of directors may not amend the NOL Rights Plan in a way that adversely affects holders of the Rights (other than an Acquiring Person, or an Affiliate or Associate of an Acquiring Person).

Additional Information

For additional information on the NOL Rights Plan, see our Registration Statement on Form 8-A filed with the SEC on June 28, 2024. The NOL Rights Plan is filed as an exhibit to our accompanying Annual Report on Form 10-K.

Exhibit 10.41

FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment"), dated as of March 12, 2025, is entered into among Purple Innovation, LLC, a Delaware limited liability company (the "Company" or "Borrower"), Purple Innovation, Inc., a Delaware corporation ("Holdings"), Intellibed, LLC, a Delaware limited liability company ("Intellibed", and together with Holdings, the "Guarantors"), each lender party hereto (collectively, the "2025 Term Loan Lenders" and individually, a "2025 Term Loan Lender"), and CSC Delaware Trust Company (f/k/a Delaware Trust Company), as Administrative Agent (as further defined below).

PRELIMINARY STATEMENTS

A. Reference is hereby made to that certain Amended and Restated Credit Agreement, dated as of January 23, 2024 (the "Existing Credit Agreement," and, as amended by this Amendment, the "Amended Credit Agreement"), by and among Borrower, the Guarantors, the lenders from time to time party thereto (the "Lenders") and the Administrative Agent (in such capacity, together with its successors or assigns in such capacity, the "Administrative Agent").

B. The Company has requested that, pursuant to Section 2.18 of the Existing Credit Agreement, a Commitment Increase in an aggregate principal amount of $19,000,000 be made available to Borrower and the 2025 Term Loan Lenders have agreed, upon the terms and subject to the conditions set forth herein, (i) that each 2025 Term Loan Lender with a Commitment for 2025 Term Loans will make 2025 Term Loans to the Borrower on the First Amendment Effective Date (as defined in Section 3 hereof) in the amount of such Lender's Commitment therefor, (ii) that the proceeds of the 2025 Term Loans shall be used by the Borrower to (x) pay fees, premiums and expenses relating to the incurrence of the 2025 Term Loans and the transactions contemplated by this Amendment and/or (y) finance working capital, capital expenditures, and other business requirements of the Borrower, and for other purposes not prohibited by the Amended Credit Agreement and (iii) to amend the Existing Credit Agreement as may be necessary or appropriate, in the opinion of the Borrower and the Administrative Agent, to effect this Amendment, as set forth in Section 2 hereof.

C. Pursuant to and in accordance with Section 11.01 of the Existing Credit Agreement, each of the 2025 Term Loan Lenders party hereto, constituting the Required Lenders, has agreed to amend the Existing Credit Agreement as set forth in Section 2 hereof, subject to the conditions set forth herein.

Accordingly, in consideration of the mutual agreements contained in the Amended Credit Agreement and in this Amendment (together, the "Amendment Documents"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Unless otherwise defined in this Amendment, capitalized terms used this Amendment, including in the preamble and preliminary statements hereto, and not otherwise defined herein shall have the meanings ascribed to such terms in the Amended Credit Agreement.

2. Amendments to Existing Credit Agreement. Effective as of the First Amendment Effective Date:

(a) The Existing Credit Agreement is amended pursuant to this Amendment to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the document attached as Exhibit A hereto (except that any Schedule or Exhibit to the Existing Credit Agreement not amended pursuant to the terms of this Amendment or otherwise included as part of Exhibit A hereto shall remain in effect without any amendment or other modification thereto).

(b) The Borrower shall have paid a fee to each Lender party hereto (the "Amendment Fee"), payable-in-kind and fully earned on the First Amendment Effective Date, by adding the amount thereof to the then-outstanding principal amount of the Initial Term Loans, and on such date the then-outstanding principal amount of the Initial Term Loans shall be deemed automatically increased by the Amendment Fee, in an amount equal to 2.00% of the sum of (i) such Lender's outstanding principal amount of Initial Term Loans as of the First Amendment Effective Date, plus (ii) the amount of accrued and unpaid interest on such Initial Term Loans as of the First Amendment Effective Date. For the avoidance of doubt, interest accruing on the Initial Term Loans on and after the First Amendment Effective Date for the covered Interest Period will be based on the Initial Term Loans as increased pursuant to the Amendment Fee.

(c) Subject to Section 15 of this Amendment, Schedule 2.01 attached as Exhibit C to this Amendment shall amend, restate and replace the corresponding Schedule or shall be added to the Amended Credit Agreement, as applicable. Each of the parties hereto agrees that, after giving effect to this Amendment, the revised Commitments of each Lender (as of the First Amendment Effective Date) shall be as set forth on the amended and restated Schedule 2.01 included on Exhibit C attached hereto.

3. Conditions to Effectiveness of Amendment. This Amendment shall become effective as of the date first written above (the "First Amendment Effective Date") upon the satisfaction (or written waiver by Required Lenders) of the following conditions precedent (in each case, subject to Section 15 of this Amendment):

(a) The Administrative Agent shall have received this Amendment duly executed and delivered by the Lenders constituting the Required Lenders and the Loan Parties;

(b) The Administrative Agent's and the 2025 Term Loan Lenders' receipt of items (iii), (v) through (x) and (xii), below and the Lenders' receipt of items (i), (ii), (iii), (iv) and (xii) below, each properly executed by a Responsible Officer of the applicable Loan Party, each dated as of the First Amendment Effective Date (or, in the case of certificates of governmental officials, a recent date before the First Amendment Effective Date) and each in form and substance reasonably satisfactory to the Required Lenders and their respective legal counsel:

(i) a Warrant (substantially in the form of Exhibit B attached hereto) (each an "Incremental Warrant") issued to each 2025 Term Loan Lender, duly executed and delivered by an Authorized Officer of Holdings;

(ii) a Note executed by the Borrower in favor of each 2025 Term Loan Lender requesting a Note in the amount of such 2025 Term Loan Lender's Commitment with respect to the 2025 Term Loans being made by such 2025 Term Loan Lender;

(iii) a Secretary's certificate for each Loan Party certifying as to (A) true and complete copies of all Organization Documents of such Loan Party attached thereto, (B) resolutions of the Board of Directors or other organizational action authorizing execution, delivery and performance of this Amendment and all Loan Documents to which such Loan Party is a party executed in connection herewith, and (C) incumbency of officers (including specimen signatures) evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Amendment and the other Loan Documents to which such Loan Party is a party executed in connection herewith;

(iv) certification from any applicable Governmental Authority as the Required Lenders may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization and in any other jurisdiction in which the failure to be so qualified could reasonably be expected to have a Material Adverse Effect, including certificates of good standing and qualification to engage in business in each applicable jurisdiction;

(v) a favorable opinion of Dorsey & Whitney LLP, counsel to the Loan Parties, each addressed to the Administrative Agent and each 2025 Term Loan Lender and their successors and assigns, as to the matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(vi) certificates of Responsible Officers of the Borrower Agent or the applicable Loan Parties either (A) identifying all consents, licenses and approvals required in connection with the execution, delivery and performance by the Borrower and the validity against each such Loan Party of this Amendment and Loan Documents to which it is a party executed in connection herewith, and stating that such consents, licenses and approvals shall be in full force and effect, and attaching true and correct copies thereof or (B) stating that no such consents, licenses or approvals are so required;

(vii) certificates of Responsible Officers of Holdings certifying that Holdings has reserved sufficient shares of Common Stock for issuance upon exercise of the Incremental Warrants;

(viii) a certificate signed by a Responsible Officer of the Borrower Agent certifying (A) that the conditions specified in Section 3(b) have been satisfied and (B) as to the matters described in Section 3(f);

(ix) a certificate signed by the Chief Financial Officer or the Chief Accounting Officer of the Borrower Agent certifying that, after giving effect to the entering into the Loan Documents executed in connection with this Amendment and the consummation of all of the transactions set forth in this Amendment, (A) the Borrower is Solvent and (B) the Loan Parties, taken as a whole, are Solvent;

(x) a Borrowing Request with respect to the 2025 Term Loans;

(xi) evidence satisfactory to the Required Lenders of the consummation (in compliance with all applicable laws and regulations, with the receipt of all material governmental, shareholder and third party consents and approvals relating thereto) of the transactions set forth in this Amendment; and

(xii) such other assurances, certificates, documents, consents or opinions as the Administrative Agent or the Required Lenders may reasonably require.

(c) (i) So long as requested by any 2025 Term Loan Lender at least five days prior to the First Amendment Effective Date, the Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Borrower and (ii) so long as requested by the Administrative Agent or any 2025 Term Loan Lender at least ten days prior to the First Amendment Effective Date, the Borrower shall have provided to the Administrative Agent and each requesting 2025 Term Loan Lender the documentation and other information so requested in connection with applicable "know your customer" and Anti-Money Laundering Laws or Anti-Corruption Laws, including the PATRIOT Act.

(d) [Reserved].

(e) The Borrower shall have paid the Amendment Fee in-kind to each Lender party hereto in accordance with Section 2(b) of this Amendment.

(f) Any fees required to be paid on or before the First Amendment Effective Date (including, for the avoidance of doubt, the Amendment Fee) shall have been, or concurrently with the satisfaction of the requirements in this Section 3, will be, paid.

(g) The Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent and the 2025 Term Loan Lenders to the extent invoiced prior to or on the First Amendment Effective Date, plus such additional amounts of such reasonable fees, charges and disbursements as shall constitute its reasonable estimate of such reasonable fees, charges and disbursements incurred or to be incurred by it through such date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent and the 2025 Term Loan Lenders, respectively).

(h) ~~[~~Subject to Section 15 of this Amendment, the~~]~~ representations and warranties of the Loan Parties contained in Article VI of the Amended Credit Agreement or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or in the case of any representation or warranty subject to a materiality qualifier, true and correct in all respects) on and as of the First Amendment Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or in the case of any representation or warranty subject to a materiality qualifier, true and correct in all respects) as of such earlier date.

(i) No Default or Event of Default shall have occurred and be continuing, or would result from the extension of the 2025 Term Loans or from the application of the proceeds thereof.

(j) The Borrower shall have paid all fees, charges and disbursements of the Administrative Agent (including fees, charges and disbursements of counsel) required to be reimbursed or paid by the Borrower pursuant to the terms of the Amended Credit Agreement;

(k) The Borrower shall have paid all fees, charges and disbursements of Coliseum (including fees, charges and disbursements of Debevoise & Plimpton LLP, as advisors to Coliseum) required to be reimbursed or paid by the Borrower pursuant to that certain Structuring Work Fee Letter, dated as of the date hereof, by and between the Borrower and Coliseum.

4. Representations and Warranties. In order to induce the Administrative Agent and the 2025 Term Loan Lenders (which constitute Required Lenders) to enter into this Amendment, the Loan Parties hereby represent and warrant to the Administrative Agent and the 2025 Term Loan Lenders (which constitute Required Lenders) as of the First Amendment Effective Date as follows:

(a) *Authorization*; No Contravention. The execution, delivery and performance by each Loan Party of this Amendment, and the consummation of the transactions set forth in this Amendment, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of the Organization Documents of any such Person; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (i) any material Contractual Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

(b) *Governmental Authorization; Other Consents*. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Amendment or the consummation of the transactions set forth in this Amendment, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Security Instruments, (c) the perfection or maintenance of the Liens created under the Security Instruments (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for those which have been duly obtained, taken, given or made and are in full force and effect and the filing and recording of financing statements and other documents necessary in order to perfect the Liens created by the Security Instruments.

(c) *Binding Effect*. This Amendment has been duly executed and delivered by each Loan Party. This Amendment constitutes a legal, valid, and binding obligation of each Loan Party, enforceable against each Loan Party in accordance with its terms, except as the enforcement hereof may be limited by any applicable Debtor Relief Laws or by general equitable principles.

(d) *Duly Authorized and Validly Issued Shares of Common Stock*.

(i) The Borrower has reserved for issuance a number of shares of Common Stock sufficient to cover all shares issuable upon the exercise of the Incremental Warrants (the "Incremental Warrant Shares") (computed without regard to any limitations on the number of shares that may be issued on exercise thereof). The Incremental Warrants and the Incremental Warrant Shares have been duly authorized. Upon the issuance in accordance with the terms of this Amendment, the holders of the Incremental Warrants will be entitled to the rights set forth in the Incremental Warrants. Upon exercise in accordance with the terms of the Incremental Warrants, the Incremental Warrant Shares will be validly issued, fully paid and non-assessable and free and clear of all Liens with respect to the issue thereof, with the holders thereof being entitled to all rights accorded to a holder of Common Stock. It is not necessary to register the issuance of the Incremental Warrants and the Incremental Warrant Shares under the Securities Act and applicable state securities laws.

(ii) The issuance and delivery of the Incremental Warrants does not and, assuming full exercise of the Incremental Warrants, the exercise of the Incremental Warrants will not: (i) require approval from any Governmental Authority or from the Borrower's stockholders (including, without limitation, pursuant to the NASDAQ rules or listing standards); (ii) obligate the Borrower to issue shares of Common Stock or other securities to any person (other than the holders of the Incremental Warrants); and (iii) will not result in a right of any holder of the Borrower's securities to adjust the exercise, conversion, exchange or reset price under and will not result in any other adjustments (automatic or otherwise) under, any securities of the Borrower.

(e) *Representations and Warranties; No Default*. The following statements are true on the First Amendment Effective Date, immediately after giving effect to this Amendment and the consummation of this Amendment contemplated by this Amendment taking place on the First Amendment Effective Date:

(i) Subject to Section 15 of this Amendment, the representations and warranties of the Loan Parties contained in Article VI of the Amended Credit Agreement or any other Loan Document, or which are contained in any document furnished at any time under or in connection with the Amended Credit Agreement or such other Loan Document, are true and correct in all material respects on and as of the First Amendment Effective Date (or in the case of any representation or warranty that is itself subject to a materiality or Material Adverse Effect qualification, in all respects), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or in the case of any representation or warranty that is itself subject to a materiality or Material Adverse Effect qualification, in all respects) as of such earlier date, and except that for purposes of this Section 4(e)(i), the representations and warranties contained in subsections (a) and (b) of Section 6.05 of the Amended Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a), (b) and (c), respectively, of Section 7.01 of the Amended Credit Agreement.

(ii) No Default or Event of Default has occurred and is continuing, or would result from entering into this Amendment.

5. Survival of Representations and Warranties. All representations and warranties made in this Amendment or in any other document delivered pursuant to this Amendment or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and the 2025 Term Loan Lenders, regardless of any investigation made by the Administrative Agent or the Lenders and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation shall remain unpaid or unsatisfied.

6. Warrants. On the First Amendment Effective Date, the Borrower shall issue to the 2025 Term Loan Lenders Incremental Warrants to purchase in the aggregate 6,229,508 shares of Common Stock, at an exercise price of $1.50 per share (each as subject to any adjustments provided for under the applicable Incremental Warrant), with an expiration date of March 12, 2035, each substantially in the form of Exhibit B attached hereto. The Incremental Warrants issued pursuant to this Section 6 shall be allocated on the First Amendment Effective Date among the 2025 Term Loan Lenders based on each 2025 Term Loan Lender's Pro Rata Share of the 2025 Term Loans.

7. Amendment as a Loan Document. This Amendment constitutes a "Loan Document" under the Amended Credit Agreement.

8. Effect on Loan Documents. After giving effect to this Amendment on the First Amendment Effective Date, the Amended Credit Agreement and the other Loan Documents shall be and remain in full force and effect in accordance with their terms and are hereby ratified and confirmed by each Loan Party in all respects. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of any right, power, or remedy of the Administrative Agent or the Lenders under the Existing Credit Agreement or the other Loan Documents. Each Loan Party hereby acknowledges and agrees that, after giving effect to this Amendment, all of its obligations and liabilities under the Existing Credit Agreement and the other Loan Documents to which it is a party, as such obligations and liabilities have been amended by this Amendment, are reaffirmed and remain in full force and effect. All references to the Existing Credit Agreement in any Loan Document or other document or instrument delivered in connection therewith shall be deemed to refer to the Amended Credit Agreement. Nothing contained herein shall be construed as a novation of the Obligations outstanding under and as defined in the Existing Credit Agreement, which shall remain in full force and effect, except as modified hereby.

9. Reaffirmation of Grant of Security Interests. Each Loan Party hereby ratifies and reaffirms its grant to the Administrative Agent, for the benefit of the Secured Parties, of a continuing security interest in and Lien upon the Collateral, whether now owned or hereafter acquired or arising, and wherever located, all as provided in the Security Instruments and the other Loan Documents, and each Loan Party hereby ratifies and reaffirms that the Obligations are and shall continue to be secured by the continuing security interest and Lien granted by each Loan Party to the Administrative Agent, for the benefit of the Secured Parties, pursuant to the Security Instruments and the other Loan Documents.

10. Release by the Loan Parties. Each Loan Party for and on behalf of itself and its legal representatives, successors and assigns, fully, unconditionally, and irrevocably waives, releases, relinquishes and forever discharges the Administrative Agent, the Lenders and each of their parents, subsidiaries, and affiliates, its and their respective past, present and future directors, officers, managers, agents, employees, insurers, attorneys, representatives and all of their respective heirs, successors and assigns, (collectively, the "Released Parties"), of and from any and all manner of action or causes of action, suits, claims, liabilities, losses, costs, expenses, demands, judgments, damages (including compensatory and punitive damages), levies and executions of whatsoever kind, nature and/or description arising on or before giving effect to this Amendment on the First Amendment Effective Date, in each case whether known or unknown, asserted or unasserted, liquidated or unliquidated, joint or several, fixed or contingent, direct or indirect, contractual or tortious, which the Loan Parties, or their legal representatives, successors or assigns, ever had or now has or may claim to have against any of the Released Parties, with respect to any matter whatsoever, including, without limitation, the Loan Documents, the administration of any Loan Documents, the negotiations relating to this Amendment and the other Loan Documents executed in connection herewith and any other instruments and agreements executed by the Loan Parties in connection therewith or herewith, arising on or before the date hereof.

11. Limited Effect. This Amendment relates only to the specific matters expressly covered herein, shall not be considered to be an amendment or waiver of any rights or remedies that the Administrative Agent may have under the Amended Credit Agreement or any other Loan Document (except as expressly set forth herein) or under applicable Law, and shall not be considered to create a course of dealing or to otherwise obligate in any respect the Administrative Agent to execute similar or other amendments or waivers or grant any amendments or waivers under the same or similar or other circumstances in the future.

12. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

13. Counterparts. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic imaging means (*e.g.*, "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Amendment.

14. Agent. Each of the undersigned 2025 Term Loan Lenders, constituting the Required Lenders hereby authorize and direct the Administrative Agent to (A) execute and deliver this Amendment and (B) take all actions reasonably requested by the Borrower or the Lenders that are necessary to consummate the transactions set forth in this Amendment. In executing this Amendment, the Administrative Agent shall be entitled to all of the rights, protections, immunities and indemnities afforded to the Administrative Agent under the Amended Credit Agreement as if those rights, protections, immunities and indemnities were set forth fully herein. The undersigned Loan Parties and Lenders hereby confirm that the reimbursement and indemnification provisions set forth in the Amended Credit Agreement apply in all respects in connection with this Amendment and, to the extent that the Administrative Agent is not indemnified by the Loan Parties in accordance with such provisions against any liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (collectively, "Losses") in any way relating to or arising out of this Amendment, (i) the Loan Parties agree pursuant to this Amendment to pay the Administrative Agent such Losses and, (ii) to the extent that the Administrative Agent is still not indemnified by the Loan Parties for such Losses, the undersigned Lenders agree to pay the Administrative Agent such Lender's Pro Rata Share (determined as of the date hereof and calculated without including the Loan Exposure of any Lenders not party hereto in sub-clause (B) of "Pro Rata Share") of such Losses, so long as such Losses were incurred by or asserted against the Administrative Agent in its capacity as such. Nothing in this Amendment is intended to or shall modify the reimbursement and indemnification obligations of the Loan Parties and the Lenders set forth in the Existing Credit Agreement.

15. Post-Closing Obligations. The Administrative Agent and each of the 2025 Term Loan Lenders agree to waive delivery of the certain instruments, documents and agreements ("Supplemental Agreements") set forth on Exhibit D annexed hereto as a condition precedent to the effectiveness of this Amendment, and to the obligation of the 2025 Term Loan Lenders to make 2025 Term Loans, but nevertheless require these Supplemental Agreements as well as the other matters set forth on said Exhibit D be delivered or satisfied on or before the dates set forth on said Exhibit D (or such longer periods as may be determined by the Required Lenders, in their sole discretion). The Loan Parties agree to deliver and satisfy the Supplemental Agreements as and when required (which time periods may be extended by the Required Lenders, in their sole discretion) by this Amendment, all as more specifically described on Exhibit D annexed hereto, and that the failure to do so shall constitute an Event of Default under Section 9.01(b)(i) of the Amended Credit Agreement.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first above written.

BORROWER:

PURPLE INNOVATION, LLC, a Delaware limited liability company

By: /s/ Tricia S. McDermott
Name: Tricia S. McDermott
Title: Chief Legal Officer

GUARANTORS:

PURPLE INNOVATION, INC., a Delaware corporation

By: /s/ Todd Vogensen
Name: Todd Vogensen
Title: Chief Financial Officer and Treasurer

INTELLIBED, LLC, a Delaware limited liability company

By: /s/ Tricia S. McDermott
Name: Tricia S. McDermott
Title: Chief Legal Officer

ADMINISTRATIVE AGENT:

CSC DELAWARE TRUST COMPANY, not in its individual capacity but solely as Administrative Agent

By: /s/ Sean Foronjy
Name: Sean Foronjy
Title: Vice President

[Signature Page to First Amendment to Amended and Restated Credit Agreement]

LENDERS:

COLISEUM CAPITAL PARTNERS, L.P.

/s/ Adam Gray

Name: Adam Gray
Title: Manager

BLACKWELL PARTNERS LLC – SERIES A

By: Coliseum Capital Management, LLC – Attorney-in-Fact

/s/ Adam Gray

Name: Adam Gray
Title: Managing Partner

[Signature Page to First Amendment to Amended and Restated Credit Agreement]

EXHIBIT A

Amended Credit Agreement

See attached.

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of January 23, 2024

among

PURPLE INNOVATION, LLC,
as a Borrower,

PURPLE INNOVATION, INC.,
as Guarantor,

CERTAIN FINANCIAL INSTITUTIONS,
as Lenders,

and

CSC DELAWARE TRUST COMPANY,
as Administrative Agent

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AMENDED AND RESTATED CREDIT AGREEMENT

This **AMENDED AND RESTATED CREDIT AGREEMENT** (this "***Agreement***") is entered into as of January 23, 2024, among PURPLE INNOVATION, LLC, a Delaware limited liability company (the "***Company***" or "***Borrower***" and collectively with any other entities that become a "Borrower" hereunder, the "***Borrowers***"), PURPLE INNOVATION, INC., a Delaware corporation ("***Holdings***"), **EACH LENDER FROM TIME TO TIME PARTY HERETO** (collectively, the "***Lenders***" and individually, a "***Lender***"), and CSC DELAWARE TRUST COMPANY (f/k/a Delaware Trust Company), as Administrative Agent.

PRELIMINARY STATEMENTS

A. Borrower is party to (i) that certain Term Loan Credit Agreement, dated as of August 7, 2023 (as amended by that certain First Amendment, dated as of November 6, 2023, that certain Assignment of Loan Documents, Resignation, Appointment and Acceptance Resignation Agreement, dated as of the date hereof, by and among Callodine Commercial Finance, LLC ("Callodine"), as resigning agent, the Administrative Agent, as successor agent, Borrower and the Guarantors and that certain Assignment and Assumption Agreement, dated as of the date hereof, by and among Callodine and Coliseum (as defined in the Second Amendment) and as acknowledged and accepted by the Borrower, and as further amended, amended and restated, extended, supplemented or otherwise modified in writing from time to time prior to the date hereof, the "Original Term Loan Credit Agreement"), among Borrower, the lenders party thereto and the Administrative Agent and (ii) that certain Credit Agreement, dated as of August 7, 2023 (as amended by that certain First Amendment and Limited Waiver), dated as of November 6, 2023, that certain Assignment of Loan Documents, Resignation, Appointment and Acceptance Resignation Agreement, dated as of the date hereof, by and among Bank of Montreal ("BMO"), as resigning agent, CSC Delaware Trust Company, as successor agent, Borrower and the Guarantors and that certain Assignment and Assumption Agreement, dated as of the date hereof, by and among BMO and Coliseum (as defined in the Second Amendment) and as acknowledged and accepted by Borrower, and as further amended, amended and restated, extended, supplemented or otherwise modified in writing from time to time prior to the date hereof, the "Original ABL Credit Agreement"), among Borrower, Guarantors, CSC Delaware Trust Company, as administrative agent thereunder and the lenders from time to time parties thereto;

B. Borrower has requested, and the Administrative Agent and the Lenders party hereto have agreed, to amend and restate the Original Term Loan Credit Agreement pursuant to the Second Amendment, to, among other things, (i) provide for $61.0 million in principal amount of Loans extended by the Lenders on the Closing Date and (ii) make certain other amendments to the Original Term Loan Credit Agreement.

C. The proceeds of the Loans made on the Closing Date will be used by Borrower to (i) (A) repay in full all Term Loans outstanding under (and as defined in) the Original Term Loan Credit Agreement, and all accrued and unpaid interest thereon, immediately prior to giving effect to the Transaction and (B) repay in full all indebtedness outstanding under the Original ABL Credit Agreement and terminate and release all commitments, security interests and guarantees in connection therewith (such transactions described under clauses (A) and (B), the "Closing Date Refinancing"), (ii) pay the fees, premiums and expenses incurred in connection with the Transaction and (iii) in excess of amounts set forth in clauses (i) and (ii) above, to finance their mutual and collective business enterprise.

D. As partial consideration for the agreement by the Lenders to extend the Loans on the Closing Date, each Lender will be issued its Pro Rata Share of warrants to purchase, in the aggregate for all such warrants, up to 20,000,000 shares of Class A common stock (subject to adjustment as provided for under the applicable warrant agreement), par value $0.0001 per share ("Common Stock"), of Holdings in each case pursuant to a warrant agreement (each a "Warrant" and collectively the "Warrants") dated as of the date hereof, by and among Holdings and each Lender in its capacity as an investor under the Warrant to which it is a party.

E. Lenders are willing to provide the credit facility on the terms and subject to the conditions set forth in this Agreement and the Second Amendment.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"2025 Term Loans" means individually each term loan, and collectively the term loans, made by the 2025 Term Loan Lenders to the Borrowers on the First Amendment Effective Date pursuant to Section 2.01(a).

"2025 Term Loan Lender" means any Lender having a 2025 Term Loan outstanding hereunder.

"Account" means "accounts" as defined in the UCC.

"Account Debtor" means any Person who is or may become obligated under or on account of any Account, Contractual Obligation, Chattel Paper or General Intangible.

"Acquisition" means (a) the acquisition of a controlling Equity Interest or other ownership interest in or Control of another Person, whether by purchase of such Equity Interest or other ownership interest or upon exercise of an option or warrant for, or conversion of securities into, such Equity Interest or other ownership interest, or (b) the acquisition of assets of another Person which constitute all or substantially all of the assets of such Person or of a line or lines of business conducted by such Person, whether in one or a series of related transactions or (c) the merger, consolidation or combination of Holdings, a Borrower or a Subsidiary with another Person (other than (i) in the case of any Subsidiary, a Subsidiary into a Borrower or any other Subsidiary or (ii) in the case of a Borrower, into another Borrower).

"Adjusted Term SOFR" means with respect to any tenor, the per annum rate equal to the sum of (i) Term SOFR plus (ii) 0.10% (10 basis points); *provided*, that if Adjusted Term SOFR determined as provided above shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"Administrative Agent" means CSC Delaware Trust Company, a Delaware corporation, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower Agent and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. For purposes of this Agreement and the other Loan Documents, the Lenders shall not be deemed Affiliates of the Company and the Company shall not be deemed an Affiliate of any Lender. For the purposes of (i) Section 8.08 and (ii) the proviso to the definition of "Eligible Assignee" only, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent or is an officer or director of the specified Person.

"Agent Indemnitee" has the meaning specified in Section 11.04(c).

"Agent Indemnitee Liabilities" has the meaning specified in Section 11.04(c).

"Agreement" means this Credit Agreement.

"Allocable Amount" has the meaning specified in Section 2.15(c)(ii).

"ALTA Survey" means a survey that is (a) prepared by a surveyor or engineer licensed to perform surveys in the jurisdiction where such Mortgaged Property is located, (b) certified to the Lenders, the Administrative Agent and the title company and (c) survey reasonably satisfactory to the Required Lenders prepared in accordance with the standards adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1997, known as the "Minimum Standard Detail Requirements of Land Title Surveys" and sufficient form to satisfy the requirements any applicable title insurance company to provide extended coverage over survey defects and shall also show the location of all easements, utilities, and covenants of record, dimensions of all improvements, encroachments from any adjoining property, and certify as to the location of any flood plain area affecting the subject Real Property.

"Anti-Corruption Laws" means all Laws of any jurisdiction applicable to a Loan Party or any of their Subsidiaries from time to time targeting or relating to bribery or corruption, including the FCPA and the UK Bribery Act 2010.

"Anti-Money Laundering Laws" means all Laws applicable to a Loan Party or its Subsidiaries related to terrorism financing or money laundering, including Executive Order No. 13224, the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the PATRIOT Act, and the Money Laundering Control Act of 1986.

"Applicable Margin" means with respect to any Loan, (x) 8.25% per annum, or (y) if a PIK Election is made, 10.25% per annum, as applicable.

"Applicable Percentage" means in respect of the Facility, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the ~~Facility~~Initial Term Loans or 2025 Term Loans, as applicable, represented by (i) on or prior to the Closing Date, the amount of the Commitment of such Lender at such time and (ii) thereafter, the outstanding principal amount of such Lender's Initial Term Loans or 2025 Term Loans, as applicable, at such time. The initial Applicable Percentage of each Lender with respect to the Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form approved by the Administrative Agent.

"Assumed Indebtedness" means Indebtedness of a Person which is (a) in existence at the time such Person becomes a Subsidiary or a Borrower or (b) assumed in connection with an Investment in or Acquisition of such Person, and which, in each case, (i) has not been incurred or created in connection with, or in anticipation or contemplation of, such Person becoming a Subsidiary or Borrower, (ii) only such Person (or its Subsidiaries so acquired) are obligors with respect to such Indebtedness, (iii) such Indebtedness is not a revolving loan facility; and (iv) such Indebtedness is not secured by any Liens on working capital assets.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

"Audited Financial Statements" means the audited Consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended December 31, 2022, and the related Consolidated statements of income or operations, retained earnings and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

"Auditor" has the meaning specified in Section 7.01(a).

"August 2023 Transaction" means the "Transaction" as defined in the Original ABL Credit Agreement.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date, and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 3.03(b)(iv).

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

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

"Bankruptcy Code" means Title 11 of the United States Code.

"Benchmark" means, initially, the Term SOFR Reference Rate; *provided* that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.03(b)(i).

"Benchmark Replacement" means the first alternative set forth in the order below that can be determined by the Administrative Agent (acting at the direction of the Required Lenders) for the applicable Benchmark Replacement Date,

(a) the sum of (i) Daily Simple SOFR plus (ii) 0.10% (10 basis points);

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Borrower Agent and the Required Lenders giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment; *provided* that any such Benchmark Replacement is administratively feasible to be implemented by the Administrative Agent.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor, for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Required Lenders and the Borrower Agent giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time; *provided* that any such Benchmark Replacement Adjustment is administratively feasible to be implemented by the Administrative Agent.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period" means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03(b) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03(b).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"Board of Directors" means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers or board of directors or sole member or manager of such Person or any Person or any committee thereof duly authorized to act on behalf of such board, (c) in the case of any partnership, the Board of Directors of a general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

"Borrower Agent" has the meaning specified in Section 2.15(g).

"Borrowers" has the meaning specified in the introductory paragraph hereto.

"Borrower Materials" has the meaning specified in Section 7.02.

"Borrowing Request" means a request by the Borrower Agent for a borrowing in accordance with Section 2.02 and substantially in the form attached hereto as Exhibit E.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located.

"Capital Leases" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Secured Parties during the continuance of an Event of Default, as collateral for any Obligations that are contingent and not yet due and payable, cash or deposit account balances or, if the Administrative Agent (acting at the direction of the Required Lenders) shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Required Lenders. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" means any of the following types of property, to the extent owned by the Company or any of its Subsidiaries free and clear of all Liens (other than Liens created under the Security Instruments):

(a) cash, denominated in Dollars;

(b) readily marketable direct obligations of the government of the United States or any agency or instrumentality thereof, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by the government of the United States or any state or municipality thereof, in each case so long as such obligation has an investment grade rating by S&P and Moody's;

(c) commercial paper rated at least P-1 (or the then equivalent grade) by Moody's and A-1 (or the then equivalent grade) by S&P, or carrying an equivalent rating by a nationally recognized rating agency if at any time neither Moody's nor S&P shall be rating such obligations;

(d) insured certificates of deposit or bankers' acceptances of, or time deposits with any Lender, or with any commercial bank that (i) is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in the first portion of clause (c) above, (iii) is organized under the laws of the United States or of any state thereof and (iv) has combined capital and surplus of at least $500,000,000;

(e) readily marketable general obligations of any corporation organized under the laws of any state of the United States of America, payable in the United States of America, expressed to mature not later than twelve months following the date of issuance thereof and rated A or better by S&P or A3 or better by Moody's; and

(f) readily marketable shares of investment companies or money market funds that, in each case, invest solely in the foregoing Investments described in clauses (a) through (e) above.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"CERCLIS" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"CFC" has the meaning specified in the definition of "Excluded Subsidiary".

"CFCHC" has the meaning specified in the definition of "Excluded Subsidiary".

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which:

(a) Other than the Common B shares issued and outstanding on the Closing Date (except to the extent any are repurchased, retired or otherwise acquired pursuant to Section 8.06(c)), Holdings shall fail to own and control, beneficially and of record/directly or indirectly, 100% of the issued and outstanding equity interests of the Company; or

(b) The Common B Holders assign or transfer any of the Equity Interests of the Company to any Person other than as permitted under the Organization Documents of Holdings as in effect on the Closing Date or as modified as agreed to by the Required Lenders; or

(c) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of Holdings or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Permitted Holders, becomes the "beneficial owner" (as defined in Rules 13d-4 and 13d-6 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the Equity Interests of Holdings on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any option right); or

(d) during any period of 24 consecutive months beginning on the Closing Date, a majority of the members of the board of directors or other equivalent governing body of Holdings cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(e) the Company shall fail to own and control, beneficially and of record (directly or indirectly), 100% of the issued and outstanding Equity Interests of each of its Subsidiaries, except where such failure is the result of a transaction permitted under the Loan Documents; ~~or~~

(f) any "change of control" or similar event occurs under the Organization Documents of Holdings or any other Loan Party or under any Material Contract to which Holdings or any other Loan Party is a party~~.~~; or

(g) any acquisition, investment, merger, combination or consolidation of the Company or any Subsidiary of the Company of, with or into another Person (other than any internal reorganization), and in connection with or as a result of such transaction, stockholders of the Company immediately prior to such transaction own or receive less than a majority of the outstanding stock of the Company, such Subsidiary or the surviving entity.

"Closing Date" means the first date all the conditions precedent in Section 5.01 are satisfied or waived in accordance with Section 11.01 (or, in the case of Section 5.01(b), waived by the Person entitled to receive the applicable information).

"Closing Date Refinancing" has the meaning set forth in the Preliminary Statements hereto.

"Code" means the Internal Revenue Code of 1986.

"Coliseum" means Coliseum Capital Management, LLC, a Delaware limited liability company, and any successor thereto.

"Coliseum Fee Letter" means that certain letter agreement, dated as of the Closing Date among the Company, Coliseum Capital Partners, L.P. and Blackwell Partners LLC – Series A.

"Coliseum Investors" means Coliseum and its Investment Affiliates.

"Collateral" means, collectively, certain property of the Loan Parties or any other Person in which the Administrative Agent or any Secured Party is granted a Lien under any Security Instrument as security for all or any portion of the Obligations or any other obligation arising under any Loan Document.

"Commitment" means, as to each Lender, its obligation to make Loans to the Borrowers pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01. The aggregate Commitments as of the ~~Closing~~First Amendment Effective Date are $~~61,000,000~~80,000,000.

"Commitment Increase" has the meaning specified in Section 2.18(a).

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Common B Holders" means the holders of Common B shares of Holdings and Class B Units of Borrower. As of the Closing Date the Common B Holders are set forth on Schedule 1.02 hereto.

"Common Stock" has the meaning specified in the Preliminary Statements hereto.

"Communication" means this Agreement, any Loan Document and any document, amendment, waiver, forbearance, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document (including any Assignment and Assumption).

"Company" has the meaning specified in the introductory paragraph hereto.

"Compliance Certificate" means a certificate substantially in the form of Exhibit B.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "U.S. Government Securities Business Day", the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.05, and other technical, administrative or operational matters) that the Administrative Agent (acting at the direction of the Required Lenders) decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent (acting at the direction of the Required Lenders) determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent (acting at the direction of the Required Lenders) decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents); *provided* that such Conforming Changes shall be administratively feasible to the Administrative Agent.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated" means the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

"Consolidated Capital Expenditures" means, with respect to Holdings and its Subsidiaries on a Consolidated basis, for any period the sum of (without duplication) all expenditures (whether paid in cash or accrued as liabilities) by Holdings or any Subsidiary during such period for items that would be classified as "property, plant or equipment" or comparable items on the Consolidated balance sheet of Holdings and its Subsidiaries, including without limitation all transactional costs incurred in connection with such expenditures provided the same have been capitalized; *provided* that Consolidated Capital Expenditures shall exclude any capital expenditures (a) financed with Indebtedness permitted hereunder other than Loans, (b) made with (i) Net Cash Proceeds from any Disposition described in Section 8.05(b) or (ii) proceeds of insurance arising from any casualty or other insured damage or from condemnation or similar awards with respect to any property or asset, in each case, to the extent such proceeds are reinvested within 180 days of receipt thereof, (c) constituting any portion of the purchase price of an Permitted Acquisition which is accounted for as a capital expenditure or (d) which is required to be reimbursed by a third-party pursuant to an enforceable contract obligation and is reimbursed within 180 days of the incurrence of such capital expenditure.

"Consolidated EBITDA" means, for any period, Consolidated Net Income for such period; plus, (a) to the extent deducted in determining such Consolidated Net Income for such period, without duplication, (i) Consolidated Interest Charges (net of interest income for such period of Holdings and its Subsidiaries), plus (ii) federal, state, local and foreign income tax expense for such period, net of income tax credits, plus (iii) depreciation and amortization, plus (iv) non-cash compensation expense, or other non-cash expenses or charges, arising from the granting of stock options, restricted stock, stock appreciation rights or similar equity arrangements, plus (v) non-cash expenses or losses and other non-cash charges incurred (excluding any non-cash charges representing an accrual of, or reserve for, cash charges to be paid within the next twelve months and reduced by any cash payments made during such period in respect of such non-cash items added back in a prior period); plus (vi) expenses of up to $4,000,000 incurred in connection with the August 2023 Transaction, plus (vii) transaction expenses (other than depreciation and amortization expenses) of up to $4,000,000 during the term of this Agreement incurred in connection with any Acquisition, Investment or Disposition permitted hereunder or the defense of any ownership or control take-over; plus (viii) proceeds of business interruption insurance received in cash during such period; plus (viii) non-recurring and unusual out-of-pocket costs and charges in an amount not to exceed $2,000,000 per year and $6,000,000 in the aggregate; minus (b) to the extent included in determining Consolidated Net Income for such period, without duplication, non-cash income, gains or profits (including, without limitation, non-cash extraordinary gains), in each case as determined for Holdings and its Subsidiaries on a Consolidated basis and subject to applicable Pro Forma Adjustments.

"Consolidated Fixed Charge Coverage Ratio" means the ratio, determined on a Consolidated basis for Holdings and its Subsidiaries for the applicable Measurement Period, of (a) Consolidated EBITDA minus Consolidated Capital Expenditures to (b) Consolidated Fixed Charges.

"Consolidated Fixed Charges" means, for any period, for Holdings and its Subsidiaries on a Consolidated basis, the sum of, without duplication, (a) Consolidated Interest Charges paid or required to be paid in cash or in-kind (including pursuant to a PIK Election, but calculated as if paid in cash interest) during such period, (b) all scheduled and mandatory principal repayments made or required to be made of Consolidated Funded Indebtedness during such period (excluding any such payments to the extent constituting a refinancing of such Consolidated Funded Indebtedness through the incurrence of additional Indebtedness otherwise expressly permitted under Section 8.01, (c) the aggregate amount of federal, state, local and foreign income taxes paid in cash, in each case, of or by Holdings and its Subsidiaries during such period, and (d) all Restricted Payments (excluding payments made pursuant to Section 8.06(e)) in cash during such period.

"Consolidated Funded Indebtedness" means, as of any date of determination, for Holdings and its Subsidiaries on a Consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under standby and commercial letters of credit (excluding the undrawn amount thereof), bankers' acceptances, bank guaranties (excluding the amounts available thereunder as to which demand for payment has not yet been made), surety bonds (excluding the amounts available thereunder as to which demand for payment has not yet been made) and similar instruments (excluding the amounts available thereunder as to which demand for payment has not yet been made), (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable arising in the Ordinary Course of Business being paid on a timely basis and consistent with past practices), (e) Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than Holdings or any Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which Holdings or a Subsidiary is a general partner or joint venturer, to the extent such Indebtedness is recourse to Holdings or such Subsidiary.

"Consolidated Interest Charges" means, with respect to Holdings and its Subsidiaries for any period ending on the date of computation thereof, the gross interest expense of Holdings and its Subsidiaries, including without limitation (a) the current amortized portion of all fees (including fees payable in respect of any Swap Contract in the nature of an interest rate hedge) payable in connection with the incurrence of Indebtedness to the extent included in gross interest expense and (b) the portion of any payments made in connection with Capital Leases allocable to interest expense, all determined on a Consolidated basis; *provided however*, that Consolidated Interest Charges shall include the amount of payments in respect of Synthetic Lease Obligations that are in the nature of interest.

"Consolidated Net Income" means, for any period, for Holdings and its Subsidiaries on a Consolidated basis, the net income after taxation of Holdings and its Subsidiaries for that period excluding (a) net losses or gains realized in connection with (i) any sale, lease, conveyance or other disposition of any asset (other than in the Ordinary Course of Business), or (ii) repayment, repurchase or redemption of Indebtedness, and (b) extraordinary or nonrecurring gain or income (or expense), including, any compensation charge incurred in connection with the Transactions; *provided* that there shall be excluded from Consolidated Net Income, without duplication, the net income of (x) any Person that is not a Subsidiary or that is accounted for by the equity method of accounting to the extent of the amount of dividends or distributions are not actually paid to the Company or a Subsidiary in cash, (y) any Person in which any other Person (other than the Company or a Subsidiary) has an ownership interest, except to the extent of the amount of dividends or other distributions actually paid in cash to the Company or a Subsidiary by such Person during such period and (z) any Person the ability of which to make Restricted Payments is restricted by any agreement or Organization Document, except to the extent of the amount of dividends or other distributions actually paid in cash to Holdings or a Subsidiary by such Person during such period.

"Continuing Obligations" has the meaning specified in Section 12.12.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Control Agreement" means, with respect to any Deposit Account, Securities Account or Commodity Account, an agreement, in form and substance satisfactory to the Administrative Agent and the Required Lenders, among the Administrative Agent, the financial institution or other Person at which such account is maintained and the Loan Party maintaining such account, (i) effective to grant "control" (as defined under the applicable UCC) over such account to the Administrative Agent and (ii) providing for "springing" domain upon the occurrence of an Event of Default.

"Controlled Account" means each Controlled Deposit Account, Controlled Securities Account and Controlled Commodities Account.

"Controlled Account Bank" means each bank, securities intermediary or other financial institution with whom Deposit Accounts or Securities Accounts of any of the Loan Parties are maintained and with whom a Control Agreement has been, or is required to be, executed in accordance with the terms hereof.

"Controlled Commodities Account" means each Commodities Account (including all funds on deposit therein) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with an intermediary approved by the Required Lenders.

"Controlled Deposit Account" means each Deposit Account (including all funds on deposit therein) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with a financial institution approved by the Required Lenders.

"Controlled Persons" means, with respect to any Person, (a) its Subsidiaries and Affiliates, (b) its officers, directors, employees and agents and (c) the officers, directors, employees and agents of such Subsidiaries and Affiliates.

"Controlled Securities Account" means such Securities Account (including all Securities or Investment Property deposited or credited thereto) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with a financial institution approved by the Required Lenders.

"Core Business" means any material line of business conducted by Holdings and its Subsidiaries as of the Closing Date and any business directly related thereto.

"Cost" means with respect to Inventory, the lower of (i) cost (as reflected in the general ledger of such Person) and (ii) market value, in each case, determined in accordance with GAAP calculated on a first-in, first-out basis and in accordance with the Loan Parties' accounting practices as in effect on the Closing Date.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent (at the direction of the Required Lenders) in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; *provided*, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent (acting at the direction of the Required Lenders) may establish another convention in its reasonable discretion; *provided further* that such convention is administratively feasible to the Administrative Agent.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would unless cured or waived be an Event of Default.

"Default Rate" means an interest rate equal to the interest rate (including the Applicable Margin) otherwise applicable to the Loans plus two percent (2%) per annum.

"Designated Jurisdiction" means, at any time, any country, region or territory which is itself the target of Sanctions comprehensively restricting or prohibiting dealings with such country, region or territory.

"Direct Foreign Subsidiary" means a Subsidiary, other than a Domestic Subsidiary that is not a CFCHC, a majority of whose Voting Equity Interests are owned by the Company or a Domestic Subsidiary.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including by Division, any sale and leaseback transaction, any casualty or condemnation or otherwise) of any property (including any Equity Interest), or part thereof, by any Person, and including any sale, assignment, transfer, forgiveness, write-off or other disposal, with or without recourse, of any Investment, notes or accounts receivable or any rights and claims associated therewith.

"Disqualified Equity Interest" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 180 days after the Maturity Date, (b) is convertible into or exchangeable for debt securities (unless only occurring at the sole option of the issuer thereof), (c) (i) contains any repurchase obligation that may come into effect prior to, (ii) requires cash dividend payments (other than taxes) prior to, or (iii) provides the holders thereof with any rights to receive any cash upon the occurrence of a change of control or sale of assets prior to, in each case, the date that is 180 days after the Maturity Date; *provided*, *however*, that (i) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by the Company or one of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, resignation, death or disability and (ii) any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of an Equity Interest that is not a Disqualified Equity Interest, such Equity Interests shall not be deemed to be Disqualified Equity Interests and (iii) only the portion of such Equity Interests which so matures or is so mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Equity Interests.

"Division" means the creation of one or more new limited liability companies by means of any statutory division of a limited liability company pursuant to any applicable limited liability company act or similar statue of any jurisdiction. "Divide" shall have the corresponding meaning.

"Dollar" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any political subdivision of the United States (but excluding any territory or possession thereof).

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

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

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

"Electronic Record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the Electronic Record.

"Eligible Assignee" means (a) a Lender or any of its Affiliates; (b) an Approved Fund; and (c) any other Person (other than a natural person) approved by (i) the Required Lenders (each such approval not to be unreasonably committed or delayed), and (ii) unless an Event of Default has occurred and is continuing, the Borrower Agent (such approval not to be unreasonably withheld or delayed); *provided* that, notwithstanding the foregoing, "Eligible Assignee" shall not include a Loan Party or any of the Loan Parties' Affiliates (it being understood and agreed, for the avoidance of doubt, the Lenders and any of their Affiliates or Approved Funds shall not be deemed an Affiliate of a Loan Party).

"Environmental Laws" means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of a Loan Party or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means, with respect to any Person, (a) all of the shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person, (b) all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person, (c) all of the securities convertible into or exchangeable for (i) shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person or (ii) warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of or partnership interest, membership interest, limited liability company interest (or other ownership, management or control rights or profit interests) in such Person, and (d) all of the other ownership, control or profit interests in such Person, whether voting or nonvoting, and whether or not such shares, units, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(3) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor thereto), as in effect from time to time.

"Event of Default" has the meaning specified in Section 9.01.

"Exchange Act" means the Securities Exchange Act of 1934 and the regulations promulgated thereunder.

"Excluded Deposit Account" means (a) Trust Accounts, (b) zero balance disbursement accounts and (c) other Deposit Accounts maintained in the Ordinary Course of Business containing cash amounts that do not exceed at any time $100,000 in the aggregate for all such accounts under this clause (c).

"Excluded Equity Interests" means (a) any of the outstanding Voting Equity Interests of any CFC or CFCHC that is a Direct Foreign Subsidiary of a Loan Party in excess of 65% of all the Voting Equity Interests of such CFC or CFCHC, (b) any Voting Equity Interests of any CFC or CHCHC that is not a Direct Foreign Subsidiary of a Loan Party, and (c) the Equity Interests of a Subsidiary that is not a wholly-owned Subsidiary the pledge of which would violate a contractual obligation to the owners of the other Equity Interests of such Subsidiary (other than any such owners that are the Company or Affiliates of the Company) that is binding on or relating to such Equity Interests, or the applicable organizational documents, joint venture agreement or shareholders' agreement of such Subsidiary.

"Excluded Real Property" means any fee-owned Real Property of a Loan Party with a purchase price of less than $1,000,000 individually.

"Excluded Receipts" means cash received by any Loan Party or any of their Subsidiaries directly from any of the events listed on Schedule 1.03 hereto.

"Excluded Subsidiary" means (a) any Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code (a "CFC"), (b) any Subsidiary that owns no material assets other than the Capital Stock or indebtedness of one or more CFCs and/or one or more CFCHCs (a "CFCHC") and (c) any direct or indirect Subsidiary of any CFC or CFCHC.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower Agent under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any withholding Taxes imposed pursuant to FATCA.

"Extraordinary Expenses" means all costs, expenses, liabilities or advances that Administrative Agent may incur or make during a Default or Event of Default, or during the pendency of ~~an~~a proceeding of any Loan Party under any Debtor Relief Laws, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Administrative Agent, any Lender, any Loan Party, any representative of creditors of a Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Administrative Agent's Liens with respect to any Collateral), Loan Documents or Obligations, including any lender liability or other claims; (c) the exercise, protection or enforcement of any rights or remedies of Administrative Agent in, or the monitoring of, any proceeding applicable to any Loan Party under any Debtor Relief Laws; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any enforcement action and (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Loan Party or independent contractors in liquidating any Collateral, and travel expenses.

"Facility" means the facility described in Section 2.01(a) providing for Loans to or for the benefit of the Borrowers by the Lenders, in the case of Section 2.01(a), on the Closing Date or the First Amendment Effective Date, as applicable, and, in the case of Section 2.18, on the applicable Increase Effective Date, in the maximum aggregate principal amount of $~~80,000,000~~100,000,000 plus any increase to the principal amount of the Loans in accordance with Section 2.08(d).

"Facility Termination Date" means the date as of which Payment in Full has occurred.

"Fair Market Value" means, with respect to any asset or any group of assets, as of any date of determination, the value of the consideration obtainable in a sale of such assets at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time giving regard to the nature and characteristics of such asset.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"FCPA" means the U.S. Foreign Corrupt Practices Act.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to a nationally recognized financial institution reasonably selected by the Administrative Agent (in consultation with the Borrower) on such day on such transactions as notified to the Borrower Agent (and if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"Fee Letter" means the letter agreement, dated as of the Closing Date among the Company and the Administrative Agent.

"First Amendment" means that certain First Amendment to the Credit Agreement, dated as of the First Amendment Effective Date, among the Loan Parties, the 2025 Term Loan Lenders party thereto and the Administrative Agent.

"First Amendment Effective Date" means March 12, 2025.

"Flood Insurance Laws" means, collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"Floor" means a rate of interest equal to 3.50%.

"FLSA" means the Fair Labor Standards Act of 1938.

"Foreign Lender" means (a) if the applicable Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the applicable Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

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

"Fund" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any debt obligation, payment or performance of any other Person (the "primary obligor"), or otherwise agreeing to provide funds for payment or performance of the debt or other obligations of the primary obligator in any manner, whether directly or indirectly, and including any obligation of any Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such debt or other obligation of a primary obligor, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such debt or other obligation of the payment or performance of such debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) Lien on any assets of such Person securing any debt or other obligation of any primary obligor, whether or not such debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such debt or other obligation to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means each Person who executes or becomes a party to this Agreement as a guarantor pursuant to Article XII or otherwise executes and delivers a guaranty agreement reasonably acceptable to the Required Lenders guaranteeing any of the Obligations.

"Guarantor Payment" has the meaning specified in Section 2.15(c).

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Holdings" has the meaning specified in the introductory paragraph hereof.

"Illegality Notice" has the meaning specified in Section 3.02.

"Incremental Warrants" has the meaning specified in the First Amendment.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments or upon which interest is customarily paid;

(b) all direct or contingent obligations of such Person arising under or in respect of letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and other financial products and services (including treasury management and commercial credit card, merchant card and purchase or procurement card services);

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable arising in the Ordinary Course of Business being paid on a timely basis and consistent with past practices) and any accrued and unpaid obligations with respect to earnout payments or similar payments under Acquisition documents;

(e) indebtedness secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) obligations under Capital Leases and Synthetic Lease Obligations of such Person;

(g) all obligations of such Person with respect to the redemption, repayment or other repurchase or payment in respect of any Disqualified Equity Interest; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, to the extent such Indebtedness is recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitees" has the meaning specified in Section 11.04(b).

"Information" has the meaning specified in Section 11.07.

"Initial Term Loan" and "Initial Term Loans" means individually each term loan, and collectively the term loans, made by the Lenders to the Borrowers on the Closing Date pursuant to Section 2.01(a).

"Initial Term Loan Lender" means any Lender having an Initial Term Loan outstanding hereunder.

"Insolvency Event" means, with respect to any Person:

(a) the commencement of: (i) a voluntary case by such Person under the Bankruptcy Code or (ii) the seeking of relief by such Person under other Debtor Relief Laws;

(b) the commencement of an involuntary case or proceeding against such Person under the Bankruptcy Code or other Debtor Relief Laws and the petition or other filing is not controverted or dismissed within sixty (60) days after commencement of the case or proceeding;

(c) a custodian (as defined in the Bankruptcy Code or equal term under any other Debtor Relief Law, including a receiver, interim receiver, receiver manager, trustee or monitor) is appointed for, or takes charge of, all or substantially all of the property of such Person;

(d) such Person commences (including by way of applying for or consenting to the appointment of, or the taking charge by, a rehabilitator, receiver, interim receiver, custodian, trustee, monitor, conservator or liquidator (or any equal term under any other Debtor Relief Laws) (collectively, a "conservator") of such Person or all or any substantial portion of its property) any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, liquidation, rehabilitation, conservatorship or similar law of any jurisdiction whether now or hereafter in effect relating to such Person;

(e) such Person is adjudicated by a court of competent jurisdiction to be insolvent or bankrupt;

(f) any order of relief or other order approving any such case or proceeding referred to in clauses (a) or (b) above is entered;

(g) such Person suffers any appointment of any conservator or the like for it or any substantial part of its property that continues undischarged or unstayed for a period of sixty (60) days; or

(h) such Person makes a compromise, arrangement or assignment for the benefit of creditors or generally does not pay its debts as such debts become due.

"Intellectual Property" means all past, present and future: trade secrets, know-how and other proprietary information; trademarks, uniform resource locations (URLs), internet domain names, service marks, sound marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights (including copyrights for computer programs) and copyright registrations or applications for registrations which have heretofore been or may hereafter be issued throughout the world and all tangible property embodying the copyrights, unpatented inventions (whether or not patentable); patent applications and patents; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

"Interest Payment Date" means, with respect to any Loan, (i) the last Business Day of each Interest Period applicable to such Loan, (ii) any date that such Loan is prepaid or converted, in whole or in part, and (iii) the Maturity Date; *provided*, that interest accruing at the Default Rate shall be payable from time to time upon demand of the Administrative Agent (acting at the direction of the Required Lenders).

"Interest Period" means, with respect to any Loan, the period commencing on the date such Loan is disbursed or continued as a SOFR Loan and ending, in each case, on the date one month thereafter (subject to the availability thereof in accordance with Section 3.03); *provided* that with respect to the 2025 Term Loans, the initial Interest Period for such Loans shall commence on the First Amendment Effective Date and end on the last day of the existing Interest Period for the Initial Term Loans. For the avoidance of doubt, the initial Interest Period shall commence on the date of funding of any Loan and end at the end of that calendar month; and thereafter, the Interest Period for such Loan shall be each fiscal month.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) an Acquisition with respect to another Person or (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person. For purposes of compliance with Section 8.03, the amount of any Investment (i) shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less all returns of principal or equity thereon (and without adjustment by reason of the financial condition of such other Person), (ii) if made by the transfer or exchange of property other than cash, shall be deemed to be the original principal or capital amount equal to the Fair Market Value of such property at the time of such transfer or exchange and (iii) if made in the form of a Guaranty or acquisition or assumption of Indebtedness, shall be deemed the maximum principal amount of such Indebtedness or maximum value of the obligation Guaranteed when made, as applicable.

"Investment Affiliate" means (a) Blackwell Partners LLC – Series A, solely with respect to any securities managed by Coliseum pursuant to an investment management agreement which grants control to Coliseum and (b) any fund or investment vehicle that (i) is organized by Coliseum or any of its Affiliates for the purpose of making equity or debt investments in one or more companies and (ii) is controlled by, or under common control with, Coliseum or any of its Affiliates. For purposes of this definition 'control' means the power to direct or cause the direction of management and policies of a Person whether by contract or otherwise.

"IP Rights" means the rights of any Person to use any Intellectual Property.

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lender" has the meaning specified in the introductory paragraph hereto.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower Agent and the Administrative Agent.

"License" means any license or agreement under which a Loan Party is granted IP Rights in connection with any manufacture, marketing, distribution, use or disposition of Collateral, any use of assets or property or any other conduct of its business.

"Licensor" means any Person from whom a Loan Party obtains IP Rights.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest, or any preference, priority or other security agreement or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Lien Waiver" means an agreement, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, by which (a) for any Collateral located on leased premises or owned premises subject to a mortgage, the lessor or mortgagee, as applicable, agrees to, among other things, waive or subordinate any Lien it may have on the Collateral and permit the Administrative Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for the Administrative Agent, and agrees to deliver the Collateral to the Administrative Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges the Administrative Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Administrative Agent upon request; and (d) for any Collateral subject to a License, the applicable Licensor grants to the Administrative Agent the right, vis-à-vis such Licensor, to enforce the Administrative Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the licensed Intellectual Property, whether or not a default exists under any applicable License.

"Loan" and "Loans" means ~~individually each term loan, and~~, collectively, the ~~term loans, made by the Lenders to the Borrowers on the Closing Date pursuant to Section 2.01(a)~~Initial Term Loans and the 2025 Term Loans.

"Loan Account" has the meaning assigned to such term in Section 2.11.

"Loan Documents" means this Agreement, the Second Amendment, each Note, the First Amendment, each Security Instrument, each Compliance Certificate, the Fee Letter, any agreement creating or perfecting rights in Cash Collateral securing any Obligation hereunder and all other instruments and documents heretofore or hereafter executed or delivered to or in favor of any Lender or the Administrative Agent in connection with the Loans made and transactions contemplated by this Agreement.

"Loan Exposure" means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Loans.

"Loan Parties" means the Borrowers and each Guarantor.

"Make-Whole Premium" means with respect to any prepayment of 2025 Term Loans, on the Make-Whole Premium Prepayment Date, the excess of (A) (x) 100% of the principal amount of such 2025 Term Loans, plus (y) the present value at such Make-Whole Premium Prepayment Date of all remaining scheduled interest payments due on such 2025 Term Loans from the Make-Whole Premium Prepayment Date through the Maturity Date (excluding accrued and unpaid interest to the Make-Whole Premium Prepayment Date), assuming that all such interest accrues at the Make-Whole Premium Rate, computed using a discount rate equal to the Treasury Rate as of such Make-Whole Premium Prepayment Date plus 50 basis points, over (B) the principal amount of such 2025 Term Loans on such Make-Whole Premium Prepayment Date.

"Make-Whole Premium Prepayment Date" means the date on which a Make-Whole Premium prepayment occurs.

"Make-Whole Premium Rate" "means, with respect to the 2025 Term Loans, the sum of (1) Adjusted Term SOFR for such applicable Interest Period plus (2) the Applicable Margin with respect to 2025 Term Loans; provided that (i) Adjusted Term SOFR for purposes of this Make-Whole Premium Rate shall be equal to the Adjusted Term SOFR on such 2025 Term Loans for the Interest Period during which the Make-Whole Premium Prepayment Date occurs and (ii) the Applicable Margin for purposes of this Make-Whole Premium Rate shall be calculated (A) pursuant to clause (y) thereof (irrespective of whether a PIK Election was made with respect to the Interest Period during which the Make-Whole Premium Prepayment Date occurs) or (B) solely if the Borrower has not made a PIK Election with respect to each of three Interest Periods ending immediately preceding the Make-Whole Premium Prepayment Date and paid interest in cash on the applicable Interest Payment Dates, pursuant to clause (x) thereof.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or condition (financial or otherwise) of either (i) the Borrowers, taken as a whole or (ii) Holdings and its Subsidiaries, taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party or on the ability of the Administrative Agent to collect any Obligation or realize upon any material portion of the Collateral.

"Material Contract" means any agreement or arrangement to which a Loan Party or Subsidiary is party (other than the Loan Documents) (a) that is deemed to be a material contract under any securities laws applicable to such Loan Party, including the Securities Act of 1933; (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (c) that relates to Subordinated Debt, or to other Indebtedness in an aggregate principal amount of $500,000 or more.

"Material License" has the meaning assigned to such term in Section 7.15.

"Material Third-Party Agreement" has the meaning assigned to such term in Section 7.17(a).

"Maturity Date" means December 31, 2026.

"Measurement Period" means, at any date of determination, the most recently completed trailing twelve month period of Holdings and its Subsidiaries for which financial statements have or should have been delivered in accordance with Section 7.01(a), 7.01(b) or 7.01(c); *provided* that for the period ending (i) August 31, 2023, the Measurement Period means, at such date of determination, the one month period ending on such date, (ii) September 30, 2023, the Measurement Period means, at such date of determination, the two month period ending on such date, (iii) October 31, 2023, the Measurement Period means, at such date of determination, the three month period ending on such date, (iv) November 30, 2023, the Measurement Period means, at such date of determination, the four month period ending on such date, (v) December 31, 2023, the Measurement Period means, at such date of determination, the five month period ending on such date, (vi) January 31, 2024, the Measurement Period means, at such date of determination, the six month period ending on such date, (vii) February 29, 2024, the Measurement Period means, at such date of determination, the seven month period ending on such date, (viii) March 31, 2024, the Measurement Period means at such date of determination, the eight month period ending on such date, (ix) April 30, 2024, the Measurement Period means, at such date of determination, the nine month period ending on such date, (x) May 31, 2024, the Measurement Period means, at such date of determination, the ten month period ending on such date, and (xi) June 30, 2024, the Measurement Period means, at such date of determination, the eleven month period ending on such date, in each case of Holdings and its Subsidiaries.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage Related Documents" means, with respect to any Real Property subject to a Mortgage, the following, in form and substance satisfactory to the Administrative Agent and the Required Lenders and received by the Administrative Agent and the Required Lenders for review at least 15 days prior to the effective date of the Mortgage: (a) a policy of title insurance (or binder therefor) covering the Administrative Agent's interest under the Mortgage and insuring the Lien of such Mortgage as a valid first mortgage or deed of trust Lien on the Mortgaged Property, in a form and amount and by an insurer acceptable to the Required Lenders, which title policy (x) shall include endorsements that are available in the applicable jurisdiction as may reasonably be requested by the Required Lenders and contain no other exceptions to title other than Permitted Liens and (y) must be fully paid on such effective date by Borrower; (b) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as the Required Lenders may require with respect to other Persons having an interest in the Real Property; (c) an ALTA Survey acceptable to the Required Lenders; (d) a life-of-loan FEMA standard flood hazard determination and, if the Real Property is located in an area identified by the FEMA (or any successor agency) as a special flood hazard area, an acknowledged notice about special flood hazard area status and flood disaster assistance duly executed by Borrower and the applicable Loan Party relating thereto together with a copy of an insurance policy or a certificate of insurance and a declaration page relating thereto showing coverage for flood insurance in an amount sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws, each of which shall (w) be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable or mortgagee endorsement (as applicable), (x) name the Administrative Agent, on behalf of the Secured Parties, as lenders' loss payee/mortgagee, (y) identify the address of each property located in a special flood hazard area, the applicable flood zone designation and the flood insurance coverage and deductible relating thereto and (z) be otherwise in form and substance reasonably satisfactory to the Required Lenders; (e) a current appraisal of the Real Property, prepared by an appraiser acceptable to the Required Lenders, and in form and substance satisfactory to Required Lenders; (f) opinions, addressed to the Administrative Agent and the Secured Parties, of local counsel to the Loan Parties in each jurisdiction (x) where the Mortgaged Property is located regarding the enforceability of each such Mortgage and customary related matters and (y) where the applicable Loan Party granting the Mortgage on said Mortgaged Property is organized, regarding the due execution and delivery of each such Mortgage, each in form and substance reasonably acceptable to the Required Lenders; (g) an environmental assessment, prepared by environmental engineers acceptable to the Required Lenders, and accompanied by such reports, certificates, studies or data as the Required Lenders may reasonably require, which shall all be in form and substance satisfactory to Required Lenders; and (h) an environmental indemnity agreement and such other documents, instruments or agreements as the Required Lenders may reasonably require with respect to any environmental risks regarding the Real Property.

"Mortgaged Property" means (a) the Real Property of the Loan Parties listed on Schedule 1.01 hereto and (b) Real Property, other than Excluded Real Property, required from time to time to be subject to a Mortgage pursuant to the terms of the Loan Documents.

"Mortgages" means the mortgages, leasehold mortgages, deeds of trust, leasehold deeds of trust or deeds to secure debt executed by a Loan Party on or about the Closing Date, or from time to time thereafter as may be required under the Loan Documents, in favor of the Administrative Agent, for the benefit of the Secured Parties, by which such Loan Party has granted to the Administrative Agent, as security for the Obligations, a Lien upon the Mortgaged Property described therein, together with all mortgages, deeds of trust and comparable documents now or at any time hereafter securing the whole or any part of the Obligations, duly executed and acknowledged by the applicable Loan Party and otherwise in form for recording in the local recording office where such Mortgaged Property is located, together with such certificates, affidavits, questionnaires or returns as may be necessary or advisable in connection with the recording or filing thereof to create a mortgage or deed of trust lien under the laws of the applicable jurisdiction on the Mortgaged Property and fixtures located thereon.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(4) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including any Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Net Cash Proceeds" means

(a) with respect to the Disposition of any asset of any Loan Party or any Subsidiary, the excess, if any, of (i) the sum of the cash and cash equivalents received in connection with such Disposition (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by such asset and that is required to be repaid in connection with the Disposition thereof (other than Indebtedness under the Loan Documents and Indebtedness owing to such Loan Party or any Subsidiary), (B) the reasonable out-of-pocket expenses incurred by such Loan Party or any Subsidiary in connection with such Disposition, including any brokerage commissions, underwriting fees and discount, legal fees, finder's fees and other similar fees and commissions, (C) taxes paid or reasonably estimated to be payable by the Loan Party or any Subsidiary in connection with the relevant Disposition, (D) the amount of any reasonable reserve required to be established in accordance with GAAP against liabilities (other than taxes deducted pursuant to clause (C) above) to the extent such reserves are (x) associated with the assets that are the object of such Disposition and (y) retained by such Loan Party or applicable Subsidiary, and (E) the amount of any reasonable reserve for purchase price adjustments and retained fixed liabilities reasonably expected to be payable by such Loan Party or applicable Subsidiary in connection therewith to the extent such reserves are (1) associated with the assets that are the object of such Disposition and (2) retained by such Loan Party or applicable Subsidiary; *provided* that the amount of any subsequent reduction of any reserve provided for in clause (D) or (E) above (other than in connection with a payment in respect of such liability) shall (X) be deemed to be Net Cash Proceeds of such Disposition occurring on the date of such reduction, and (Y) immediately be applied to the prepayment of Loans in accordance with Section 2.06(c); and

(b) with respect to any issuance of Indebtedness or Equity Interests by any Loan Party or any Subsidiary, the excess, if any, of (i) the sum of the cash and cash equivalents received in connection with such issuance over (ii) the sum of (A) the reasonable out-of-pocket expenses incurred by such Loan Party or any Subsidiary in connection with such issuance, including any brokerage commissions, underwriting fees and discount, legal fees, and other similar fees and commissions and (B) taxes paid or payable to the applicable taxing authorities by the Loan Party or any Subsidiary in connection with and at the time of such issuance.

"Non-Consenting Lender" has the meaning assigned to such term in Section 11.01(d).

"Note" means a promissory note requested by a Lender, made by the Borrowers in favor of such Lender evidencing Loans made by such Lender, substantially in the form of Exhibit A.

"NPL" means the National Priorities List pursuant to CERCLA, as updated from time to time.

"Obligations" means all amounts owing by any Loan Party to the Administrative Agent, any Lender or any other Secured Party pursuant to or in connection with this Agreement or any other Loan Document or otherwise with respect to any Loan, and including all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any proceeding under any Debtor Relief Law relating to any Loan Party, or would accrue but for such filing or commencement, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement obligations, indemnification and reimbursement payments, fees, costs and expenses (including all fees, costs and expenses of counsel to the Administrative Agent) incurred in connection with this Agreement or any other Loan Document, whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, together with all renewals, extensions, modifications or refinancings thereof.

"OFAC" means the United States Department of Treasury Office of Foreign Assets Control.

"OFAC SDN List" means the list of the Specially Designated Nationals and Blocked Persons maintained by OFAC.

"Ordinary Course of Business" means the ordinary course of business of the Company and its Subsidiaries, consistent with past practices and undertaken in good faith.

"Original ABL Credit Agreement" has the meaning set forth in the Preliminary Statements hereto.

"Original Term Loan Credit Agreement" has the meaning set forth in the Preliminary Statements hereto.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity; and (d) with respect to any of the foregoing, each shareholder agreement, member agreement, agreement among partners or limited partners, stock designation, equity holder agreement or other agreement among or affecting rights of holders of Equity Interests issued by any Loan Party and which such Loan Party is a party to.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 11.13).

"Overnight Rate" means, for any day and from time to time as in effect, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Federal Reserve Bank of New York as set forth on its public website from time to time, and published on the next succeeding Business Day by the Federal Reserve Bank of New York as an overnight bank funding rate.

"Participant" has the meaning assigned to such term in Section 11.06(d).

"Participant Register" has the meaning assigned to such term in Section 11.06(d).

"Patent Security Agreement" means any patent security agreement pursuant to which a Loan Party assigns to Administrative Agent, for the benefit of the Secured Parties, such Person's interests in its patents, as security for the Obligations.

"PATRIOT Act" means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"Payment Conditions" means, with respect to any Specified Investment, the satisfaction of the following conditions:

(a) as of the date of any such Specified Investment and immediately after giving effect thereto, no Default or Event of Default has occurred and is continuing;

(b) [reserved];

(c) the Consolidated Fixed Charge Coverage Ratio as of the end of the most recently ended Measurement Period prior to the making of such Specified Investment, calculated on a Pro Forma Basis, shall be equal to or greater than 1.00 to 1.00;

(d) the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower Agent certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby; and

(e) such Specified Transaction shall occur after August 7, 2024.

"Payment in Full" means (a) the payment in full in cash of all Obligations (other than contingent Obligations for which no claim has been asserted), together with all accrued and unpaid interest and fees thereon shall have been made and (b) all claims of the Loan Parties against any Secured Party arising on or before the satisfaction of the condition set forth in clause (a) above, shall have been released on terms acceptable to the Administrative Agent and the Lenders; *provided* that, the Administrative Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages the Administrative Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, Administrative Agent receives a written agreement, executed by Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying the Administrative Agent and the Lenders from any such damages.

"Payment Item" means each check, draft or other item of payment payable to a Borrower, including those constituting proceeds of any Collateral.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is maintained or is contributed to by any Loan Party and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

"Permitted Acquisition" means any Acquisition by a Loan Party with respect to which:

(a) the Person to be (or whose assets are to be) acquired does not oppose such Acquisition and the line or lines of business of the Person to be acquired constitute Core Businesses and had positive EBITDA for the 12 month period most recently ended;

(b) (x) the Person to be (or whose assets are to be) acquired (i) is a domestic Person, or all or substantially all of any business or division of a domestic Person and (ii) upon acquisition, would constitute a Domestic Subsidiary under this Agreement and (y) such Acquisition shall only involve assets located in the United States;

(c) after giving effect to such Acquisition on a Pro Forma Basis and the costs related thereto (including cash and other property (other than Equity Interests or options to acquire Equity Interests of any Loan Party) given as consideration, any Indebtedness incurred, assumed or acquired by any Loan Party or any Subsidiary in connection with such Acquisition, all additional purchase price amounts in the form of earnouts and other contingent obligation calculated at the maximum amount thereof, and all fees expenses and transaction costs incurred in connection therewith), the Payment Conditions shall have been met with respect thereto;

(d) the Borrower Agent shall have furnished to the Administrative Agent at least five (5) Business Days prior to the date on which any such Acquisition is to be consummated or such shorter time as the Required Lenders may allow, a certificate of a Responsible Officer of the Borrower Agent, in form and substance reasonably satisfactory to the Administrative Agent, (i) certifying that all of the requirements set forth above will be satisfied on or prior to the consummation of such Acquisition and (ii) a reasonably detailed calculation of item (b) above (and such certificate shall be updated as necessary to make it accurate as of the date the Acquisition is consummated); and

(e) the Borrower Agent shall have furnished the Administrative Agent with ten (10) days' prior written notice of such intended Acquisition and shall have furnished the Administrative Agent with a current draft of the applicable acquisition documents (and final copies thereof as and when executed), and to the extent available, appropriate financial statements of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Loan Parties), and, to the extent available, such other information as the Required Lenders may reasonably request.

"Permitted Holder" means any of the Coliseum Investors.

"Permitted Liens" has the meaning specified in Section 8.02.

"Permitted Tax Distributions" means for any taxable period in which a Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of such Borrower is the common parent (a "Tax Group"), distributions by such Borrower to such direct or indirect parent of such Borrower to pay federal, foreign, state and local income Taxes of such Tax Group that are attributable to the taxable income of the Borrower and/or its Subsidiaries; *provided* that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that such Borrower and the Subsidiaries would have been required to pay as a stand-alone Tax Group, reduced by any portion of such income Taxes directly paid by such Borrower or any of its Subsidiaries.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"PIK Election" means an election by the Borrower submitted to the Administrative Agent at least 3 Business Days prior to the commencement of an Interest Period for the interest payable on the Interest Payment Date with respect to such Interest Period to be payable in-kind in accordance with Section 2.08(d).

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan, but excluding a Multiemployer Plan), maintained for employees of any Loan Party or any ERISA Affiliate or any such Plan to which any Loan Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Platform" has the meaning specified in Section 7.02.

"Post-Closing Agreement" means that certain Post-Closing Agreement by and between the Borrower Agent and the Administrative Agent dated as of the Closing Date (as defined in the Original Term Loan Credit Agreement) with respect to the satisfaction of certain collateral matters upon the dates specified therein and as modified pursuant to the Second Amendment.

"Prime Rate" means, for any day, a fluctuating rate per annum equal to the greatest of (a) the rate last quoted by *The Wall Street Journal* as the "Prime Rate" in the United States or, if *The Wall Street Journal* ceases to quote such rate, the greatest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Administrative Agent (acting at the direction of the Required Lenders)) or any similar release by the Federal Reserve Board (as reasonably determined by the Administrative Agent (acting at the direction of the Required Lenders)), (b) the sum of the Federal Funds Rate on such day plus 0.50%, and (c) Adjusted Term SOFR plus 1.00%. Any change in the Prime Rate due to a change in any of the rates referred to in the foregoing clauses (a) through (c) shall be effective from and including the effective date of such change. If the Prime Rate is being used as an alternative rate of interest pursuant to Sections 3.02 or 3.03, then the Prime Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above, provided that if Prime Rate as determined above shall ever be less than the 4.50% then Prime Rate shall be deemed to be the 4.50%. The Prime Rate is a reference rate and not necessarily the lowest interest rate at which any Secured Party may make loans or other extensions of credit to other customers.

"Pro Forma Adjustment" means, for the purposes of calculating Consolidated EBITDA for any Measurement Period, if at any time during such Measurement Period, Holdings or any of its Subsidiaries shall have made a Permitted Acquisition or Disposition, Consolidated EBITDA for such Measurement Period shall be calculated after giving pro forma effect thereto as if any such Permitted Acquisition or Disposition occurred on the first day of such Measurement Period, including (a) with respect to an any Permitted Acquisition, inclusion of the actual historical results of operation of such acquired Person or line of business during such Measurement Period and (b) with respect to any Disposition, exclusion of the actual historical results of operations of the disposed of Person or line of business or assets during such Measurement Period.

"Pro Forma Basis," "Pro Forma Compliance" and "Pro Forma Effect" means, with respect to compliance with any applicable test, financial ratio or covenant hereunder, that (without duplication):

(a) the Pro Forma Adjustment shall have been made, to the extent applicable; and

(b) all Specified Pro Forma Transactions that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made (the period beginning on the first day of such period of measurement and continuing until the date of the consummation of such event, the "Reference Period") shall be deemed to have occurred as of the first day of the applicable Reference Period; *provided* that (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Pro Forma Transaction, (A) shall be excluded in the case of a Disposition of all or substantially all Equity Interests in or assets of any Loan Party or its Subsidiaries or any division, product line, or facility used for operations of the Loan Parties or their Subsidiaries, and (B) shall be included in the case of a Permitted Acquisition or Investment described in the definition of Specified Pro Forma Transaction, and (ii) all Indebtedness issued, incurred or assumed as a result of, or to finance, any Specified Pro Forma Transaction or permanently repaid in connection with any Specified Pro Forma Transaction during the Reference Period shall be deemed to have been issued, incurred, assumed or permanently repaid at the beginning of such Reference Period (with interest expense of such Person attributable to any Indebtedness for which pro forma effect is being given as provided in preceding clause (ii) that has a floating or formula rate, shall have an implied rate of interest for the applicable Reference Period determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination); *provided*, that, the foregoing pro forma adjustments may be applied to any such test, financial ratio or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and the definition of Pro Forma Adjustment.

Whenever any provision of this Agreement requires the Loan Parties to be in compliance on a Pro Forma Basis (or in Pro Forma Compliance) with a specified Consolidated Fixed Charge Coverage Ratio in connection with any action to be taken by any Loan Party or any Subsidiary, the Borrower Agent shall deliver to the Administrative Agent a certificate of a Senior Officer setting forth in reasonable detail the calculations demonstrating such compliance.

"Pro Rata Share" means for all purposes with respect to each Lender, the percentage obtained by dividing (A) an amount equal to the Loan Exposure of that Lender, by (B) an amount equal to the Loan Exposure of all Lenders.

"Properly Contested" means with respect to any obligation of a Loan Party, (a) the obligation is subject to a bona fide dispute regarding amount or such Loan Party's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not reasonably be expected to have a Material Adverse Effect, nor result in forfeiture or sale of any assets of a Loan Party; (e) no Lien is imposed on assets of a Loan Party, unless bonded and stayed to the reasonable satisfaction of the Required Lenders; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Lender" has the meaning specified in Section 7.02.

"Real Property" means all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Person, including all easements, rights-of-way, and similar rights appurtenant thereto and all leases, tenancies, and occupancies thereof.

"Recipient" means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any Obligation of a Borrower hereunder.

"Refinancing Conditions" means the following conditions for Refinancing Indebtedness: (a) it is in an aggregate principal amount that does not exceed the principal amount of the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended (the "Original Indebtedness") plus accrued interest and reasonable fees and expenses incurred in connection with such Refinancing Indebtedness; (b) the interest rate applicable to such Refinancing Indebtedness does not exceed the greater of the (i) interest rate applicable to the Original Indebtedness and (ii) the otherwise market rate of interest for such similar Indebtedness to similar borrowers; (c) it has a final maturity no sooner than, and a weighted average life no less than, the applicable Original Indebtedness; (d) it contains no mandatory prepayment provisions more favorable to the lenders thereunder than the mandatory prepayment provision under the Original Indebtedness, (e) to the extent the Original Indebtedness is unsecured, such Refinancing Indebtedness shall be unsecured; (f) to the extent the Original Indebtedness is secured by Liens, such Refinancing Indebtedness is either unsecured or is not secured by any Liens that did not secure the Original Indebtedness immediately prior to incurrence of the Refinancing Indebtedness; (g) to the extent that such Original Indebtedness is subject to any Subordination Provisions, such Refinancing Indebtedness is subject to Subordination Provisions no less favorable to the Administrative Agent and the Lenders than those applicable to the Original Indebtedness immediately prior to incurrence of the Refinancing Indebtedness; (h) no additional Person not obligated, primarily or contingently, on the Original Indebtedness is obligated, primarily or contingently, on such Refinancing Indebtedness; (i) such Refinancing Indebtedness shall be on terms not materially less favorable to the Administrative Agent or the Lenders, and not materially more restrictive to the Loan Parties, than the terms of the Original Indebtedness; and (j) upon giving effect to such Refinancing Indebtedness, no Default or Event of Default exists.

"Refinancing Indebtedness" means the Indebtedness that is the result of any modification, refinancing, refunding, replacement, renewal or extension of Indebtedness permitted under Section 8.01(b), (f), (g), (h), (p), (q) and (r) as to which the Refinancing Conditions are satisfied; *provided* that the incurrence of any such Refinancing Indebtedness will be deemed to utilize permitted amounts of Indebtedness, if any, under each clause thereof.

"Register" has the meaning specified in Section 11.06(c).

"Registered Public Accounting Firm" has the meaning specified in the Securities Laws and shall be independent of the Company as prescribed in the Securities Laws.

"Registration Rights Agreement" means the Amended and Restated Registration Rights Agreement dated as of the date hereof by and among Holdings, the Lenders and the other parties thereto.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or any successor thereto.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Required Lenders" means, as of any date of determination, Lenders holding more than 50% of the Loan Exposure of all Lenders; *provided* that, at any time one or more Coliseum Investors are Lenders, such Coliseum Investor or Coliseum Investors shall constitute the Required Lenders. For purposes of determining whether Required Lenders have provided any request, demand, authorization, direction, notice, consent, or waiver, the Administrative Agent shall only be deemed to have knowledge that any Lender is a Coliseum Investor to the extent that it has received written notice thereof from such Lender that is a Coliseum Investor.

"Rescindable Amount" has the meaning specified in Section 2.12(b)(ii).

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means, with respect to each Loan Party, the chief executive officer, president, chief financial officer, treasurer, controller or assistant treasurer of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of Holdings or any Subsidiary, (ii) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to Holdings or any Subsidiary's stockholders, partners or members (or the equivalent Person thereof) or (iii) any distribution, advance or repayment of Indebtedness to or for the account of a holder of Equity Interests of Holdings or its Affiliates.

"Royalties" means all royalties, fees, expense reimbursement and other amounts payable by a Loan Party under a License.

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. and any successor thereto.

"Same Day Funds" means immediately available funds.

"Sanctioned Person" means, at any time, any Person that is a target of Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including the OFAC SDN List), the United States Department of State, the United Nations Security Council, the European Union, any European Union member state, Canada, His Majesty's Treasury of the United Kingdom, or any other relevant sanctions authority, (b) any Person located, organized or resident in a Designated Jurisdiction or (c) any Person 50% or more owned or controlled by any Person described in clauses (a) or (b) above.

"Sanctions" means all economic or financial sanctions, sectoral sanctions, secondary sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the United States (including those administered by OFAC or the United States Department of State), or (b) the United Nations Security Council, the European Union, any European Union member state, His Majesty's Treasury of the United Kingdom, or any other relevant sanctions authority with jurisdiction over any Loan Party or any of their respective Subsidiaries or Affiliates.

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Second Amendment" means that certain Second Amendment to the Original Term Loan Credit Agreement, dated as of the Closing Date, among the Borrowers, the Lenders and the Administrative Agent.

"Secured Party" means (a) each Lender, (b) the Administrative Agent and (c) the successors and assigns of each of the foregoing.

"Secured Party Expenses" has the meaning set forth in Section 11.04(a).

"Securities Laws" means the Securities Act of 1933, the Exchange Act, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

"Security Agreement" means the Security Agreement dated as of the date hereof by the Loan Parties and the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit C.

"Security Instruments" means, collectively or individually as the context may indicate, the Security Agreement, the Control Agreements, the Mortgages, the Mortgage Related Documents, the Patent Security Agreement, the Trademark Security Agreement, each Lien Waiver and all other agreements (including securities account control agreements), instruments and other documents, whether now existing or hereafter in effect, pursuant to which any Loan Party or other Person shall grant or convey to the Administrative Agent for the benefit of the Secured Parties, a Lien in property as security for all or any portion of the Obligations.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Loan" means a Loan bearing interest based on Adjusted Term SOFR.

"Solvent" means, as to any Person, such Person (a) owns property or assets whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns property or assets whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not "insolvent" within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. "Fair salable value" means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase. For purposes hereof, the amount of all contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

"Specified Investment" means any Investment proposed to be made pursuant to Section 8.03(g) or (i).

"Specified Pro Forma Transaction" means, with respect to any period, any Investment, Disposition, or other event, including any Specified Investments, that by the terms of the Loan Documents requires "Pro Forma Compliance" with a test or covenant hereunder or requires such test or covenant to be calculated on a "Pro Forma Basis."

"Subordinated Debt" means Indebtedness (including earnout payments) which is expressly subordinated in right of payment to the prior Payment in Full and which is in form and on terms reasonably satisfactory to, and approved in writing by, the Required Lenders.

"Subordination Provisions" means any provision relating to debt or lien subordination applicable to or contained in any documents evidencing any Indebtedness, including Subordinated Debt or the Loans, including as set forth in applicable intercreditor agreements acceptable to the Administrative Agent and the Required Lenders.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (but not a representative office of such Person) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of Holdings.

"Subsidiary Guarantor" means any Subsidiary of the Company that is a Guarantor.

"Supplemental Facility" has the meaning provided in Section 11.01(c).

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, together with any related schedules.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Tax Receivable Agreement" means that certain Tax Receivable Agreement dated February 2, 2018, by and between Holdings and InnoHold, LLC, as amended, modified or supplemented from time to time prior to the date hereof and as further amended, modified or supplemented from time to time not in violation of this Agreement.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term SOFR" means the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; *provided*, *however*, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent (acting at the direction of the Required Lenders).

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Threshold Amount" means Two Million Dollars ($2,000,000).

"Trademark Security Agreement" means any trademark security agreement pursuant to which any Loan Party assigns to the Administrative Agent, for the benefit of the Secured Parties, such Person's interest in its trademarks as security for the Obligations.

"Transaction" means, collectively, (a) the assignment and assumption of obligations under the Original Term Loan Credit Agreement and Original ABL Credit Agreement on the Closing Date and immediately prior to effectiveness of the Second Amendment and this Agreement, (b) the funding of the Loans on the Closing Date and the execution and delivery of the Loan Documents to be entered into on the Closing Date, (c) the Closing Date Refinancing, (d) entry into definitive documentation in respect of, and issuance of, the Warrants and (e) the payment of fees, premiums and expenses in connection with the foregoing.

"Treasury Rate" means with respect to a Make-Whole Premium Prepayment Date, the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two Business Days prior to such Make-Whole Premium Prepayment Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such Make-Whole Premium Prepayment Date to (but not including) the Maturity Date; *provided*, *however*, that if the period from the Make-Whole Premium Prepayment Date to such date is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the Make-Whole Premium Prepayment Date to such date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

"Trust Accounts" means Deposit Accounts or Securities Accounts containing cash, cash equivalents or Securities (a) held exclusively for employee benefit payments and expenses related to a Loan Party's employees, or (b) required to be collected, remitted or withheld exclusively to pay payroll or taxes (including, without limitation, federal and state withholding taxes (including the employer's share thereof)).

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that if, with respect to any financing statement or by reason of any mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Administrative Agent pursuant to any applicable Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than the State of New York, the term "UCC" shall also include the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of this Agreement, each Loan Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"United States" and "U.S." mean the United States of America.

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"Voting Equity Interests" means Equity Interests with respect to which the holders thereof are ordinarily, in the absence of contingencies, entitled to vote for the election of members of the Board of Directors of the issuer thereof, even if the right so to vote has been suspended by the happening of such a contingency.

"Warrant" and "Warrants" have the meanings specified in the Preliminary Statements hereto.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vii) all covenants in Article VIII shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant (other than specific cross references permitting actions or conditions under other covenants) shall not avoid the occurrence of an Event of Default or Default if such action is taken or condition exists.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) A reference to Loan Parties' "knowledge" or similar concept means actual knowledge of a Responsible Officer, or knowledge that a Responsible Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect on the Closing Date, except (i) with respect to any reports or financial information required to be delivered pursuant to Section 7.01, which shall be prepared in accordance with GAAP as in effect and applicable to that accounting period in respect of which reference to GAAP is being made and (ii) as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of each Loan Party and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower Agent or the Required Lenders shall so request, the Required Lenders and the Borrower Agent shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower Agent shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding anything to the contrary contained in this Section 1.03 or the definition of "Capital Leases", in the event of a change in GAAP requiring all leases to be capitalized, only those leases that would have constituted Capital Leases on the Closing Date (assuming for purposes hereof that such leases were in existence on the Closing Date) shall be considered Capital Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such change in GAAP shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such change).

(c) Consolidation of Variable Interest Entities. Except as expressly provided otherwise herein, all references herein to Consolidated financial statements of the Company and its Subsidiaries or to the determination of any amount for the Company and its Subsidiaries on a Consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Company is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

(d) Calculations. In computing financial ratios and other financial calculations of the Company and its Subsidiaries required to be submitted pursuant to this Agreement, all Indebtedness of the Company and its Subsidiaries shall be calculated at par value irrespective if the Company has elected the fair value option pursuant to FASB Interpretation No. 159 – The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115 (February 2007).

1.04 Uniform Commercial Code. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: "Chattel Paper," "Commodity Account," "Commodity Contracts," "Deposit Account," "Documents," "Equipment", "General Intangibles," "Instrument," "Inventory," "Record," and "Securities Account."

1.05 Rounding. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Central time (daylight or standard, as applicable).

1.07 [Reserved].

1.08 Interest Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Benchmark or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II
THE COMMITMENTS AND LOANS

2.01 Loans.

(a)

(i) ~~(a)~~ Upon the terms and subject to the conditions herein set forth and the Second Amendment, each Lender, severally and not jointly with any other Lender, agrees to make ~~a~~an Initial Term Loan to the Borrowers, in the amount set forth opposite such Lender's name in Schedule 2.01 under the heading "Commitments." The Commitments shall expire upon the funding of the Initial Term Loans by the applicable Lenders. Once repaid, whether such payment is voluntary, scheduled or mandatory, no portion of the Loans may be reborrowed.

(ii) Upon the terms and subject to the conditions herein set forth and the First Amendment, each 2025 Term Loan Lender, severally and not jointly with any other 2025 Term Loan Lender, agrees to make a 2025 Term Loan to the Borrowers, in the amount set forth opposite such 2025 Term Loan Lender's name in Schedule 2.01 under the heading "Commitments." The Commitments shall expire upon the funding of the 2025 Term Loans by the applicable 2025 Term Loan Lenders. Once repaid, whether such payment is voluntary, scheduled or mandatory, no portion of the Loans may be reborrowed.

(b) The obligations of the Lenders hereunder to make the Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loans or to make its payment under Section 11.04(c).

(c) To request a borrowing of a Loan, the Borrowers shall notify the Administrative Agent of such request by delivery of a written Borrowing Request signed by the Borrower Agent to the Administrative Agent not later than 2:00 p.m., New York City time, one Business Day before the date of the applicable date of funding (or such later time as the Administrative Agent and the Required Lenders may agree in their sole discretion). Each such Borrowing Request shall specify the following information:

(i) the aggregate amount of such borrowing;

(ii) the date of such borrowing, which shall be a Business Day;

(iii) the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(iv) the location and wiring instructions for the Borrower's account to which funds are to be disbursed.

2.02 [Reserved.].

2.03 [Reserved.]

2.04 [Reserved.]

2.05 Repayment of Loans.

(a) [Reserved].

(b) Loans. The Borrowers shall repay to the Administrative Agent for the account of each of the Lenders on the Maturity Date the aggregate principal amount of and all accrued and unpaid interest on all Loans outstanding on such date.

(c) [reserved]

(d) [reserved]

(e) Other Obligations. Obligations other than principal and interest on the Loans, including Extraordinary Expenses, shall be paid by Borrowers as specifically provided herein and in any other applicable Loan Documents or, if no payment date is specified, on demand.

2.06 Prepayments.

(a) Optional.

(i) The Borrowers may, upon notice to the Administrative Agent from the Borrower Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty (except as provided in Section 2.06(a)(iii)); *provided* that, (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to the date of prepayment (or such shorter period as agreed to by the Required Lenders) and (B) any prepayment shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the Facility). If such notice is given by the Borrower Agent, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 2.06(a)(iii) and Section 3.05 (amounts paid pursuant to Section 3.05, if any, to be paid directly to such Lender). Any such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages.

(ii) [Reserved]

(iii)

(A) ~~(iii)~~ If on or after August 7, 2024, any voluntary prepayment or mandatory prepayment ~~pursuant~~ is made pursuant to Section 2.06(a) or Section 2.06(b) in part or in full of the ~~Loans~~Initial Term Loans (the date of such prepayment, the "Initial Term Loan Prepayment Premium Payment Date"), the Borrowers shall pay to the Administrative Agent, for the ratable account of each Initial Term Loan Lender, a prepayment premium (the "Initial Term Loan Prepayment Premium") equal to:

Date	Prepayment Premium
On or after August 7, 2024 and prior to August 7, 2025	1.25%
On or after August 7, 2025	2.50%

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, it is understood and agreed that if the Initial Term Loans are accelerated in accordance with the terms and conditions of this Agreement as a result of the occurrence and continuance of any Event of Default (including by operation of law or otherwise), the Initial Term Loan Prepayment Premium, determined as of the date of such acceleration, will also be due and payable and will be treated and deemed as though the Initial Term Loans were prepaid as of such date and shall constitute part of the Obligations for all purposes herein. Any Initial Term Loan Prepayment Premium payable in accordance with this Section 2.06 shall be presumed to be equal to the liquidated damages sustained by the Initial Term Loan Lenders as the result of the occurrence of the Initial Term Loan Prepayment Premium Payment Date, and the Loan Parties agree that it is reasonable under the circumstances currently existing. This Initial Term Loan Prepayment Premium shall also be payable in the event the Initial Term Loans (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means or the Initial Term Loans are reinstated pursuant to Section 1124 or any other provision of the Bankruptcy Code. THE LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Loan Parties expressly agree that (i) the Initial Term Loan Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (ii) the Initial Term Loan Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between Initial Term Loan Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Initial Term Loan Prepayment Premium, (iv) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 2.06, (v) their agreement to pay the Initial Term Loan Prepayment Premium is a material inducement to the Initial Term Loan Lenders to provide the Initial Term Loan Commitments and make the Initial Term Loans and (vi) the Initial Term Loan Prepayment Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Initial Term Loan Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Initial Term Loan Lenders or profits lost by the Initial Term Loan Lenders as a result of such Initial Term Loan Prepayment Premium Payment Date.

(B) If on or after the First Amendment Effective Date, any voluntary prepayment or mandatory prepayment is made pursuant to Section 2.06(a) or Section 2.06(b) in part or in full of the 2025 Term Loans (the date of such prepayment, the "2025 Term Loan Prepayment Premium Payment Date"), the Borrowers shall pay to the Administrative Agent, for the ratable account of the 2025 Term Loan Lenders, a prepayment premium (the "2025 Term Loan Prepayment Premium") in an amount equal to the greater of (i) the Make-Whole Premium and (ii) 2.50% of the aggregate principal amount of the 2025 Term Loans so prepaid or replaced. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, it is understood and agreed that if the 2025 Term Loans are accelerated in accordance with the terms and conditions of this Agreement as a result of the occurrence and continuance of any Event of Default (including by operation of law or otherwise), the 2025 Term Loan Prepayment Premium, if any, determined as of the date of such acceleration, will also be due and payable and will be treated and deemed as though the 2025 Term Loans were prepaid as of such date and shall constitute part of the Obligations for all purposes herein. Any 2025 Term Loan Prepayment Premium payable in accordance with this Section 2.06 shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the 2025 Term Loan Prepayment Premium Prepayment Date, and the Loan Parties agree that it is reasonable under the circumstances currently existing. This 2025 Term Loan Prepayment Premium, if any, shall also be payable in the event the 2025 Term Loans (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means or the 2025 Term Loans are reinstated pursuant to Section 1124 or any other provision of the Bankruptcy Code. THE LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Loan Parties expressly agree that (i) the 2025 Term Loan Prepayment Premium is reasonable and are the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (ii) the 2025 Term Loan Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between 2025 Term Loan Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the 2025 Term Loan Prepayment Premium, (iv) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 2.06, (v) their agreement to pay the 2025 Term Loan Prepayment Premium is a material inducement to the 2025 Term Loan Lenders to provide the 2025 Term Loan Commitments and make the 2025 Term Loans and (vi) the 2025 Term Loan Prepayment Premium represent a good faith, reasonable estimate and calculation of the lost profits or damages of the 2025 Term Loan Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the 2025 Term Loan Lenders or profits lost by the 2025 Term Loan Lenders as a result of such 2025 Term Loan Prepayment Premium Prepayment Date.

(C) Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to ascertain or calculate the amount of the 2025 Term Loan Prepayment Premium.

(b) Mandatory.

(i) The Borrowing Agent shall notify the Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to the date of any mandatory prepayment pursuant to this Section 2.06(b) (or such shorter period as agreed to by the Required Lenders).

(ii) Asset Dispositions. If a Disposition occurs with respect to any property of any Loan Party or any of its Subsidiaries (other than any Disposition of property permitted by Section 8.05(a), (c), (e), (f), (g), (h) (to the extent such Disposition is a discount of or compromise of overdue accounts in the Ordinary Course of Business), (i) or (j)) which results in the realization by such Person of Net Cash Proceeds in excess of $1,000,000 in any calendar year, the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds within five (5) Business Days upon receipt thereof by such Person.

(iii) Equity Issuance. Upon the sale or issuance by any Loan Party or any of its Subsidiaries of any of its Equity Interests (other than (x) the issuance of Equity Interests to another Loan Party or Subsidiary of a Loan Party to the extent permitted by this Agreement, (y) the issuance by Holdings of Equity Interests to directors, officers or employees pursuant to employee stock option plans approved by Holdings' board of directors and (z) the issuance of Equity Interests consented to by the Required Lenders to not be subject to this prepayment requirement), the Borrowers shall prepay an aggregate principal amount of Loans equal to 50.0% of all Net Cash Proceeds received therefrom within five (5) Business Days upon receipt thereof by such Loan Party or such Subsidiary.

(iv) Debt Incurrence. Upon the incurrence or issuance by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 8.01 or otherwise consented to by the Required Lenders), the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom within five (5) Business Days upon receipt thereof by such Loan Party or such Subsidiary.

(v) Extraordinary Receipts. Upon receipt of any cash by (or paid to or for the account of) any Loan Party or its Subsidiaries not in the ordinary course of business in excess of $1,000,000 in any calendar year, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), indemnity payments, purchase price adjustments, judgments, settlements or other payments in connection with any cause of action, but as long as no Default or Event of Default is outstanding excluding Excluded Receipts, and not otherwise included in clauses (ii), (iii) or (iv) of this Section 2.06(b), the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of the cash amount thereof (net of all reasonable out-of-pocket expenses, including without limitation the reasonable legal fees of counsel to the Lenders and counsel to the Administrative Agent that are incurred in connection with such receipt and to the extent borne by a Loan Party, or other amounts required to be paid in connection therewith) within five (5) Business Days upon receipt.

(c) Application of Mandatory Prepayments. Subject to Section 9.03:

(i) Each prepayment of Loans pursuant to the provisions of Section 2.06(b) shall be applied to the Facility in the manner set forth in clause (ii) below. Such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentage.

(ii) Prepayments of the Facility made pursuant to Section 2.06(b) shall be applied to the prepayment, on a pro rata basis, of remaining installments of principal of the Loans until paid in full in accordance with each Lender's Applicable Percentage, and in each case shall be accompanied by all accrued interest on the amount prepaid, together with all amounts (including any applicable prepayment premium under Section 2.06(a)(iii)) due under this Agreement.

(d) Reinvestment. Notwithstanding the foregoing, with respect to any Net Cash Proceeds realized in connection with a Disposition described in Section 2.06(b)(ii), at the election of the Borrowers (as notified by the Borrower Agent to the Administrative Agent on or prior to the date of such Disposition or receipt of proceeds) and so long as no Default shall have occurred and be continuing, such Loan Party or such Subsidiary may reinvest all or any portion of such Net Cash Proceeds in operating assets within 180 days after the receipt of such Net Cash Proceeds (the consummation of such reinvestment to be certified by the Borrowers in writing to the Administrative Agent within such period); *provided*, *however*, that any Net Cash Proceeds not so reinvested shall be immediately applied to the prepayment of the Loans as set forth in Section 2.06(c) and such amounts shall be held as Cash Collateral until the earlier of reinvestment or the expiration of 180 days from receipt.

2.07 [Reserved.].

2.08 Interest.

(a) Subject to the provisions of subsection (b) and Section 3.03 below, (i) each Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to Adjusted Term SOFR for such Interest Period plus the Applicable Margin; provided that with respect to the initial Interest Period for the 2025 Term Loans, the interest rate applicable to such Loans shall be the interest rate applicable to the Initial Term Loans during the Interest Period during which the First Amendment Effective Date occurs; and (ii) each other Obligation (including, to the extent not prohibited by applicable Law, interest not paid when due) shall bear interest on the unpaid amount thereof at a rate per annum equal to the Prime Rate plus the Applicable Margin.

(b) If any amount payable by the Borrowers under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(i) If any other Event of Default exists, then the Administrative Agent, at the direction of the Required Lenders, shall require (and notify the Borrower Agent thereof) that all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto, the Maturity Date and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) At the Borrower Agent's option, interest on each Loan shall be payable (x) in cash on each Interest Payment Date or (y) if a PIK Election has been made at least 3 Business Days prior to commencement of the applicable Interest Period, in-kind on the applicable Interest Payment Date for such Interest Period by adding the amount thereof to the then-outstanding principal amount of the Loans, and on such Interest Payment Date the then-outstanding principal amount of the Loans shall be deemed automatically increased by the interest due and payable on such date.

2.09 Fees.

(a) [Reserved]

(b) [Reserved]

(c) Fee Letter. The Borrowers agree to pay to the Administrative Agent, for its own account, the fees payable in the amounts and at the times set forth in the Fee Letter.

(d) Generally. All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution to the Lenders entitled thereto. Fees paid shall not be refundable under any circumstances.

2.10 Computation of Interest and Fees. All computations of interest for Loans accruing interest at the Prime Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan or other Obligation not paid when due for the day on which the Loan is made or such Obligation is due and unpaid, and shall not accrue on a Loan, or any portion thereof, or such Obligation for the day on which the Loan, or such portion thereof, or Obligation is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt. Loan Account. The Loans made by each Lender shall be evidenced by the Register maintained by the Administrative Agent in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the Register maintained by the Administrative Agent, the Register shall control in the absence of manifest error. Upon the request of any Lender made to the Borrower Agent, the Borrowers shall execute and deliver to such Lender a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

2.12 Payments Generally; the Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed, at the discretion of the Administrative Agent, received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) Presumptions by Administrative Agent.

(i) [reserved.]

(ii) Payments by Borrower. Unless the Administrative Agent shall have received notice from the Borrower Agent prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may (but shall not be required to) in reliance upon such assumption, distribute to the Lenders the amount due. With respect to any payment that the Administrative Agent makes to any Lender or any other Secured Party as to which the Administrative Agent determines (in its sole and absolute discretion) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made the corresponding payment to the Administrative Agent; (2) the Administrative Agent has made a payment in excess of the amount(s) received by it from Borrowers either individually or in the aggregate (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Secured Parties severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Secured Party, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or any Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) [reserved.]

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and prepayment premiums then due hereunder, such funds shall be applied as provided in Section 2.06(c).

2.13 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise (other than in connection with a Supplemental Facility), obtain payment in respect of (a) the Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its Pro Rata Share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) the Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its Pro Rata Share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of any Loan Party pursuant to and in accordance with the express terms of this Agreement, (B) the application of Cash Collateral provided for in Section 2.16, or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 [Reserved.].

2.15 Nature and Extent of Each Borrower's Liability.

(a) Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for all Obligations and all agreements under the Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until the Facility Termination Date, and that such obligations are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Borrower is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by the Administrative Agent or any Lender with respect thereto; (iii) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by the Administrative Agent or any Lender in respect thereof (including the release of any security or guaranty); (iv) the insolvency of any Borrower; (v) any election by the Administrative Agent or any Lender in proceeding under Debtor Relief Laws for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of the Administrative Agent or any Lender against any Borrower for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except full payment in cash or Cash Collateralization of all Obligations on the Facility Termination Date.

(b) Waivers.

(i) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel the Administrative Agent or Lenders to marshal assets or to proceed against any Borrower, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor or accommodation co-obligor other than full payment of all Obligations. It is agreed among each Borrower, the Administrative Agent and Lenders that the provisions of this Section 2.15 are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, the Administrative Agent and Lenders would decline to make Loans. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(ii) The Administrative Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this Section 2.15. If, in taking any action in connection with the exercise of any rights or remedies, the Administrative Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower or other Person, whether because of any applicable Laws pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim of forfeiture of such rights or remedies based upon it, even if the action may result in loss of any rights of subrogation that such Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of the Administrative Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. The Administrative Agent may bid (either directly or through one or more acquisition vehicles), upon instructions from Required Lenders, all or a portion of the Obligations (other than Obligations owing to the Administrative Agent) at any foreclosure or trustee's sale or at any private sale, and the amount of such bid need not be paid but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether the Administrative Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 2.15, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which the Administrative Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each Borrower's liability under this Section 2.15 shall be limited to the greater of (i) all amounts for which such Borrower is primarily liable, as described below, and (ii) such Borrower's Allocable Amount.

(ii) If any Borrower makes a payment under this Section 2.15 of any Obligations (other than amounts for which such Borrower is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this Section 2.15 without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(d) Direct Liability. Nothing contained in this Section 2.15 shall limit the liability of any Borrower to pay Loans made directly or indirectly to that Borrower (including Loans advanced to any other Borrower and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder.

(e) Joint Enterprise. Each Borrower has requested that the Administrative Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. The Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. The Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the Facility, all to their mutual advantage. The Borrowers acknowledge that the Administrative Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers' request.

(f) Subordination. Each Loan Party hereby agrees that any intercompany Indebtedness or other intercompany payables, receivables or obligation, or intercompany advances directly or indirectly made by or owed to such Loan Party by any other Loan Party (collectively, "Intercompany Debt"), of whatever nature at any time outstanding shall be subordinate and subject in right of payment to the prior payment in full in cash of the Obligations. Each Loan Party hereby agrees that it will not, while any Event of Default is continuing, accept any payment, including by offset, on any Intercompany Debt until the Facility Termination Date, in each case, except with the prior written consent of the Administrative Agent (acting at the direction of the Required Lenders). In the event that any payment on any Intercompany Debt shall be received by a Loan Party other than as permitted by this Section 2.15(f) before the Facility Termination Date, such Loan Party shall receive such payments and hold the same in trust for, segregate the same from its own assets and shall immediately pay over to, the Administrative Agent for the benefit of the Administrative Agent and the Lenders all such sums to the extent necessary so that the Administrative Agent and the Lenders shall have received Payment in Full, in cash, all Obligations owed or which may become owing. Upon any payment or distribution of any assets of any Loan Party of any kind or character, whether in cash, property or securities by set-off, recoupment or otherwise, to creditors in any liquidation or other winding-up of such Loan Party or in the event of any proceeding under the Debtor Relief Laws, the Administrative Agent and Lenders shall first be entitled to receive payment in full in cash, in accordance with the terms of the Obligations and of this Agreement, of all amounts payable under or in respect of such Obligations, before any payment or distribution is made on, or in respect of, any Intercompany Debt, in any such proceeding, any distribution or payment, to which the Administrative Agent or any Lender would be entitled except for the provisions hereof shall be paid by such Loan Party, or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution directly to the Administrative Agent (for the benefit of the Administrative Agent and the Lenders) to the extent necessary to pay all such Obligations in full in cash, after giving effect to any concurrent payment or distribution to the Administrative Agent and Lenders (or to the Administrative Agent for the benefit of the Administrative Agent and Lenders).

(g) Borrower Agent.

(i) Each Loan Party hereby irrevocably appoints and designates (or, if not a party hereto, by execution and delivery of a guaranty agreement acceptable to the Required Lenders or otherwise becoming a Guarantor hereunder shall be deemed to have irrevocably appointed and designated) Purple Innovation, LLC ("Borrower Agent") as its representative and agent and attorney-in-fact for all purposes under the Loan Documents, including, as applicable, requests for Loans, designation of interest rates, delivery or receipt of communications, preparation and delivery of financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with the Administrative Agent or any Lender.

(ii) Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any Loan Party by the Borrower Agent shall be deemed for all purposes to have been made by such Loan Party and shall be binding upon and enforceable against such Loan Party to the same extent as if made directly by such Loan Party.

(iii) The Borrower Agent hereby accepts the appointment by each Loan Party hereunder to act as its agent and attorney-in-fact.

(iv) The Administrative Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower or other Loan Party. The Administrative Agent and Lenders may give any notice to or communication with a Loan Party hereunder to the Borrower Agent on behalf of such Loan Party. Each of the Administrative Agent and the Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Loan Party agrees (or, if not a party hereto, by execution and delivery of a guaranty agreement acceptable to the Required Lenders or otherwise becoming a Guarantor hereunder shall be deemed to have agreed) that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it.

2.16 Cash Collateral.

(a) Certain Credit Support Events. If the Borrowers shall be required to provide Cash Collateral pursuant to Section 9.02, the Borrowers shall immediately provide Cash Collateral in an amount reasonably required by the Administrative Agent (acting at the direction of the Required Lenders).

(b) Grant of Security Interest. The Borrowers hereby grant to (and subject to the control of) the Administrative Agent, for the benefit of the Secured Parties, and agree to maintain a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied.

2.17 [Reserved.].

2.18 Increase in Loan Commitments.

(a) Request for Increase. Provided there exists no Default or Event of Default, upon notice to the Administrative Agent and the Lenders and with the written consent of the Required Lenders (in their sole and absolute discretion), the Borrower Agent may from time to time after the First Amendment Effective Date request an increase in the Commitments by an amount (for all such requests) not exceeding $~~19,000,000~~20,000,000 (each such increase, a "Commitment Increase"); *provided* that (i) any such request for an increase shall be in a minimum amount of $5,000,000 in the aggregate or, if less, the entire unutilized amount of the maximum amount of all such requests set forth above, (ii) no more than three (3) such requests shall be made during the term of this Agreement, (iii) such Commitment Increase shall be provided by one or more Lenders (or any of their affiliates) and (iv) such Commitment Increase shall be subject to closing conditions and fees to be agreed upon by the Lenders and the Borrower Agent at the time of such request; *provided*, that, notwithstanding this clause (~~iii~~iv), the terms, conditions, and interest rate of such Commitment Increase shall be on terms consistent with the Loans then outstanding under this Agreement (except as otherwise agreed to by the Required Lenders). At the time of sending such notice, the Borrower Agent (in consultation with the Required Lenders) shall specify the time period within which each applicable Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the applicable Lenders).

(b) Lender Elections to Increase. Each Lender shall notify the Borrower Agent within such time period whether or not it agrees to commit to a portion of the requested increase of the Facility and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage. Any Lender not responding within such time period shall be deemed to have declined to commit to any portion of the requested increase.

(c) Notification by Administrative Agent; Additional Lenders. The Borrower Agent shall notify the Administrative Agent of the Lenders' responses to each request made hereunder.

(d) Effective Date and Allocations. If the Commitments are increased in accordance with this Section 2.18, the Required Lenders and the Borrower Agent shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Borrower Agent shall provide five (5) Business Days' prior notice to the Administrative Agent and the Lenders of the final allocation of such increase and the Increase Effective Date, and shall provide schedule in the form of Schedule 2.01 with respect to such Commitment Increases applicable to each Lender. Subject to Section 2.18(g) and with the prior written consent of the Required Lenders, any term loans funded pursuant to Commitments increased in accordance with this Section 2.18 may rank senior in priority of payment to any other Loans.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, (i) the Borrower Agent shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) certifying that, before and after giving effect to such increase, the representations and warranties contained in Article VI and in the other Loan Documents, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.18, the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a), (b) and (c), respectively, of Section 7.01, (ii) [reserved]; (iii) the Borrowers shall have paid such fees and other compensation to the Lenders increasing their Commitments as the Borrowers and such Lenders shall agree; (iv) [reserved]; (v) other than the fees and compensation referred to in clause (iii) above, the Commitment Increase shall be on the same terms and pursuant to the same documentation applicable to the existing Commitments (except as otherwise agreed to by the Required Lenders); (vi) the Borrowers shall deliver to the Administrative Agent (A) an opinion or opinions, in form and substance reasonably satisfactory to the Required Lenders, from counsel to the Loan Parties reasonably satisfactory to the Required Lenders and dated such date and (B) a certification from the Borrower Agent, or other evidence reasonably satisfactory to the Required Lenders, that such increase is permitted under the Loan Documents and any other material Indebtedness; (viii) the Borrowers and the Lenders increasing their Commitments shall have delivered such other instruments, documents and agreements as the Administrative Agent or the Required Lenders may reasonably have requested; and (ix) no Default or Event of Default exists or shall result therefrom. On the Increase Effective Date, there shall be an automatic adjustment to the Applicable Percentage of each Lender to reflect the new Applicable Percentages of the Lenders and the Administrative Agent shall be authorized to update the Register in accordance therewith.

(f) Conflicting Provisions. This Section 2.18 shall supersede any provisions in Section 2.06, 2.13 or 11.01 to the contrary for all purposes under this Agreement and the other Loan Documents.

(g) Certain Terms of the 2025 Term Loans.

(i) 2025 Term Loan Payments and Seniority. Notwithstanding anything herein to the contrary, including Sections 2.13 and 9.03, the 2025 Term Loans shall be senior in right of payment to the Initial Term Loans, including, for the avoidance of doubt, any optional or mandatory prepayments made pursuant to Section 2.06.

(ii) Debtor-in-Possession Financing. Notwithstanding anything herein to the contrary, including Section 2.13, in the event that any 2025 Term Loan Lender provides debtor-in-possession financing to any Loan Party after the occurrence of an Insolvency Event with respect to such Loan Party, with the prior written consent of the Required Lenders, the proceeds of such debtor-in-possession financing may be used to repay or otherwise refinance any of the Initial Term Loans or 2025 Term Loans in a "roll up" or similar transaction. For the avoidance of doubt, (x) each 2025 Term Loan Lender shall be given a reasonable opportunity to participate in such debtor-in-possession financing and (y) with the prior written consent of the Required Lenders, any other Lender may be given a reasonable opportunity to participate in such debtor-in-possession financing.

2.19 Warrants. On the Closing Date, the Borrower shall issue to the Lenders Warrants to purchase in the aggregate 20,000,000 shares of Common Stock, at an exercise price of $1.50 per share (each as subject to any adjustments provided for under the applicable Warrant), with an expiration date of January 23, 2034, each substantially in the form of Exhibit F attached hereto. The Warrants issued pursuant to this Section 2.19 shall be allocated on the Closing Date among the Lenders based on each Lender's Pro Rata Share.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require the Loan Parties or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower Agent or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable law, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Tax Indemnification by the Borrowers.

(i) Without limiting the provisions of subsection (a) or (b) above, each Loan Party shall, and does hereby, indemnify the Administrative Agent and each Lender, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Loan Parties or the Administrative Agent or paid by the Administrative Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Loan Party shall also, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender for any reason fails to pay to the Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower Agent by a Lender (with a copy to the Administrative Agent), or forwarded by the Administrative Agent on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender shall, and does hereby, indemnify the Loan Parties and the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrowers or the Administrative Agent) incurred by or asserted against the Loan Parties or the Administrative Agent by any Governmental Authority as a result of the failure by such Lender, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender, as the case may be, to the Borrower Agent or the Administrative Agent pursuant to subsection (e). Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the occurrence of the Facility Termination Date.

(d) Evidence of Payments. Upon request by the Borrower Agent or the Administrative Agent, as the case may be, after any payment of Taxes by the Loan Parties or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower Agent shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower Agent, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower Agent or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to the Borrower Agent and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower Agent or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower Agent or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Loan Parties pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

(ii) Without limiting the generality of the foregoing, if a Borrower is resident for tax purposes in the United States,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower Agent and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower Agent or the Administrative Agent as will enable the Borrower Agent or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower Agent and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower Agent or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of Internal Revenue Service Form W-8BEN-E (or, if applicable W-8BEN) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed originals of Internal Revenue Service Form W-8ECI,

(III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower Agent or the Administrative Agent to determine the withholding or deduction required to be made; and

(C) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Agent and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by any Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by any Borrower or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of this Section 3.01, "Laws" shall include FATCA

(iii) Each Lender shall promptly (A) notify the Borrower Agent and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Loan Parties or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender, as the case may be. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by any Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to any Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender, as applicable, in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, then, upon notice thereof by such Lender to the Borrower Agent (through the Administrative Agent) (an "Illegality Notice"), any obligation of the Lenders to make SOFR Loans, and any right of any Borrower to continue SOFR Loans or to convert Base Rate Loans to SOFR Loans, shall be suspended until each affected Lender notifies the Administrative Agent and the Borrower Agent that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, interest on the Loans shall accrue and be payable at the Prime Rate plus the Applicable Margin until such Illegality Notice is revoked or a Benchmark Replacement is implemented pursuant to Section 3.03. Upon any such conversion, the Borrower shall also pay accrued interest on the amounts so converted, together with any additional amounts required pursuant to Section 3.05(a) of this Agreement.

3.03 Inability to Determine Rates; Effect of Benchmark Transition Event.

(a) Inability to Determine Rates. Subject to Section 3.03(b), if, on or prior to the first day of any Interest Period for any SOFR Loan:

(i) the Administrative Agent or the Required Lenders determine (which determination shall be conclusive and binding absent manifest error) that Adjusted Term SOFR cannot be determined pursuant to the definition thereof, and, with respect to a determination by the Required Lenders, the Required Lenders have provided notice of such determination to the Administrative Agent, or

(ii) the Required Lenders determine that for any reason that Adjusted Term SOFR for any Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent:

then in each case the Administrative Agent will promptly so notify the Borrower Agent and each Lender. Upon notice thereof by the Administrative Agent to the Borrower Agent, any obligation of the Lenders to make or continue SOFR Loans shall be suspended (to the extent of the affected SOFR Loans and, in the case of a SOFR Loan, the affected Interest Periods) until the Administrative Agent (at the direction of the Required Lenders) revokes such notice. Upon receipt of such notice, any outstanding affected Loans bearing interest at a rate based on Term SOFR will be deemed to have been converted into Loans bearing interest at a rate equal to the Prime Rate plus the Applicable Margin until the Administrative Agent (at the direction of the Required Lenders) or the Required Lenders revoke such notice, or otherwise implement any Benchmark Replacement. Upon any such conversion, the Borrower shall also pay accrued interest on the amounts so converted, together with any additional amounts required pursuant to Section 3.05(a) of this Agreement.

(b) Effect of Benchmark Transition Event. Notwithstanding anything to the contrary herein or in any other Loan Document:

(i) Benchmark Replacement. If a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis. For the avoidance of doubt, no Swap Contract shall be deemed to be a "Loan Document" for purposes of this Section 3.03.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent (acting at the direction of the Required Lenders) will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notice; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower Agent and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower Agent of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.03(b)(iv) and the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.03(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.03(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement) (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent (acting at the direction of the Required Lenders) may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent (acting at the direction of the Required Lenders) may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower Agent's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower Agent may revoke any pending request for a borrowing of a SOFR Loan, or conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower Agent will be deemed to have converted any such request into a request for a borrowing of or conversion to Prime Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Prime Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Prime Rate.

3.04 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(iii) impose on any Lender any other condition, cost or expense (other than taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to Term SOFR (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Loan Parties will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time pursuant to subsection (c) below the Loan Parties will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower Agent shall be conclusive absent manifest error. The Loan Parties shall pay such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Loan Parties shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Loan Parties of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any conversion, payment or prepayment of any Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan on the date or in the amount notified by the Borrower Agent; or

(c) any assignment of a Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower Agent pursuant to Section 11.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Loan made by it at SOFR for such Loan by a matching deposit or other borrowing in the SOFR market for a comparable amount and for a comparable period, whether or not such Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender, as applicable, shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive the resignation or removal of the Administrative Agent, the replacement of any Lender and the occurrence of the Facility Termination Date.

ARTICLE IV
SECURITY AND ADMINISTRATION OF COLLATERAL

4.01 Security. As security for the full and timely payment and performance of all Obligations, Borrower Agent shall, and shall cause each other Loan Party to, on or before the Closing Date, do or cause to be done all things necessary in the opinion of the Required Lenders and their counsel to grant to the Administrative Agent for the benefit of the Secured Parties a duly perfected first priority security interest in all Collateral (except as expressly permitted hereunder), and subject to no prior Lien or other encumbrance or restriction on transfer, except as expressly permitted hereunder. Without limiting the foregoing, on the Closing Date, Borrower Agent shall deliver, and shall cause each Loan Party to deliver, to the Administrative Agent, in form and substance reasonably acceptable to the Administrative Agent and the Required Lenders, (a) the Security Agreement, which shall pledge to the Administrative Agent for the benefit of the Secured Parties certain personal property of the Borrowers and the other Loan Parties more particularly described therein and (b) Uniform Commercial Code financing statements in form, substance and number as requested by the Administrative Agent and the Required Lenders, reflecting the Lien in favor of the Secured Parties on the Collateral, and shall take such further action and deliver or cause to be delivered such further documents as required by the Security Instruments or otherwise as the Administrative Agent and the Required Lenders may request to effect the transactions contemplated by this Article IV.

4.02 Collateral Administration.

(a) Administration of Accounts.

(i) Records and Schedules of Accounts. Each Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to the Administrative Agent sales, collection, reconciliation and other reports in form satisfactory to the Administrative Agent, on such periodic basis as the Administrative Agent may request.

(ii) Account Verification. Upon the occurrence and during the existence of an Event of Default, the Administrative Agent shall have the right at any time, in the name of the Administrative Agent, any designee of the Administrative Agent or any Borrower, to verify the validity, amount or any other matter relating to any Accounts of Borrowers by mail, telephone or otherwise. Borrowers shall cooperate fully with the Administrative Agent in an effort to facilitate and promptly conclude any such verification process.

(b) Administration of Inventory.

(i) Returns of Inventory. No Borrower shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default or Event of Default exists or would result therefrom; and (c) the Administrative Agent is promptly notified if the aggregate value of all Inventory returned in any month exceeds $1,000,000.

(ii) Acquisition, Sale and Maintenance. No Borrower shall acquire or accept any Inventory on consignment or approval, and shall take all steps to assure that all Inventory is produced in accordance with applicable Law, including the FLSA. No Borrower shall sell any Inventory on consignment or approval or any other basis (for the avoidance of doubt, this does not include sales utilizing the services of fulfillment companies, such as Amazon), under which the customer may return or require a Borrower to repurchase such Inventory except returns by customers pursuant to the Borrowers' customer return policy in the Ordinary Course of Business. The Borrowers shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all applicable Laws, and shall make current rent payments (within applicable grace periods provided for in leases) at all leased locations where any Collateral is located.

4.03 After Acquired Property; Further Assurances.

(a) New Deposit Accounts and Securities Accounts. Concurrently with or prior to the opening of any Deposit Account, Securities Account or Commodity Account by any Loan Party, other than any Excluded Deposit Account, such Loan Party shall deliver to the Administrative Agent a Control Agreement covering such Deposit Account, Securities Account or Commodity Account, duly executed by such Loan Party, the Administrative Agent and the applicable Controlled Account Bank, securities intermediary or financial institution at which such account is maintained.

(b) Future Locations Subject to Material Third-Party Agreements. With respect to any location of Collateral subject to a Material Third-Party Agreement entered into after the Closing Date, each Loan Party shall use commercially reasonable efforts to provide the Administrative Agent with Lien Waivers with respect to the premises subject to such Material Third-Party Agreements.

(c) Acquired Real Property. If any Loan Party acquires, owns or holds an interest in any fee-owned Real Property not constituting Excluded Real Property, the Borrower Agent will promptly (and in any event within ten (10) days of the acquisition thereof (or such longer period as the Required Lenders may agree)) notify the Administrative Agent in writing of such event, identifying the property or interests in question, and, the Loan Party will, or will cause such Subsidiary to, within sixty (60) days or such longer period as the Required Lenders may reasonably agree, (i) deliver to the Administrative Agent, in each case in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, Mortgages and Mortgage Related Documents with respect to such Real Property.

(d) UCC Authorization. The Administrative Agent is hereby irrevocably authorized to execute (if necessary) and file or cause to be filed, with or if permitted by applicable Law without the signature of any Borrower appearing thereon, all UCC or PPSA financing statements reflecting any Borrower as "debtor" and the Administrative Agent as "secured party", and continuations thereof and amendments thereto, as the Administrative Agent or the Required Lenders reasonably deem necessary or advisable to give effect to the transactions contemplated hereby and by the other Loan Documents.

4.04 Cash Management.

(a) Controlled Deposit Accounts. On or prior to the Closing Date, but subject to the Post-Closing Agreement, enter into a Control Agreement with respect to each Deposit Account listed on Schedule 6.19, other than Excluded Deposit Accounts, which shall include all lockboxes and related lockbox accounts used for the collection of Accounts. Each Loan Party agrees that it shall take all commercially reasonable steps necessary to ensure that all payments in respect of Accounts or other Collateral be paid to a Controlled Deposit Account in its name, including ensuring that all invoices rendered and other requests made by any Loan Party for payment in respect of Accounts contain a written statement directing payment to be made to a Controlled Deposit Account in its name. The Administrative Agent retains the right at all times during the continuance of a Default or an Event of Default to notify Account Debtors that a Loan Party's Accounts have been assigned to the Administrative Agent and the collection costs and expenses, including reasonable attorneys' fees, related thereto shall be deemed Obligations owing to the Administrative Agent.

(b) Controlled Securities Accounts. On or prior to the Closing Date, enter into a Control Agreement with respect to each Securities Account and Commodity Account listed on part (b) of Schedule 6.19. The Borrower Agent shall request the applicable broker, financial institution or other financial intermediary to deliver account statements and/or other reports to the Administrative Agent not less often than monthly, setting forth all assets, including securities entitlements, financial assets or other amounts, held in each Securities Account or Commodity Account.

4.05 Information Regarding Collateral. Each Borrower represents, warrants and covenants that Schedule 4.05 sets forth as of the Closing Date, (a) the exact legal name, jurisdiction of formation, organizational identification number, chief executive office and any trade name or other trade style of each Loan Party and each of its Subsidiaries, (b) each Person that has effected any merger or consolidation with a Loan Party or sold, contributed or transferred to a Loan Party any property constituting Collateral at any time since, in each case, July 1, 2018 (excluding Persons making sales in the ordinary course of their businesses to a Loan Party of property constituting Inventory in the hands of such seller), (c) any prior legal name, jurisdiction of formation, organizational identification number, trade name or other trade style or location of the chief executive office of each Loan Party at any time since July 1, 2018, and (d) each location within the United States in which material goods constituting Collateral are located as of the Closing Date (together with the name of each owner of the property located at such address if not the applicable Loan Party, a summary description of the relationship between the applicable Loan Party and such Person and with respect to Inventory or other property (other than floor samples and office equipment such as desks, electronics, and other similar business personal property) the maximum approximate book or market value of such Collateral held or to be held at such location). The Company shall not change, and shall not permit any other Loan Party to change, its name, jurisdiction of formation (whether by reincorporation, merger or otherwise), the location of its chief executive office or any location specified in clause (d) of the immediately preceding sentence (other than locations that solely contain floor samples and related Inventory with a Cost at such location of less than $40,000, and office equipment such as desks, electronics and other similar business personal property), or use or permit any other Loan Party to use, any additional trade name or other trade style, except upon giving not less than thirty (30) days' prior written notice to the Administrative Agent and taking or causing to be taken all such action at Borrowers' or such other Loan Parties' expense as may be reasonably requested by the Administrative Agent or the Required Lenders to perfect or maintain the perfection and priority of the Lien of the Administrative Agent in the Collateral.

ARTICLE V
CONDITIONS PRECEDENT TO LOANS

5.01 Conditions of Initial Loans. The obligation of each Lender to make Initial Loans hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's and the Lenders' receipt of the items (i), (v) through (viii), (x), (xii), (xiii), (xv), (xvi), (xvii), (xxi) and (xxii) below and the Lenders' receipt of items (ii), (iii), (iv), (ix), (xi), (xviii), (xix) and (xx) below, each properly executed by a Responsible Officer of the applicable Loan Party, each dated as of the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Lenders and their respective legal counsel:

(i) executed counterparts of this Agreement and each of the Loan Documents;

(ii) original Warrants issued to each Lender, duly executed and delivered by an Authorized Officer of Holdings;

(iii) executed counterparts of the Registration Rights Agreement;

(iv) Notes executed by the Borrowers in favor of each Lender requesting a Note;

(v) a Secretary's certificate for each Loan Party certifying as to (A) true and complete copies of all Organization Documents of such Loan Party attached thereto, (B) resolutions of the Board of Directors or other organizational action authorizing execution, delivery and performance of all Loan Documents to which such Loan Party is a party, and (C) incumbency of officers (including specimen signatures) evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(vi) certification from any applicable Governmental Authority as the Required Lenders may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization and in any other jurisdiction in which the failure to be so qualified could reasonably be expected to have a Material Adverse Effect, including certificates of good standing and qualification to engage in business in each applicable jurisdiction;

(vii) a favorable opinion of Dorsey & Whitney LLP, counsel to the Loan Parties, each addressed to the Administrative Agent and each Lender and their successors and assigns, as to the matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(viii) certificates of Responsible Officers of the Borrower Agent or the applicable Loan Parties either (A) identifying all consents, licenses and approvals required in connection with the execution, delivery and performance by each Borrower and the validity against each such Loan Party of the Loan Documents to which it is a party, and stating that such consents, licenses and approvals shall be in full force and effect, and attaching true and correct copies thereof or (B) stating that no such consents, licenses or approvals are so required;

(ix) certificates of Responsible Officers of Holdings certifying that Holdings has reserved sufficient shares of Common Stock for issuance upon exercise of the Warrants;

(x) a certificate signed by a Responsible Officer of the Borrower Agent certifying (A) that the conditions specified in Sections 5.01(a) and 5.01(b) have been satisfied and (B) as to the matters described in Section 5.01(d);

(xi) (A) audited financial statements of Holdings and its Subsidiaries for each of the three fiscal years immediately preceding the Closing Date, (B) unaudited financial statements for Holdings and its Subsidiaries as of December 31, 2023, without the accompanying footnotes and schedules and (C) financial projections (including but not limited to financial forecast models and liquidity forecasts) of Holdings and its Subsidiaries on a monthly basis for 2024 and on an annual basis for 2025;

(xii) a certificate signed by the Chief Financial Officer or the Chief Accounting Officer of the Borrower Agent certifying that, after giving effect to the entering into of the Loan Documents and the consummation of all of the Transactions, (A) each Borrower is Solvent and (B) the Loan Parties, taken as a whole, are Solvent;

(xiii) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(xiv) [reserved];

(xv) A Borrowing Request with respect to the Loans;

(xvi) delivery of Uniform Commercial Code financing statements, suitable in form and substance for filing in all places required by applicable law to perfect the Liens of the Administrative Agent under the Security Instruments as a first priority Lien as to items of Collateral in which a security interest may be perfected by the filing of financing statements, and such other documents and/or evidence of other actions as may be reasonably necessary under applicable law to perfect the Liens of the Administrative Agent under such Security Instruments as a first priority Lien in and to such other Collateral as the Required Lenders may require;

(xvii) Uniform Commercial Code search results showing only those Liens as are acceptable to the Lenders;

(xviii) evidence of the payment in full and termination of, and cancellation of the commitments under, the Original ABL Credit Agreement, including terminations of Uniform Commercial Code financing statements filed in connection with the Original ABL Credit Agreement and other evidence of lien releases and other related matters on terms acceptable to the Required Lenders;

(xix) evidence satisfactory to the Required Lenders of the consummation (in compliance with all applicable laws and regulations, with the receipt of all material governmental, shareholder and third party consents and approvals relating thereto) of the Transactions;

(xx) copies of the Loan Documents, all certified as true and correct by the Borrower Agent;

(xxi) [reserved]; and

(xxii) such other assurances, certificates, documents, consents or opinions as the Administrative Agent or the Required Lenders may reasonably require.

(b) At least five days prior to the Closing Date, (i) any Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Borrower and (ii) so long as requested by the Administrative Agent or any Lender at least ten days prior to the Closing Date, Borrowers shall have provided to the Administrative Agent and each requesting Lender the documentation and other information so requested in connection with applicable "know your customer" and Anti-Money Laundering Laws or Anti-Corruption Laws, including the PATRIOT Act.

(c) Administrative Agent and its counsel shall have completed all legal, tax and regulatory due diligence, including without limitation review of all documentation required by bank regulatory authorities under applicable Anti-Corruption Laws and Anti-Money Laundering Laws, the results of which shall be satisfactory to Administrative Agent in its sole discretion.

(d) Any fees required to be paid on or before the Closing Date shall have been, or concurrently with the satisfaction of the requirements in this Section 5.01, will be, paid.

(e) The Borrowers shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent and the Lenders to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such reasonable fees, charges and disbursements as shall constitute its reasonable estimate of such reasonable fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent and the Lenders, respectively).

(f) [reserved].

(g) [reserved].

(h) [reserved].

(i) [reserved].

(j) The representations and warranties of the Loan Parties contained in Article VI or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or in the case of any representation or warranty subject to a materiality qualifier, true and correct in all respects) on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or in the case of any representation or warranty subject to a materiality qualifier, true and correct in all respects) as of such earlier date.

(k) No Default or Event of Default shall have occurred and be continuing, or would result from the extension of the Loans or from the application of the proceeds thereof.

Without limiting the generality of the provisions of Section 10.04, for purposes of determining compliance with the conditions specified in this Section 5.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES

To induce the Secured Parties to enter into this Agreement and to make Loans hereunder, each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

6.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary (a) is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as is now being conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and to consummate the Transactions to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i), or (c), to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Loan Party is an Affected Financial Institution.

6.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, and the consummation of the Transactions, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of the Organization Documents of any such Person; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (i) any material Contractual Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

6.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for those which have been duly obtained, taken, given or made and are in full force and effect and the filing and recording of financing statements and other documents necessary in order to perfect the Liens created by the Security Instruments.

6.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except (a) as rights to indemnification hereunder may be limited by applicable Law and (b) as the enforcement hereof may be limited by any applicable Debtor Relief Laws or by general equitable principles.

6.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material Indebtedness and other liabilities, direct or contingent, of Holdings and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited Consolidated balance sheet of Holdings and its Subsidiaries dated as of December 31, 2023, without the accompanying footnotes and schedules, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for the month then ended (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) Each Borrower is Solvent and the Loan Parties, on a Consolidated basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

6.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Loan Party after due investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of their properties or revenues, that (a) purport to affect or pertain to this Agreement or any other Loan Document (including the grant and perfection of any Lien under any Security Instrument) or any of the Transactions or (b) except as specifically disclosed in Schedule 6.06, either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect. There has been no adverse change in the status, or financial effect on any Loan Party or any Subsidiary thereof, of the matters described on Schedule 6.06.

6.07 No Default. No Loan Party nor any Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

6.08 Ownership of Property; Liens.

(a) Each Loan Party and each Subsidiary has good title to, or valid leasehold interests in, all its real and personal property material to its business, if any (including the Mortgaged Properties), (i) free and clear of all Liens except for Permitted Liens and (ii) except for minor defects in title that do not materially interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes.

(b) Schedule 6.08 sets forth the address (including street address, county and state) of all Real Property that is owned or subject to a ground lease by the Loan Parties as of the Closing Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Liens. Each ground lease of the Loan Parties is in full force and effect and the Loan Parties are not in default of any material terms thereof.

6.09 Environmental Compliance.

(a) Except as disclosed in Schedule 6.09, no Loan Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law with respect to the Loan Party or any Subsidiary's operations, (ii) has become subject to a pending claim with respect to any Environmental Liability or (iii) has received written notice of any claim with respect to any Environmental Liability except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in Schedule 6.09 or as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, (i) none of the properties currently owned or operated by any Loan Party or any Subsidiary thereof is listed or, to the knowledge of the Loan Parties, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and, to the knowledge of the Loan Parties, never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof; (iii) to the knowledge of the Loan Parties, there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Loan Party or Subsidiary in violation of Environmental Laws or, to the knowledge of the Loan Parties, by any other Person in violation of Environmental Laws on any property currently owned or operated by any Loan Party or any Subsidiary thereof.

(c) Except as otherwise set forth on Schedule 6.09 or as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, no Loan Party or any Subsidiary thereof is undertaking, and no Loan Party or any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored by any Loan Party or any Subsidiary at, or transported to or from by or on behalf of any Loan Party or any Subsidiary, any property currently owned or operated by any Loan Party or any Subsidiary thereof have, to the knowledge of the Loan Parties, been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

(d) Each Loan Party conducts in the Ordinary Course of Business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof each Loan Party has reasonably concluded that, except as set forth on Schedule 6.09, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.10 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 6.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. Each insurance policy listed on Schedule 6.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

6.11 Taxes. Each Loan Party and its Subsidiaries have filed all federal, state and other tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being Properly Contested and except where the failure to file such returns or reports could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against Holdings or any Subsidiary that would, if made, have a Material Adverse Effect. Neither Holdings nor any Subsidiary thereof is party to any tax sharing agreement.

6.12 ERISA Compliance.

(a) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other federal or state Laws, except as could not reasonably be expected to have a Material Adverse Effect. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service (or, with respect to a prototype plan, can rely on an opinion or advisory letter from the Internal Revenue Service to the prototype plan sponsor) to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Loan Party, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) No Loan Party nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Closing Date, those listed on Schedule 6.12 hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

(e) As of the Closing Date that the Borrower is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Commitments;

6.13 Subsidiaries and Equity Interests. No Loan Party (a) has any Subsidiaries other than those specifically disclosed in part (a) of Schedule 4.05 or created or acquired after the Closing Date in compliance with Section 7.12, or (b) owns any Equity Interests in any other Person other than those specifically disclosed on Schedule 6.13, except, in each case, Subsidiaries acquired or created and equity investments made on or after the Closing Date in compliance with this Agreement and the other Loan Documents. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Schedule 6.13 free and clear of all Liens except for those created under the Security Instruments and Permitted Liens arising by operation of Law. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and are owned in the amounts specified on Schedule 6.13 free and clear of all Liens except for those created under the Security Instruments and Permitted Liens arising by operation of Law.

6.14 Margin Regulations; Investment Company Act. No Loan Party is engaged nor will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), or extending credit for the purpose of purchasing or carrying margin stock. None of the Loan Parties, any Person Controlling any Loan Party, nor any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

6.15 Disclosure. Each Loan Party has disclosed or caused the Borrower Agent to disclose to the Lenders all material agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), and taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

6.16 Compliance with Laws. Each Loan Party and each Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.17 Intellectual Property; Licenses, Etc. Each Loan Party and its Subsidiaries own, or possess the right to use, all of the Intellectual Property (including IP Rights) that are reasonably necessary for the operation of their respective businesses, without known conflict with the Intellectual Property of any other Person, except to the extent any failure so to own or possess the right to use could not reasonably be expected to have a Material Adverse Effect. To the knowledge of each Loan Party, the operation by each Loan Party and its Subsidiaries of their respective businesses does not infringe upon any Intellectual Property held by any other Person.

6.18 Labor Matters. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or as set forth on Schedule 6.18, there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened. Except as would not reasonably be expected to result in a Material Adverse Effect, the hours worked by and payments made to employees of the Loan Parties comply with the FLSA and any other applicable federal, state, local or foreign Law dealing with such matters. No Loan Party or any of its Subsidiaries has incurred any material liability or obligation under the Worker Adjustment and Retraining Act or similar state Law. All payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 6.18 no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries, except as would not reasonably be expected to result in a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

6.19 Deposit Accounts and Securities Accounts.

(a) Part (a) of Schedule 6.19 sets forth a list of all Deposit Accounts (including Excluded Deposit Accounts) maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each Deposit Account (i) the name and address of the depository; (ii) the name and account number of such Deposit Account; (iii) the type or use of such Deposit Account and (iv) the average balance of such Deposit Account over the prior twelve month period.

(b) Part (b) of Schedule 6.19 sets forth a list of all Securities Accounts and Commodity Accounts maintained by the Loan Parties as of the Closing Date, which Schedule includes with respect to each Securities Account and Commodity Account (i) the name and address of the securities intermediary or institution holding such account; (ii) the name and account number of such account; (iii) a contact person at such securities intermediary or institution and (iv) the average value of assets held in such account over the prior twelve month period.

6.20 [Reserved].

6.21 Sanction; Anti-Money Laundering Laws and Anti-Corruption Laws.

(a) None of the Loan Parties nor any of their Controlled Persons nor, to the knowledge of Borrower, any agent, affiliate or representative of any Loan Party or any of their Subsidiaries, is, or is controlled by a Person that is, a Sanctioned Person.

(b) The Loan Parties and each of their Subsidiaries and, to the knowledge of Borrower, each of the Loan Parties' and their Subsidiaries' respective agents, affiliates and representatives, is in compliance with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(c) The Loan Parties and their Subsidiaries have instituted and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties, their Subsidiaries, and their Controlled Persons with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(d) As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

6.22 Brokers. Except as otherwise disclosed in writing to the Required Lenders, no broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

6.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any modification or change in the business relationship of any Loan Party with any customers or suppliers which are, individually or in the aggregate, material to its operations, to the extent that such cancellation, modification or change would reasonably be expected to result in a Material Adverse Effect.

6.24 Material Contracts. Schedule 6.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Administrative Agent on or before the date hereof.

6.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

6.26 Senior Indebtedness. All Obligations including those to pay principal of and interest (including post-petition interest, whether or not allowed as a claim under Debtor Relief Laws) on the Loans and other Obligations, and fees and expenses in connection therewith, are entitled to the benefits of the Subordination Provisions applicable to Subordinated Debt. Each Loan Party acknowledges that the Administrative Agent and each Lender is entering into this Agreement and each Lender is extending its Commitments in reliance upon the Subordination Provisions.

6.27 Shares of Common Stock.

(a) All of the issued and outstanding shares of Equity Interests of Borrower are duly and validly issued and authorized, are fully paid and nonassessable, have been issued in compliance with all applicable federal and state and foreign securities laws, and are not subject to any preemptive or similar rights.

(b) The Borrower has reserved for issuance a number of shares of Common Stock sufficient to cover all shares issuable upon the exercise of the Warrants (the "Warrant Shares") (computed without regard to any limitations on the number of shares that may be issued on exercise thereof). The Warrants and the Warrant Shares have been duly authorized. Upon the issuance in accordance with the terms of this Agreement, the holders of the Warrants will be entitled to the rights set forth in the Warrants. Upon exercise in accordance with the terms of the Warrants, the Warrant Shares will be validly issued, fully paid and non-assessable and free and clear of all Liens with respect to the issue thereof, with the holders thereof being entitled to all rights accorded to a holder of Common Stock. It is not necessary to register the issuance of the Warrants and the Warrant Shares under the Securities Act and applicable state securities laws.

(c) The Borrower has reserved for issuance a number of shares of Common Stock sufficient to cover all shares issuable upon the exercise of the Incremental Warrants (the "Incremental Warrant Shares") (computed without regard to any limitations on the number of shares that may be issued on exercise thereof). The Incremental Warrants and the Incremental Warrant Shares have been duly authorized. Upon the issuance in accordance with the terms of the First Amendment, the holders of the Incremental Warrants will be entitled to the rights set forth in the Incremental Warrants. Upon exercise in accordance with the terms of the Incremental Warrants, the Incremental Warrant Shares will be validly issued, fully paid and non-assessable and free and clear of all Liens with respect to the issue thereof, with the holders thereof being entitled to all rights accorded to a holder of Common Stock. It is not necessary to register the issuance of the Incremental Warrants and the Incremental Warrant Shares under the Securities Act and applicable state securities laws.

(d) ~~(c)~~ As of the Closing Date, all of Holding's authorized, issued and outstanding shares of Equity Interests of Holdings and each of its Subsidiaries are set forth in Schedule 6.27, and, except as set forth in Schedule 6.27, there are no (i) Equity Interests options or other Equity Interests incentive plans, employee Equity Interests purchase plans or other plans, programs or arrangements of Holdings or any of its Subsidiaries under which Equity Interests options, Equity Interests or other Equity Interests-based or Equity Interests-linked awards are issued or issuable to officers, directors, employees, consultants or other Persons, (ii) outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable or exercisable for, any Equity Interests of Holdings or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which Holdings or any of its Subsidiaries is or may become bound to issue additional Equity Interests of Holdings or any of its Subsidiaries, or options, warrants or scrip for rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exercisable or exchangeable for, any shares of Equity Interests of Holdings or any of its Subsidiaries, (iii) agreements or arrangements under which Holdings or any of its Subsidiaries is obligated to register the sale of any of their securities or Equity Interests under the Securities Act (except the Registration Rights Agreement), (iv) outstanding Equity Interests, securities or instruments of Holdings or any of its Subsidiaries that contain any redemption or similar provisions, or contracts, commitments, understandings or arrangements by which Holdings or any of its Subsidiaries is or may become bound to redeem a security of Holdings other than under the Loan Documents, (v) Equity Interests or other securities or instruments containing anti-dilution or similar provisions that may be triggered by the issuance of securities of Holdings or any of its Subsidiaries other than under the Loan Documents or (vi) stock appreciation rights or "phantom stock" plans or agreements or any similar plans or agreements to which Holdings or any of its Subsidiaries is a party or by which Holdings or any of its Subsidiaries is otherwise subject or bound. Except for the Subscription Agreement, dated February 1, 2018, between Global Partner Acquisition Corp., Global Partner Sponsor I LLC, Coliseum Capital Partners, L.P. and Blackwell Partners LLC and the Cooperation Agreement, dated April 19, 2023 between Coliseum and the Company, there are no (x) stockholders' agreements, voting agreements or similar agreements to which Holdings or any of its Subsidiaries is a party or by which Holdings or any of its Subsidiaries is otherwise subject or bound, (y) preemptive rights or any other similar rights to which any Equity Interests of Holdings or any of its Subsidiaries is subject or (z) restrictions upon the voting or transfer of any Equity Interests of Holdings or any of its Subsidiaries (other than restrictions on transfer imposed by U.S. federal and state securities laws and other than as set forth in the Loan Documents).

(e) ~~(d)~~ The issuance and delivery of the Warrants does not and, assuming full exercise of the Warrants, the exercise of the Warrants will not: (i) require approval from any Governmental Authority or from the Borrower's stockholders (including, without limitation, pursuant to the NASDAQ rules or listing standards); (ii) obligate the Borrower to issue shares of Common Stock or other securities to any person (other than the Lenders); and (iii) will not result in a right of any holder of the Borrower's securities to adjust the exercise, conversion, exchange or reset price under and will not result in any other adjustments (automatic or otherwise) under, any securities of the Borrower.

(f) The issuance and delivery of the Incremental Warrants does not and, assuming full exercise of the Incremental Warrants, the exercise of the Incremental Warrants will not: (i) require approval from any Governmental Authority or from the Borrower's stockholders (including, without limitation, pursuant to the NASDAQ rules or listing standards); (ii) obligate the Borrower to issue shares of Common Stock or other securities to any person (other than the holders of the Incremental Warrants); and (iii) will not result in a right of any holder of the Borrower's securities to adjust the exercise, conversion, exchange or reset price under and will not result in any other adjustments (automatic or otherwise) under, any securities of the Borrower.

(g) ~~(e)~~ Borrower has furnished to each Lender, or made available through its filings with the SEC, true, correct and complete copies of each Loan Party's Organizational Documents and any amendments, restatements, supplements or modifications thereto, and all documents, agreements and instruments containing the terms of all securities and Equity Interests convertible into, or exercisable or exchangeable for, Common Stock, and the material rights of the holders thereof in respect thereto.

ARTICLE VII
AFFIRMATIVE COVENANTS

So long as any Obligation (other than contingent obligations for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied, each Loan Party shall, and shall cause each Subsidiary to, or with respect to Sections 7.01, 7.02 and 7.03, the Borrower Agent shall:

7.01 Financial Statements. Deliver to the Administrative Agent and each Lender:

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of Holdings or, if earlier, 15 days after the date required to be filed with the SEC, a Consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be audited and accompanied by a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Required Lenders (the "Auditor"), which report and opinion shall be prepared in accordance with audit standards of the Public Company Accounting Oversight Board and applicable Securities Laws and shall not be subject to any "going concern" or like qualification or exception (except any "going concern" qualification or exception as a result of the maturity of the Facility within the next 12 months) or any qualification or exception as to the scope of such audit and shall include a certificate of the Auditor stating that in making the examination necessary with respect to such audit it has not become aware of any Default in respect of any term, covenant or other provision in so far as they relate to accounting matters or, if any such Default shall exist, stating the nature and status of such event;

(b) quarterly, for the first three fiscal quarters of each fiscal year, as soon as available, but in any event within 50 days after the end of each such fiscal quarter unaudited Consolidated and consolidating balance sheets of Holdings as of the end of such quarter and the related statements of income and cash flow for such quarter and for the portion of the fiscal year then elapsed, on a Consolidated basis for Holdings and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding fiscal year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting the financial condition, results of operations, shareholders equity and cash flows for such quarter and period, subject to normal year-end adjustments and the absence of footnotes;

(c) monthly, as soon as available, but in any event within 30 days after the end of each fiscal month, unaudited Consolidated and consolidating balance sheets of Holdings as of the end of such month and the related statements of income and cash flow for such month and for the portion of the fiscal year then elapsed, on a Consolidated basis for Holdings and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding fiscal year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting the financial condition, results of operations and cash flows for such month and period, subject to normal year-end adjustments and the absence of footnotes; and

(d) as soon as available but not later than 60 days after the end of each fiscal year, annual financial projections of Holdings and its Subsidiaries on a Consolidated basis, in form reasonably satisfactory to the Required Lenders, consisting of Consolidated balance sheets and statements of income or operations and cash flows.

As to any information contained in materials furnished pursuant to Section 7.02(d), the Loan Parties shall not be separately required to furnish such information under clause (a), (b) or (c) above, but the foregoing shall not be in derogation of the obligation of the Loan Parties to furnish the information and materials described in subsections (a), (b) and (c) above at the times specified therein.

7.02 Other Information. Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Required Lenders:

(a) [reserved];

(b) [reserved];

(c) ~~(a)~~ a Compliance Certificate executed by the chief financial officer of Borrower Agent which provides a reasonably detailed calculation of the Consolidated Fixed Charge Coverage Ratio, delivered (i) concurrently with the delivery of financial statements under Sections 7.01(a), 7.01(b) and 7.01(c) above and (ii) as requested by the Administrative Agent (acting at the direction of the Required Lenders) while a Default or Event of Default exists;

(d) ~~(c)~~ promptly after the same are available, copies of each annual report, proxy or financial statement sent to the stockholders of Holdings, and copies of all annual, regular, periodic and special reports and registration statements which Holdings may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to the Administrative Agent or the Lenders pursuant hereto;

(e) ~~(d)~~ [reserved];

(f) ~~(e)~~ promptly following any request therefor, provide information and documentation reasonably requested by Administrative Agent for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable Anti-Money Laundering Laws, Anti-Corruption Laws, or Sanctions; and

(g) ~~(f)~~ promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request or as may be provided to the Administrative Agent or the Lenders from time to time, all in form and scope reasonably acceptable to the Required Lenders.

Documents required to be delivered pursuant to Section 7.01(a), 7.01(b) or 7.01(c) or Section 7.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower Agent posts such documents, or provides a link thereto on the Borrower Agent's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Borrower Agent's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: (x) the Borrower Agent shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower Agent to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (y) the Borrower Agent shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each Loan Party hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on SyndTrak, Intralinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Loan Parties or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Loan Party hereby agrees that, so long as any Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities, (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC", each Loan Party shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to any Loan Party or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor". Notwithstanding the foregoing, the Borrowers shall be under no obligation to mark any Borrower Materials "PUBLIC."

7.03 Notices. Promptly, and in any event within one (1) Business Days after any Responsible Officer obtains knowledge of such occurrence or the materiality thereof, as applicable, notify the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including as a result of (i) breach or non-performance of, or any default under, a Contractual Obligation of any Loan Party or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws; or (iv) any violation or asserted violation of any applicable Law;

(c) the occurrence of any ERISA Event;

(d) the occurrence of a Change of Control;

(e) the creation (by Division or otherwise) or acquisition of any Subsidiary;

(f) any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary;

(g) any change in any Loan Party's senior executive officers;

(h) the discharge by any Loan Party of its present Auditors or any withdrawal or resignation by such Auditors;

(i) any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;

(j) the filing of any Lien for unpaid Taxes against any Loan Party;

(k) any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;

(l) any notice received by Holdings or any of its Subsidiaries under the Loan Documents or any notices of termination or event of default or any other material notice under the Master Retailer Agreement with Mattress Firm, Inc.;

(m) [reserved];

(n) any material notice received with respect to any pledged Equity Interest;

(o) (i) any failure by any Loan Party to pay rent at any of such Loan Party's locations if such failure continues for more than fifteen (15) days following the day on which such rent first came due or (ii) any pending termination or expiration in accordance with its terms of a lease, bailment, storage or similar agreement for any location where a material amount of Collateral is located, at least 60 days prior to such termination or expiration, if no extension or renewal or replacement thereof has been entered into at such time; and

(p) the occurrence of any default under the Tax Receivable Agreement.

Each notice pursuant to this Section 7.03 shall be accompanied by a statement of a Responsible Officer of the Borrower Agent setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

7.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being Properly Contested; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, except to the extent that any such Lien would otherwise be permitted by Section 8.02; and (c) all Indebtedness having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

7.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 8.04 or 8.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered Intellectual Property, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

7.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

7.07 Maintenance of Insurance; Condemnation Proceeds.

(a) Maintain with (i) companies having an A.M. Best Rating of at least "A" or (ii) financially sound and reputable insurance companies reasonably acceptable to the Required Lenders and not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Required Lenders;

(b) Maintain flood insurance with respect to any Mortgaged Property located in any area identified by FEMA (or any successor agency) as a special flood hazard area with such providers, on such terms and in such amounts as required pursuant to the Flood Insurance Laws, and all applicable rules and regulations promulgated thereunder, or as otherwise required by the Lenders.

(c) Cause all casualty policies, including fire and extended coverage policies, maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgagee clause (regarding improvements to Real Property) and lenders' loss payable clause (regarding personal property), in form and substance reasonably satisfactory to the Required Lenders, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Administrative Agent, (ii) a provision to the effect that none of the Loan Parties, Secured Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Required Lenders may reasonably require from time to time to protect the interests of the Secured Parties.

(d) Cause commercial general liability policies to be endorsed to name the Administrative Agent as an additional insured; and cause business interruption policies to name the Administrative Agent as a loss payee and to be endorsed or amended to include (i) a provision to the effect that none of the Loan Parties, the Administrative Agent or any other party shall be a co-insurer and (ii) such other provisions as the Required Lenders may reasonably require from time to time to protect the interests of the Secured Parties.

(e) Cause each such policy referred to in this Section 7.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer, any Loan Party or any insurance broker of any Loan Party to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Administrative Agent.

(f) Deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy or insurance certificate (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Required Lenders of payment of the premium therefor.

(g) Permit any representatives that are designated by the Administrative Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby. The Loan Parties shall pay the reasonable fees and expenses of any representatives retained by the Administrative Agent to conduct any such inspection.

(h) None of the Secured Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 7.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Secured Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Secured Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Secured Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Secured Party under this Section 7.07 shall in no event be deemed a representation, warranty or advice by such Secured Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

7.08 Compliance with Laws; Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(a) Comply in all material respects with the requirements of all Laws (including without limitation all applicable Environmental Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being Properly Contested; or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect;

(b) Notwithstanding the general applicability of Section 7.08(a) above, comply with the requirements of all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to Borrower and shall cause each other Loan Party and each of its and their respective Subsidiaries to comply with the requirements of all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to such Persons.

(c) Maintain in effect and enforce policies and procedures as in effect on the date hereof to ensure compliance by each Loan Party and all Controlled Persons with applicable Anti-Corruption Laws, Anti Money-Laundering Laws and Sanctions.

7.09 Books and Records. (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of each Loan Party or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over any Loan Party or such Subsidiary, as the case may be.

7.10 Inspection Rights and Appraisals; Meetings with the Administrative Agent.

(a) Permit the Administrative Agent, the Required Lenders or their respective designees or representatives from time to time, subject to reasonable notice and normal business hours (except, in each case, when a Default or Event of Default exists), to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers and Auditors; *provided* that representatives of the Borrower Agent shall be given the opportunity to participate in any discussions with the Auditors. The Loan Parties acknowledge that all reports are prepared by or for the Administrative Agent and Lenders for their purposes, and Loan Parties shall not be entitled to rely upon them.

(b) [reserved].

(c) Without limiting the foregoing, participate and will cause their key management personnel to participate in meetings with the Administrative Agent and/or the Lenders periodically during each year, which meetings shall be held at such times and such places as may be reasonably requested by the Required Lenders.

7.11 Use of Proceeds. Use the proceeds of the Initial Term Loans (i) to refinance certain Indebtedness under the Original ABL Credit Agreement, (ii) to finance Permitted Acquisitions; (~~ii~~iii) to pay fees and expenses in connection with the Transactions, and (~~iii~~iv) for working capital, capital expenditures, and other general corporate purposes not in contravention of any Law or of any Loan Document. Use the proceeds of the 2025 Term Loans (i) to pay fees, premiums and expenses relating to the First Amendment and the incurrence of the 2025 Term Loans and (ii) to finance working capital, capital expenditures, and other business requirements of the Borrower, and for other purposes not in contravention of any Law or of any Loan Document.

7.12 New Subsidiaries. As soon as practicable but in any event within 30 days following the acquisition or creation (by Division or otherwise) of any Domestic Subsidiary (other than an Excluded Subsidiary), or the time any existing Excluded Subsidiary ceases to be an Excluded Subsidiary, cause to be delivered to the Administrative Agent each of the following, as applicable:

(a) a joinder agreement reasonably acceptable to the Required Lenders duly executed by such Domestic Subsidiary sufficient to cause such Subsidiary to become a Guarantor, together with executed counterparts of each other Loan Document reasonably requested by the Required Lenders, including all Security Instruments and other documents necessary or reasonably requested to establish and preserve the Lien of the Administrative Agent in all Collateral of such Domestic Subsidiary;

(b) (i) Uniform Commercial Code financing statements naming such Person as "Debtor" and naming the Administrative Agent for the benefit of the Secured Parties as "Secured Party," in form, substance and number sufficient to be filed in all Uniform Commercial Code filing offices and in all jurisdictions in which filing is necessary to perfect in favor of the Administrative Agent for the benefit of the Secured Parties the Lien on the Collateral conferred under such Security Instrument to the extent such Lien may be perfected by Uniform Commercial Code filing (and the Borrower Agent shall file or cause to be filed such financing statements), and (ii) pledge agreements, control agreements, Documents and original collateral (including pledged Equity Interests (other than Excluded Equity Interests), Securities and Instruments) and such other documents and agreements as may be necessary or reasonably required by the Administrative Agent or the Required Lenders all as necessary to establish and maintain a valid, perfected security interest in all Collateral in which such Domestic Subsidiary has an interest consistent with the terms of the Loan Documents;

(c) upon the request of the Required Lenders, an opinion of counsel to each such Domestic Subsidiary and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent and the Required Lenders, each of which opinions may be in form and substance, including assumptions and qualifications contained therein, substantially similar to those opinions of counsel delivered pursuant to Section 5.01(a);

(d) current copies of the Organization Documents of each such Domestic Subsidiary, together with minutes of duly called and conducted meetings (or duly effected consent actions) of the Board of Directors, partners, or appropriate committees thereof (and, if required by such Organization Documents or applicable law, of the shareholders, members or partners) of such Person authorizing the actions and the execution and delivery of documents described in this Section 7.12, all certified by the applicable Governmental Authority or appropriate officer as the Required Lenders may elect; and

(e) with respect to any Subsidiary to become a Borrower hereunder, within three (3) Business Days prior to becoming a Borrower (which shall require the consent of the Required Lenders), all information and documentation reasonably requested by (and results satisfactory to) Administrative Agent and each Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws to the extent such information is requested by the Administrative Agent or the Lenders reasonably promptly after written notice to the Administrative Agent of the proposed joinder of a Borrower.

7.13 Compliance with ERISA. Do, and cause each of its ERISA Affiliates to do, each of the following: (a) maintain each Plan in compliance in all respects with the applicable provisions of ERISA, the Code and other applicable Laws, except as could not reasonably be expected to result in a Material Adverse Effect; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification, except as could not reasonably be expected to result in a Material Adverse Effect; and (c) make all required contributions to any Plan subject to the Pension Funding Rules. At no time shall the accumulated benefit obligations under any Plan subject to Title IV of ERISA that is not a Multiemployer Plan exceed the Fair Market Value of the assets of such Plan allocable to such benefits by more than the Threshold Amount. The Loan Parties and each of their respective Subsidiaries shall not withdraw, and shall cause each ERISA Affiliate not to withdraw, in whole or in part, from any Multiemployer Plan so as to give rise to withdrawal liability exceeding the Threshold Amount in the aggregate. At no time shall the actuarial present value of unfunded liabilities for post-employment health care benefits, whether or not provided under a Plan, calculated in a manner consistent with Statement No. 106 of the Financial Accounting Standards Board, exceed the Threshold Amount.

7.14 Further Assurances. At the Borrowers' cost and expense, upon request of the Administrative Agent (acting at the direction of the Required Lenders), duly execute and deliver or cause to be duly executed and delivered, to the Administrative Agent such further information, instruments, documents, certificates, financing and continuation statements, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent or the Required Lenders to carry out more effectively the provisions and purposes of this Agreement, the Security Instruments and the other Loan Document, including, to create, continue or preserve the liens and security interests in Collateral (and the perfection and priority thereof) of the Administrative Agent contemplated hereby and by the other Loan Documents and specifically including all Collateral acquired by the Borrowers after the Closing Date.

7.15 Licenses. (a) Keep in full force and effect each License (i) the expiration or termination of which could reasonably be expected to materially adversely affect the realizable value in the use or sale of a material amount of Inventory or (ii) the expiration or termination of which could reasonably be expected to have a Material Adverse Effect (each a "Material License"); (b) promptly notify the Administrative Agent of (i) any material modification to any such Material License that could reasonably be expected to be materially adverse to any Loan Party or the Administrative Agent or any Lender and (ii) entering into any new Material License; (c) pay all Royalties (other than immaterial Royalties or Royalties being Properly Contested) arising under such Material Licenses when due (subject to any cure or grace period applicable thereto); and (d) notify the Administrative Agent of any default or breach asserted in writing by any Person to have occurred under any such Material License.

7.16 Environmental Laws. Conduct its operations and keep and maintain its Real Property in material compliance with all Environmental Laws, other than any such non-compliance which would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; (b) obtain and renew all environmental permits necessary for its operations and properties, other than any environmental permits the failure of which to obtain would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; and (c) implement any and all investigation, remediation, removal and response actions that are required to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under or about any of its Real Property other than any such non-compliance which would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

7.17 Leases, Mortgages and Third-Party Agreements.

(a) Upon request, provide Administrative Agent with copies of all existing and future agreements (including any mortgage, deed of trust or similar security document) entered into between a Loan Party and any landlord, warehouseman, manufacturer, processor, shipper, bailee or other Person that owns, or has a mortgage or similar lien on, any premises at which any Collateral with an aggregate value of $100,000 or greater may be kept or that otherwise may possess any Collateral with an aggregate value of $100,000 or greater (each a "Material Third-Party Agreement").

(b) Except as otherwise expressly permitted hereunder, (i) make all payments and otherwise perform all obligations in respect of all leases constituting Material Third Party Agreements and not allow such leases to lapse or be terminated (or any rights to renew such leases to be forfeited or cancelled), (ii) notify the Administrative Agent of any default by the applicable Loan Party or Subsidiary with respect to such leases and (iii) promptly cure any such default by the applicable Loan Party or Subsidiary. If any such default is not so cured, each Loan Party hereby authorizes the Administrative Agent (as its non-fiduciary agent and on its behalf) to, if elected by the Administrative Agent in its sole discretion, make such payments and/or take such other actions in order to cure any such default (whether or not an Event of Default under this Agreement exists at such time). Each Loan Party agrees that the Administrative Agent shall have no obligation to exercise any right to cure hereunder, whether or not such right is exercised on any one or more occasions.

7.18 Material Contracts. Perform and observe all the payment terms and other material terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Administrative Agent (acting at the direction of the Required Lenders) and, upon reasonable request of the Administrative Agent (acting at the direction of the Required Lenders), make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do any of the foregoing, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

7.19 [Reserved.].

7.20 Budgets and Variance Reports.

(a) For purposes of this Agreement, the term "Approved Budget" shall mean a 13-week cash flow forecast and budget of the Loan Parties' and their Subsidiaries' consolidated (A) projected cash receipts, (B) projected disbursements, (C) projected operating cash flow, (D) projected net cash flow and (E) projected borrowings to be requested by the Borrower under this Amendment, including back-up schedules and supporting information as reasonably requested by the Required Lenders, as each Approved Budget may be revised or adjusted by the Borrower from time to time with the prior written consent of the Required Lenders.

(b) At the request of the Required Lenders, the Borrower shall deliver to the Administrative Agent on or before each Friday (or, if such day is not a Business Day, on the next succeeding Business Day) an initial (or, in the case of any subsequent week, updated) Approved Budget for the 13-week period commencing as of the Sunday of such week, in form and substance satisfactory to Required Lenders.

(c) At the request of the Required Lenders, the Borrower shall deliver to the Administrative Agent on or before Friday (or, if such day is not a Business Day, on the next succeeding Business Day) of each week an Approved Budget Variance Report, and such Approved Budget Variance Report shall be in form and substance satisfactory to the Required Lenders, and executed by a Responsible Officer of the Borrower certifying that (A) the Loan Parties are in compliance with the covenants contained herein and (B) no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto.

(d) As used herein, the below terms shall have the meanings specified as follows:

"Actual Cash Receipts" means the amount of all cash proceeds from ordinary course operations actually received by the Loan Parties and their Subsidiaries during the relevant period, as determined in a manner consistent with the Approved Budget, excluding proceeds of any Indebtedness.

"Actual Disbursement Amounts" means the amount of all disbursements actually paid by the Loan Parties and their Subsidiaries during the relevant period of determination, as determined in a manner consistent with the Approved Budget.

"Actual Net Cash Flow" means the actual net cash flow of the Loan Parties as of the relevant date of determination which corresponds to the budgeted net cash flow of the Loan Parties during the relevant period of determination, as determined in a manner consistent with the Approved Budget.

"Approved Budget Variance Report" means a weekly report, prepared by the Borrower (after consultation with the Borrower Consultant) and provided by the Borrower to the Administrative Agent, and as certified by a Responsible Officer of the Borrower as being true, correct and complete in all material respects showing by line item Actual Cash Receipts, Actual Disbursement Amounts, and Actual Net Cash Flow as of the last day of the Prior Week and for the Cumulative Four-Week Period then ended, noting therein all variances, on a line-item basis, from amounts set forth for such period in the Approved Budget for the Prior Week and for the Cumulative Four-Week Period then ended, and shall include explanations for all material variances (i.e., greater than 10%), together with back-up schedules and supporting information as reasonably requested by the Required Lenders. The Approved Budget Variance Report shall be in a form, and shall contain supporting information, reasonably satisfactory to the Required Lenders. Such Approved Budget Variance Report may be revised or adjusted from time to time by the Borrower with the prior written consent of the Required Lenders.

"Cumulative Four-Week Period" means (i) for the Approved Budget Variance Report to be delivered on November 24, 2023, the one-week period ending on November 18, 2023, (ii) for the Approved Budget Variance Report to be delivered on December 1, 2023, the two-week period ending on November 25, 2023, (iii) for the Approved Budget Variance Report to be delivered on December 8, 2023, the three-week period ending on December 2, 2023, and (iv) for each Approved Budget Variance Report to be delivered thereafter, the four-week period up to and through the Saturday of the most recent week ended.

"Prior Week" means as of any date of determination, the immediately preceding week ended on a Saturday and commencing on the prior Sunday.

7.21 Borrower Consultant. At the request of the Required Lenders and at all times thereafter, the Borrower shall retain a third-party consultant acceptable to the Required Lenders (the "Borrower Consultant") pursuant to an engagement letter previously acceptable to the Required Lenders, and at the sole cost and expense of, the Loan Parties. The Loan Parties (i) covenant and agree that the Loan Parties shall fully cooperate with the Borrower Consultant (including, without limitation, in connection with the preparation and/or review of the deliverables required herein), (ii) hereby authorize the Administrative Agent and the Required Lenders (or its agents or advisors, including the Secured Party Consultant) to communicate directly with the Borrower Consultant regarding any and all matters related to the Loan Parties, including, without limitation, all financial reports and projections developed, reviewed or verified by the Borrower Consultant and all additional information, reports and statements requested by the Administrative Agent or any Lender, and (iii) hereby authorize and direct the Borrower Consultant to provide the Administrative Agent and the Required Lenders with copies of reports and other information or materials prepared or reviewed by the Borrower Consultant as the Administrative Agent, the Secured Party Consultant or any Lender may request; *provided*, that none of the Loan Parties or Borrower Consultant will be required to disclose any document, information or other matter (x) in respect of which disclosure to the Administrative Agent or any Lender (or their respective agent or representatives) is prohibited by law or any binding agreement entered into with third parties that are not Affiliates of the Borrower (and only so long as such confidentiality obligations were not incurred to avoid disclosure pursuant to this section) or (y) that is, upon the reasonable advice of the Borrower's counsel, subject to attorney-client or similar privilege or constitutes attorney work product.

7.22 Secured Party Consultant. At the request of the Required Lenders, each Loan Party hereby consents to and reaffirms the Administrative Agent's right (at the direction of the Required Lenders) to retain a financial advisor (the "Secured Party Consultant"), to perform an independent business, financial and operational review of the Borrower, the Guarantors, and any of their Subsidiaries, including an assessment of the Approved Budgets, and to conduct any additional analysis as reasonably requested by the Administrative Agent or the Required Lenders. The Loan Parties acknowledge that the Secured Party Consultant does not have any authority to bind the Administrative Agent or any other Secured Party or any counsel to any Secured Party to any agreement with any Loan Party, to make any representations or warranties on behalf of any Secured Party or any counsel to any Secured Party, or otherwise to act on behalf of any Secured Party or any counsel to any Secured Party; and that the Secured Party Consultant may share with any Secured Parties and counsel and other advisors to a Secured Party any information obtained by the Secured Party Consultant during the course of the discharge of its engagement concerning Loan Parties, their financial condition, business, prospects, financial forecasts, or the Collateral. Each Loan Party agrees to provide the Secured Party Consultant with such information concerning such Loan Party, its financial condition, business prospects, forecasts, assets and liabilities as the Secured Party Consultant may request. The Loan Parties jointly and severally agree to reimburse the Administrative Agent and the Lenders (and their counsels) for any amounts that any of them pay to the Secured Party Consultant for all of the Secured Party Consultant's fees and expenses. Each Loan Party acknowledges and agrees that neither any Secured Party nor any counsel to any Secured Party will have any liability for any wrongful acts of the Secured Party Consultant.

ARTICLE VIII
NEGATIVE COVENANTS

So long as any Obligation (other than contingent obligations for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

8.01 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness or issue any Disqualified Equity Interest, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 8.01;

(c) Guarantees of any Loan Party in respect of Indebtedness otherwise permitted hereunder of any other Loan Party; *provided* that any Guarantee of Indebtedness permitted hereunder that is subordinated to the Obligations shall be subordinated to the Obligations on substantially the same terms as such guaranteed Indebtedness;

(d) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the Ordinary Course of Business for the purpose of directly mitigating risks reasonably anticipated by such Person associated with liabilities, commitments, investments, assets, cash flows of or property held by, or changes in the value of securities issued by, such Person, and not for purposes of speculation and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) Indebtedness arising in the Ordinary Course of Business in connection with treasury management and commercial credit card, merchant card and purchase or procurement card services;

(f) Indebtedness in respect of Capital Leases, Synthetic Lease Obligations and purchase money obligations for Real Property and other fixed or capital assets within the limitations set forth in Section 8.02(i); *provided*, *however*, that the aggregate amount of all such Indebtedness at any one time outstanding, together with the Swap Termination Value of all Swap Contracts permitted under Section 8.01(d) above, shall not exceed $5,000,000;

(g) Assumed Indebtedness in an aggregate principal amount not to exceed $1,000,000 at any time outstanding;

(h) Indebtedness (including earnouts and seller notes) incurred to finance or as part of the consideration for any Permitted Acquisition; *provided*, that, (i) no Event of Default exists at the time of or would be caused by the incurrence of such Indebtedness and (ii) such Indebtedness (A) is unsecured, (B) bears interest (and provided for fees) at a rate (or amount) no greater than the then current arm's length market rate (or amount) for similar Indebtedness, (C) does not have a maturity date or require the payment in cash of principal (other than in respect of working capital adjustments) prior to a date later than 91 days following the Maturity Date and (D) is subordinated to the Obligations on terms reasonably acceptable to the Required Lenders;

(i) unsecured Indebtedness consisting of Investments in any Person that is not a Subsidiary permitted under Section 8.03; *provided* that any Guarantee of such unsecured Indebtedness shall be subordinated to the Obligations on substantially the same terms, if any, as are applicable to such unsecured Indebtedness;

(j) Indebtedness of Foreign Subsidiaries in an aggregate principal amount at any time outstanding not to exceed $500,000;

(k) the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(l) Indebtedness in respect of any bankers' acceptance, bank guarantees, letters of credit, warehouse receipt or similar facilities entered into in the Ordinary Course of Business in respect of workers' compensation and other casualty claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation and other casualty claims;

(m) Indebtedness incurred or arising in the Ordinary Course of Business and not in connection with the borrowing of money in respect of (i) obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; *provided* that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms; (ii) performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar instruments or obligations; and (iii) obligations to pay insurance premiums;

(n) Indebtedness representing deferred compensation to current or former employees, directors, consultants or independent contractors incurred in the Ordinary Course of Business;

(o) surety bonds, deposits and similar obligations permitted under Section 8.02(e) or (f);

(p) unsecured Indebtedness of (A) any Loan Party owing to any other Loan Party or any Subsidiary that is not a Loan Party (so long as such Indebtedness owing to a Subsidiary that is not a Loan Party (1) bears interest (and provided for fees) at a rate (or amount) no greater than the then current arm's length market rate (or amount) for similar Indebtedness, (2) does not require the payment in cash of principal (at maturity or otherwise) prior to ninety-one (91) days following the Maturity Date, and (3) is subordinated to the Obligations on terms reasonably acceptable to the Required Lenders and as to which at least ten (10) Business Days prior to incurrence thereof, the Borrower Agent has delivered a certificate to the Administrative Agent certifying as to compliance with each of clauses (1) through (3) above), (B) any Subsidiary that is not a Loan Party owing to any other Subsidiary that is not a Loan Party and (C) any Subsidiary that is not a Loan Party owing to any Loan Party; *provided* that any such Indebtedness described in this clause which is owing to a Loan Party, shall (1) be evidenced by promissory notes in form and substance satisfactory to the Required Lenders and pledged to the Administrative Agent on terms acceptable to the Required Lenders, (2) be permitted under Section 8.03(c) or (i), and (3) not be forgiven or otherwise discharged for any consideration other than payment in full in cash unless the Required Lenders otherwise consent;

(q) [reserved];

(r) other unsecured Indebtedness (i) that bears interest (and provided for fees) at a rate (or amount) no greater than the then current arm's length market rate (or amount) for similar Indebtedness, (ii) has a stated maturity date no earlier than 91 days following the Maturity Date, (iii) as to which at the time of incurrence thereof no Default or Event of Default has occurred and is continuing or would result therefrom, (iv) the aggregate outstanding principal amount of which does not exceed $2,000,000 at any time, and (v) with respect to which at least ten (10) Business Days prior to each such incurrence, the Borrower Agent has delivered a certificate to the Administrative Agent certifying as to compliance with each of clauses (i) through (iv) above;

(s) Indebtedness of Holdings and its Subsidiaries arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the Ordinary Course of Business; *provided* that such Indebtedness is extinguished within (5) five Business Days of its incurrence;

(t) contingent obligations to financial institutions, in each case to the extent in the Ordinary Course of Business and on terms and conditions which are within the general parameters customary in the banking industry, entered into to obtain payroll services or deposit account overdraft protection services (in amount similar to those offered for comparable services in the financial industry) or other services in connection with the payroll services or opening of deposit accounts or incurred as a result of endorsement of negotiable instruments for deposit or collection purposes and other customary, contingent obligations of Credit Parties incurred in the Ordinary Course of Business;

(u) Indebtedness owing to insurance carriers to finance insurance premiums of any Loan Party in the Ordinary Course of Business in a principal amount not to exceed at any time the amount of insurance premiums to be paid by such Loan Party;

(v) Indebtedness in respect of netting services and overdraft protection in connection with Loan Party deposit accounts in the Ordinary Course of Business;

(w) Subordinated Debt; and

(x) Refinancing Indebtedness.

8.02 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following ("Permitted Liens"):

(a) Liens in favor of the Administrative Agent pursuant to any Loan Document;

(b) Liens existing on the date hereof as described on Schedule 8.02 (setting forth, as of the Closing Date, the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto) and any renewals or extensions thereof, provided that (i) the Lien does not extend to any additional property, and (ii) the obligations secured or benefited thereby constitutes Refinancing Indebtedness;

(c) Liens for taxes, assessments or other governmental charges, not yet due or which are being Properly Contested, and which in all cases are junior to the Lien of the Administrative Agent;

(d) Liens of carriers, warehousemen, mechanics, materialmen, repairmen, landlords or other like Liens imposed by Law or arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested;

(e) Liens, pledges or deposits in the Ordinary Course of Business in connection with (i) insurance, workers compensation, unemployment insurance and social security legislation, (ii) contracts, bids, government contracts, and surety, appeal, customs, performance and return-of-money bonds and (iii) other similar obligations (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to contracts, statutory requirements, common law or consensual arrangements, other than any Lien imposed by ERISA;

(f) Liens arising in the Ordinary Course of Business consisting of deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature, in each case, incurred in the Ordinary Course of Business;

(g) Liens with respect to minor imperfections of title and easements, rights-of-way, covenants, consents, reservations, encroachments, variations and zoning and other similar restrictions, charges, encumbrances or title defects affecting Real Property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person and do not materially detract from the value of or materially impair the use by the Loan Parties in the Ordinary Course of Business of the property subject to or to be subject to such encumbrance;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 9.01 or securing appeal or other surety bonds related to such judgments, and which in all cases are junior to the Lien of the Administrative Agent;

(i) Liens securing Indebtedness permitted under Section 8.01(f); *provided* that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or Fair Market Value, whichever is lower, of the property being acquired on the date of acquisition;

(j) Liens securing Assumed Indebtedness of the Loan Parties or any Subsidiary permitted pursuant to Section 8.01(g); *provided* that (i) such Liens do not at any time encumber any property other than property of the Subsidiary acquired, or the property acquired, and proceeds thereof in connection with such Assumed Indebtedness and shall not attach to any assets of the Loan Parties theretofore existing or (except for any such proceeds) which arise after the date thereof and (ii) the Assumed Indebtedness and other secured Indebtedness of the Loan Parties secured by any such Lien does not exceed the Fair Market Value of the property being acquired in connection with such Assumed Indebtedness;

(k) Liens on assets of Foreign Subsidiaries of Holdings securing Indebtedness of such Foreign Subsidiaries permitted pursuant to Section 8.01(j);

(l) operating leases or subleases granted by the Loan Parties to any other Person in the Ordinary Course of Business;

(m) Liens (a) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection, (b) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business and (c) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(n) Liens in favor of customs and revenue authorities imposed by Law to secure payment of customs duties in connection with the importation of goods and arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested; and

(o) Liens arising from the filing (for notice purposes only) of UCC-1 financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) in respect of true leases otherwise permitted hereunder.

8.03 Investments. Make or maintain any Investments, except:

(a) Investments held by the Loan Parties in the form of Cash Equivalents that are subject to the Administrative Agent's Lien and control, pursuant to documentation in form and substance reasonably satisfactory to the Required Lenders;

(b) loans and advances to officers, directors and employees of the Loan Parties and Subsidiaries made in the Ordinary Course of Business in an aggregate amount at any one time outstanding not to exceed $500,000;

(c) (i) Investments in Subsidiaries outstanding on the date hereof, (ii) Investments in wholly-owned Loan Parties (other than Holdings), (iii) Investments by Subsidiaries that are not Loan Parties in other Subsidiaries that are not Loan Parties, and (iv) so long as no Default or Event of Default has occurred and is continuing or would result from such Investment, Investments in Subsidiaries that are not Loan Parties in an aggregate amount in any fiscal year not to exceed $100,000; *provided* that, the Borrower Agent shall have delivered a certificate to the Administrative Agent certifying as to compliance with this clause (iv) at least ten (10) Business Days prior to each such Investment;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the Ordinary Course of Business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled Account Debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 8.01;

(f) Investments existing as of the date hereof as described in Schedule 8.03 (setting forth, as of the Closing Date, the amount, obligor or issuer and maturity, if any, thereof) and extensions or renewals thereof, provided that no such extension or renewal shall be permitted if it would (i) increase the amount of such Investment at the time of such extension or renewal or (ii) result in a Default hereunder;

(g) Permitted Acquisitions; and

(h) Swap Agreements otherwise permitted hereunder constituting Investments.

Notwithstanding the terms of this Section 8.03 or Sections 8.04 or 8.05, in no event shall any Loan Party or any Subsidiary sell, lease, convey, assign, transfer or otherwise dispose of material Intellectual Property of the Loan Parties or any Subsidiary to any person who is, (a) in the case of a disposition by any Loan Party, not a Loan Party, or (b) in the case of a non-Loan Party, not Holdings or a Subsidiary, in each case of (a) and (b), other than non-exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles in the Ordinary Course of Business.

8.04 Fundamental Changes. Merge, Divide, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary of Holdings may merge or consolidate with or liquidate or dissolve into a Loan Party; *provided*, that, (i) the Loan Party shall be the continuing or surviving Person, (ii) a Borrower may not merge into Holdings and (iii) in the case of any merger of a Borrower and a Subsidiary Guarantor, such Borrower shall be the continuing or surviving Person;

(b) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; *provided*, that, (i) the Person surviving such merger shall be a wholly-owned Subsidiary of a Loan Party and (ii) in the case of any such merger to which any Loan Party is a party, such Loan Party is the surviving Person; and

(c) any Subsidiary that is not a Loan Party may merge into any other Subsidiary that is not a Loan Party; *provided* that, when any wholly-owned Subsidiary is merging with another Subsidiary that is not wholly-owned, the wholly-owned Subsidiary shall be the continuing or surviving Person.

8.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of Inventory and, so long as no Event of Default exists or is created thereby, Cash Equivalents, each in the Ordinary Course of Business;

(b) Dispositions in the Ordinary Course of Business of Equipment or fixed assets that are obsolete, worn out or no longer useful to the Core Business for so long as (i) no Event of Default has occurred and is continuing at the time of such Disposition and (ii) all proceeds thereof are applied to the extent required in accordance with Section 2.06(c);

(c) Dispositions that constitute (i) an Investments permitted under Section 8.03, (ii) a Lien permitted under Section 8.02, (iii) a merger, dissolution, consolidation or liquidation permitted under Section 8.04(a), or (iv) a Restricted Payment permitted under Section 8.06;

(d) Dispositions that result from a casualty or condemnation in respect of such property or assets and is not otherwise an Event of Default so long as all proceeds thereof are applied in accordance with Section 2.06(c);

(e) (x) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other Intellectual Property rights and (y) the licensing, on an exclusive basis, of patents, trademarks, copyrights, and other Intellectual Property rights in the Ordinary Course of Business in jurisdictions which Loan Parties are not operating or to the extent Loan Parties do not use such Intellectual Property (and for the avoidance of doubt, the Loan Parties shall be deemed to be "operating in a jurisdiction" if any Loan Party or its subsidiaries is engaged in any activity in such jurisdiction (including any distribution, licensing or other arrangements with a third party covering such jurisdiction) during the two (2) year period prior to the date of determination);

(f) (i) the lapse of immaterial registered patents, trademarks, copyrights and other Intellectual Property to the extent maintaining such registered Intellectual Property is not economically desirable in the conduct of its business or (ii) the abandonment of patents, trademarks, copyrights, or other intellectual property rights in the Ordinary Course of Business so long as in each case under clauses (i) and (ii), such lapse or abandonment is not materially adverse to the interests of the Secured Parties; *provided*, *however*, that Borrower may cure any such lapse within 30 days by re-filing or re-applying for registration of the applicable Intellectual Property in the applicable jurisdiction to the extent Borrower is able to cure without loss of any material rights in the applicable Intellectual Property;

(g) the leasing or subleasing of assets (other than sale and leaseback transactions prohibited under Section 8.15) in the Ordinary Course of Business;

(h) Dispositions that consist of the sale or discount in the Ordinary Course of Business of overdue accounts receivable in connection with the compromise or collection thereof, provided that the Net Cash Proceeds from such Disposition shall be deposited in a Controlled Deposit Account;

(i) Dispositions among the Loan Parties or by any Subsidiary to a Loan Party;

(j) Dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party; and

(k) other Dispositions of assets so long as (i) no Event of Default has occurred and is continuing at the time of such Disposition and (ii) the Fair Market Value of all such assets Disposed of, whether individually or in a series of related transactions, does not exceed $500,000 in the aggregate in any fiscal year.

8.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, in each case (except Section 8.06(a)) so long as no Default or Event of Default shall have occurred and be continuing (both before or as a result of the making of such Restricted Payment):

(a) each Subsidiary may make Restricted Payments, directly or indirectly, to any Borrower;

(b) Holdings and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) Holdings, the Borrowers and each Subsidiary may purchase, redeem or otherwise acquire shares of its common stock or other common Equity Interests or warrants or options to acquire any such shares in connection with customary employee or management agreements, plans or arrangements, all in an aggregate amount not to exceed $1,000,000 during the term of this Agreement;

(d) [Reserved;]

(e) Restricted Payments by Borrowers to the extent necessary to permit Holdings to pay administrative costs and expenses related to the business of Borrowers and their Subsidiaries, so long as Holdings applies the amount of such Restricted Payment for such purpose; and

(f) the Company may make Permitted Tax Distributions.

8.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrowers and their Subsidiaries on the date hereof or any business substantially related or incidental thereto.

8.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of any Loan Party, whether or not in the Ordinary Course of Business, other than

(a) transactions on fair and reasonable terms substantially as favorable to such Loan Party or Subsidiary as would be obtainable by such Loan Party or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate;

(b) payment of reasonable and customary compensation and benefits (including equity awards) payable or provided to officers, directors, employees and independent contractors;

(c) transactions between or among the Loan Parties;

(d) Restricted Payments permitted under Section 8.06;

(e) Investments permitted under Section 8.03 and Fundamental Changes permitted under Section 8.04; and

(f) transactions pursuant to agreements in existence or contemplated on the Closing Date as set forth on Schedule 8.08 or any amendment thereto to the extent such an amendment is not adverse to the Secured Parties in any material respect.

8.09 Burdensome Agreements. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document or the Loan Documents) that:

(a) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; or

(b) limits the ability (i) of any Subsidiary to make Restricted Payments to Holdings or any Borrower or to otherwise transfer property to Holdings or any Borrower, (ii) of any Subsidiary to Guarantee the Indebtedness of the Borrowers or become a direct Borrower hereunder, or (iii) of any Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; *provided*, *however*, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 8.01(f) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness.

8.10 Use of Proceeds. Use the proceeds of any Loan, whether directly or indirectly, including through or by any Controlled Person, and whether immediately, incidentally or ultimately, (a) in any manner that might cause the Loan or the application of such proceeds to violate Regulations T, U or X of the Board of Governors of the Federal Reserve System, in each case as in effect on the date or dates of such Loan, or (b) (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) to fund, finance or facilitate any activities, business or transaction of or with any Sanctioned Person or in any Designated Jurisdiction, or (iii) in any other manner that would result in the violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws applicable to any Party hereto.

8.11 Prepayment of Indebtedness; Amendment to Material Contracts.

(a) Make or pay, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal, interest, fees or other amounts due on any Indebtedness (other than the Obligations), or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness (other than the Obligations), except for the following to the extent permitted by applicable Subordination Provisions:

(i) payments when due of regularly scheduled interest and principal payments (including mandatory prepayments arising as a result of a change of control or sale of substantially all assets);

(ii) payments made through the incurrence of Refinancing Indebtedness with respect to such Indebtedness;

(iii) payments of secured Indebtedness permitted hereunder that become due as a result of a voluntary Disposition permitted hereunder of the property securing such Indebtedness; and

(iv) payments made solely from and substantially contemporaneously with the proceeds of the issuance of Equity Interests by Holdings (other than Disqualified Equity Interests).

(b) Amend, modify or change in any manner any term or condition of (i) any Material Contract, (ii) the Tax Receivable Agreement or (iii) any Indebtedness permitted under Section 8.01(b), (d), (f), (g), (h) or (r), in each case, so that the terms and conditions thereof are less favorable in any material respect to the Administrative Agent or the Lenders.

8.12 [Reserved].

8.13 Creation of New Subsidiaries. Create or acquire any new Subsidiary after the Closing Date other than Subsidiaries created or acquired in accordance with Section 7.12.

8.14 Securities of Subsidiaries. Permit any Subsidiary to issue any Equity Interests (whether for value or otherwise) to any Person other than a Loan Party.

8.15 Sale and Leaseback. Enter into any agreement or arrangement with any other Person providing for the leasing by any Loan Party or any Subsidiary of real or personal property which has been or is to be sold or transferred by any Loan Party or any Subsidiary to such other Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of a Loan Party or any Subsidiary.

8.16 Organization Documents; Fiscal Year. (a) Amend, modify or otherwise change any of its Organization Documents in any case in any manner that could have a material adverse effect on the interests of the Secured Parties, or (b) change its fiscal year, except with the consent of the Administrative Agent (acting at the direction of the Required Lenders).

8.17 Holdings Covenant. Cause Holdings not to engage in any business activities, hold any assets or incur any Indebtedness other than (i) acting as a holding company and transactions incidental thereto, including maintaining policies of insurance with respect to directors and officers liability and other insurable risks customary for similarly situated companies, (ii) entering into the Loan Documents and the transactions required herein or permitted herein to be performed by Holdings, (iii) entering into the agreements related to and consummating the Transactions, (iv) receiving and distributing the dividends, distributions and payments permitted to be made to Holdings pursuant to Section 8.06, (v) entering into engagement letters and similar type contracts and agreements with attorneys, accountants and other professionals, (vi) owning the Equity Interests of the Company, (vii) issuing Equity Interests as permitted hereunder, (viii) engaging in activities necessary or incidental to the director, officer and/or employee option incentive plan at Holdings, (ix) providing guarantees for the benefit of a Borrower to the extent such Person is otherwise permitted to enter into the transaction under this Agreement (including guaranties of lease obligations) and (x) holding nominal deposits in deposit accounts in connection with consummating any of the foregoing transactions. Holdings shall preserve, renew and keep in full force and effect its existence (and perform ministerial activities and make payments of taxes and administrative fees, in each case, to maintain its existence). Holdings shall not merge or consolidate with or into any other Person.

8.18 Tax Receivable Agreement. Terminate, or agree to the termination of, the Tax Receivable Agreement.

ARTICLE IX
EVENTS OF DEFAULT AND REMEDIES

9.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Borrower fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or (ii) within three days after the same becomes due, any interest on any Loan or any commitment or other fee due hereunder, or (iii) within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained (i) in any of Sections 7.03, 7.05, 7.07, 7.10, 7.11, 7.20, 7.21, 7.22 or 7.23, Article VIII or the Post-Closing Agreement, or (ii) in any of Sections 4.04, 7.02(b), 7.02(c), 7.02(e) or 7.02(f) and such failure continues for three (3) or more Business Days; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the earlier of (i) receipt of notice of such default by a Responsible Officer of the Borrower Agent from the Administrative Agent or the Required Lenders, or (ii) any Responsible Officer of any Loan Party becomes aware of such default; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party or its Subsidiaries herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made in any material respect; or

(e) Cross-Default. (i) With respect to any Indebtedness or guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, any Loan Party or its Subsidiaries (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, and after passage of any grace period) in respect of any such Indebtedness or guarantee, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, and such default continues for more than the grace or cure period, if any, therein specified, the effect of which default or other event is to cause, or to permit the holder of such Indebtedness or beneficiary of such guarantee (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Loan Party or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by a Loan Party or any Subsidiary as a result thereof is greater than Threshold Amount; or

(f) Insolvency Events. Any Insolvency Event shall occur with respect to any Loan Party; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Loan Party and is not released, vacated or fully bonded within 30 days after its issue or levy; (iii) any Loan Party is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business; (iv) there is a cessation of any material part of any Loan Party's business for a material period of time; or (v) a material portion of the Collateral or property or assets of a Loan Party is taken or impaired through condemnation; or

(h) Judgments. There is entered against any Loan Party (i) one or more final judgments or orders for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments or orders (including for injunctive relief) that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, such judgment or order remains unvacated and unpaid and either (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 45 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any Loan Document, or any Lien granted thereunder, at any time after its execution and delivery and for any reason, other than as expressly permitted hereunder or upon Payment in Full, ceases to be in full force and effect (except with respect to immaterial assets); or any Borrower or any other Person contests in any manner the validity or enforceability of any Loan Document or any Lien granted to the Administrative Agent pursuant to the Security Instruments; or any Borrower denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) Breach of Contractual Obligation. Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any contract to which it is party or fails to observe or perform any other agreement or condition relating to any such contract to which it is party or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such contract to terminate such contract, in each case which would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(l) Indictment. (i) Any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business or (B) charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any material portion of Collateral, or (ii) any director or senior officer of any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, unless such director or senior officer promptly resigns or is removed or replaced or (B) charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any material portion of Collateral; or

(m) Subordinated Debt. (i) The Subordination Provisions shall fail to be enforceable by the Lenders (which have not effectively waived the benefits thereof) in accordance with the terms thereof; or (ii) the principal or interest on any Loan or other Obligations shall fail to constitute "designated senior debt" (or any other similar term) under any document, instrument or agreement evidencing such Subordinated Debt; or (iii) any Loan Party or any of its Subsidiaries shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, or (B) that any of such Subordination Provisions exist for the benefit of any Secured Party; or (iv) any Loan Party or any Subsidiary thereof or any other Person fails to observe or perform any of the Subordination Provisions; or

(n) Uninsured Loss. A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds the Threshold Amount; or

(o) Change of Control. There occurs any Change of Control.

9.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent, at the direction of the Required Lenders, shall take any or all of the following actions:

(a) [reserved];

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

(c) require that the Borrowers Cash Collateralize the Obligations that are contingent or not yet due and payable in an amount determined by the Administrative Agent (acting at the direction of the Required Lenders) in accordance with this Agreement; and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided, however, that upon the occurrence of an Event of Default under Section 9.01(f), the unpaid principal amount of all outstanding Loans and all interest and other amounts owing under the Loan Documents shall automatically become due and payable, without further act of the Administrative Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

Any Event of Default occurring hereunder shall be deemed to exist and be continuing until waived by the Administrative Agent and all or any required portion of the Lenders in accordance with Section 11.01, notwithstanding any actual or purported remedy or cure of the actions, facts, circumstances or conditions giving rise to such Event of Default.

9.03 Application of Funds.

(a) [Reserved.]

(b) Notwithstanding any provision to the contrary contained herein, after the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 9.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to all fees, indemnities, expenses and other amounts (including reasonable fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article IV) due to the Administrative Agent in its capacity as such, until paid in full;

Second, to that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, and other Obligations expressly described in clauses Third through Fifth below) payable to the Lenders (including reasonable fees, charges and disbursements of counsel to the respective Lenders and amounts payable under Article III, all to the extent required to be paid by the Loan Parties under the Loan Documents), ratably among them in proportion to the respective amounts described in this clause Fourth payable to them until paid in full;

Third, to that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them until paid in full;

Fourth, to that portion of the Obligations constituting unpaid principal of the Loans until paid in full;

Fifth, to all other Obligations that are due and payable to the Administrative Agent and the other Secured Parties, or any of them, on such date, ratably based on the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date until paid in full; and

Last, the balance, if any, after Payment in Full, to the Borrowers or as otherwise required by Law.

(c) The allocations set forth in this Section are solely to determine the rights and priorities of Administrative Agent and Secured Parties as among themselves, and may be changed by agreement among them without the consent of any Borrower. This Section is not for the benefit of or enforceable by any Loan Party.

(d) For purposes of Section 9.03(b), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Event, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any proceeding under Debtor Relief Laws.

(e) Administrative Agent shall not be liable for any application of amounts made by it in good faith under this Section 9.03, notwithstanding the fact that any such application is subsequently determined to have been made in error except as a direct and sole result of the gross negligence or willful misconduct of the Administrative Agent, as determined by a court of competent jurisdiction by a final and nonappealable judgment.

ARTICLE X
ADMINISTRATIVE AGENT

10.01 Appointment and Authority. Each of the Lenders hereby irrevocably appoints CSC Delaware Trust Company to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are expressly delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto and CSC Delaware Trust Company hereby accepts such appointment. In furtherance of the foregoing, so long as CSC Delaware Trust Company is an Administrative Agent, whenever reference is made in this Agreement or the other Loan Documents to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Administrative Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Administrative Agent, it is understood that the Administrative Agent shall be acting at the direction of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) and shall be fully protected in acting pursuant to such directions. Notwithstanding anything contained in this Agreement or the other Loan Document to the contrary, without limiting any rights, protections, immunities or indemnities afforded to the Administrative Agent hereunder (including without limitation this Article X), phrases such as "satisfactory to the Administrative Agent," "approved by the Administrative Agent," "acceptable to the Administrative Agent," "as determined by the Administrative Agent," "designed by the Administrative Agent", "specified by the Administrative Agent", "in the Administrative Agent's discretion," "selected by the Administrative Agent," "elected by the Administrative Agent," "requested by the Administrative Agent," "in the opinion of the Administrative Agent," "required by the Administrative Agent", "as the Administrative Agent deems necessary or advisable" and phrases of similar import that authorize or permit the Administrative Agent to approve, disapprove, determine, act, evaluate or decline to act in its discretion shall be subject to the Administrative Agent receiving a direction from the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents). The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and no Loan Party shall have rights as a third party beneficiary of any of such provisions.

10.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

10.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not have any duties or responsibilities except those expressly set forth herein and shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable to any other Secured Party for any action taken or not taken by it under or in connection with the Loan Documents, except for direct (as opposed to consequential) losses directly and solely caused by the Administrative Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents). The Administrative Agent shall not be liable for, and shall be fully justified in, failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of the Lenders as the Administrative Agent shall believe in good faith shall be necessary) as it reasonably deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default or any other matter unless and until written notice describing such Default, Event of Default or other matter is given to the Administrative Agent by the Borrower Agent or a Lender. No provision of this Agreement or any other Loan Document shall require the Administrative Agent to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder or thereunder or in the exercise of any of its rights or powers, if it shall have grounds to believe that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means) or (v) the satisfaction of any condition set forth in Article V or elsewhere herein.

Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, the Administrative Agent shall not be under any obligation (i) to monitor, determine or verify the unavailability or cessation of any Benchmark (or other applicable benchmark interest rate or any component thereof), or whether or when there has occurred, or to give notice to any other transaction party of the occurrence of, any date on which such rate may be required to be transitioned or replaced in accordance with the terms of the Transaction Documents, applicable law or otherwise, (ii) to select, determine or designate any Benchmark Replacement, or other successor or replacement benchmark index, or whether any conditions to the designation of such a rate have been satisfied, (iii) to select, determine or designate any Benchmark Replacement Adjustment or other modifier to any replacement or successor index, or (iv) to determine whether or what any Conforming Changes or other amendments to this Agreement or the other Loan Documents are necessary or advisable, if any, in connection with any of the foregoing. The Administrative Agent shall not be liable for any inability, failure or delay on its part to perform any of its duties set forth in this Agreement or any other Transaction Document as a result of the unavailability of any Benchmark (or other applicable benchmark interest rate), including as a result of any inability, delay, error or inaccuracy on the part of any other party, including without limitation any Lenders, the Borrower or the Borrower Agent, in providing any direction, instruction, notice or information required or contemplated by the terms of this Agreement and reasonably required for the performance of such duties. The Administrative Agent shall have no liability for any interest rate published by any publication that is the source for determining the interest rates of the Loans, including but not limited to Bloomberg (or any successor source) and the Bloomberg or Reuters screen (or any successor source), or for any rates published on any publicly available source, including without limitation the Federal Reserve Bank of New York's Website or any website administered by the Term SOFR Administrator, or in any of the foregoing cases for any delay, error or inaccuracy in the publication of any such rates, or for any subsequent correction or adjustment thereto.

In no event shall the Administrative Agent be liable for any failure or delay in the performance of its obligations under this Agreement or any other Loan Document because of circumstances beyond its control, including, but not limited to, a failure, termination, or suspension of a clearing house, securities depositary, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, earthquake, terrorism, fire, riot, labor disturbances, strikes or work stoppages for any reason, embargo, epidemics or pandemics or other health crises, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Agreement or the other Loan Documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes beyond the Administrative Agent's control whether or not of the same class or kind as specified above.

Notwithstanding anything herein or in any other Loan Document, the Administrative Agent shall have no obligation or responsibility with respect to the Warrants or the Common Stock or any documents or laws, rules or regulations related thereto, or any provisions related thereto in this Agreement, any warrant agreement or any other document.

The rights, privileges, protections, immunities and benefits given to the Administrative Agent, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable: (i) by the Administrative Agent in each Loan Document and any other document related hereto or thereto to which it is a party and (ii) the entity serving as the Administrative Agent in each of its capacities hereunder and in each of its capacities under any Loan Document whether or not specifically set forth therein and each agent, custodian and other Person employed to act hereunder and under any Loan Document or related document, as the case may be.

10.04 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent shall not be responsible for the acts or omissions of any sub-agents selected by it without gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

10.06 Resignation of the Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower Agent. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower Agent, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no qualifying Person has accepted such appointment within 30 days' of the Administrative Agent's notice of resignation, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed, but no affirmative duties, obligations or liabilities shall be imposed upon the retiring Administrative Agent as a result of holding such Collateral) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as the Administrative Agent.

10.07 Non-Reliance on the Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

10.08 [Reserved].

10.09 The Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, upon the direction and instruction of Required Lenders, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Loan Parties and the Secured Parties hereby irrevocably authorize the Administrative Agent, based upon the instruction of the Required Lenders, to (a) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Section 363 of the Bankruptcy Code of the United States or any similar Laws in any other jurisdictions to which a Loan Party is subject, or (b) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties (other than Obligations owing to the Administrative Agent) shall be entitled to be, and shall be, credit bid on a ratable basis (with any such Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of the Administrative Agent to credit bid and purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of the Administrative Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Secured Parties whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase). Upon request by the Administrative Agent or the Borrower Agent at any time, the Secured Parties will confirm in writing the Administrative Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 10.09.

10.10 Collateral Matters. The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any Collateral (i) upon the occurrence of the Facility Termination Date, (ii) that is Disposed or to be Disposed as part of or in connection with any Disposition permitted hereunder or under any other Loan Document, or (iii) subject to Section 11.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to release or subordinate any Lien (and any Indebtedness secured thereby) on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 8.02(i), so long as the Borrower Agent shall have delivered to the Administrative Agent on or prior to the date of release or subordination, as the case may be, a certificate of a Responsible Officer certifying that such Lien (and the Indebtedness secured thereby) is permitted by Section 8.02(i) (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry); and

(c) to release any Subsidiary from its obligations under the Loan Documents, and release any Lien granted by such Subsidiary thereunder, if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder, so long as the Borrower Agent shall have delivered to the Administrative Agent on or prior to the date of release a certificate of a Responsible Officer certifying that such transaction is permitted by this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Documents pursuant to this Section 10.10. Upon request by the Administrative Agent at any time, the Borrower Agent shall deliver to the Administrative Agent, a certificate of a Responsible Officer certifying that the release or subordination, and any action to be taken by the Administrative Agent in connection therewith, is authorized or permitted by this Agreement and the other Loan Documents (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry).

10.11 Other Collateral Matters.

(a) Care of Collateral. The Administrative Agent shall have no obligation to assure that any Collateral exists or is owned by a Borrower, or is cared for, protected or insured, nor to assure that the Administrative Agent's Liens or any other security interest have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

(b) Lenders as Agent For Perfection by Possession or Control. The Administrative Agent and Secured Parties appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent's request, deliver such Collateral to the Administrative Agent or otherwise deal with it in accordance with the Administrative Agent's instructions.

(c) Reports. The Administrative Agent shall promptly forward to each Lender, when complete, copies of any report prepared for the Administrative Agent with respect to any Borrower or Collateral ("Report"). Each Lender agrees (a) that the Administrative Agent does not make any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; (b) that the Reports are not intended to be comprehensive audits or examinations, and that the Administrative Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon Borrowers' books and records as well as upon representations of Borrowers' officers and employees; and (c) to keep all Reports confidential and strictly for such Lender's internal use, and not to distribute any Report (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender shall indemnify and hold harmless the Administrative Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any claims arising as a direct or indirect result of furnishing a Report to such Lender. For the avoidance of doubt, the Administrative Agent shall have no obligation or duty to prepare or cause any other Person to prepare a Report and shall take actions with respect thereto solely as directed by the Required Lenders.

10.12 [Reserved].

10.13 ERISA Related Provisions.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Administrative Agent or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least $50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Commitments or this Agreement.

(c) Each of the Lenders acknowledges and agrees that the Administrative Agent is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that it may have a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, or the Commitments for an amount less than the amount being paid for an interest in the Loans, or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

10.14 Recovery of Erroneous Payments. Notwithstanding anything to the contrary in this Agreement, if at any time the Administrative Agent determines (in its sole and absolute discretion) that it has made a payment hereunder in error to any Lender or any other Secured Party or another recipient of funds (whether known to the recipient or not) or if a Lender or another recipient of funds is not otherwise entitled to receive such funds at such time of such payment or from such Person in accordance with the Loan Documents, whether or not in respect of an Obligation due and owing by any Loan Party at such time, then in any such event, each such Person receiving such amounts severally agrees to repay to the Administrative Agent forthwith on demand such amounts received by such Person in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender and each other Secured Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another), "good consideration", "change of position" or similar defenses (whether at law or in equity) to its obligation to return any such amounts. The Administrative Agent shall inform each Lender and each other Secured Party that received a payment promptly upon determining that any such payment made to such Person was made in error or such Person was not otherwise entitled to such payment; *provided* that the failure to provide such notice shall not affect the obligations of any Secured Party or other recipient to repay such amounts as contemplated herein. Each Person's obligations, agreements and waivers under this Section 10.14 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE XI
MISCELLANEOUS

11.01 Amendments, Etc. Subject to Section 3.03(b) above,

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower Agent or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided*, *however*, that no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender without the written consent of such Lender;

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment (but excluding the delay or waiver of any mandatory prepayment) of principal, interest, fees or other amounts due to the Lenders (or any of them), including the Maturity Date, in each case without the written consent of each Lender directly affected thereby;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan, or reduce any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; *provided*, *however*, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" (so long as such amendment does not result in the Default Rate being lower than the interest rate then applicable to Loans) or to waive any obligation of the Borrowers to pay interest at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein);

(iv) change (i) Section 2.13 in a manner that would alter the pro rata sharing of payments required thereby or (ii) Section 9.03, in each case without the written consent of each Lender directly affected thereby;

(v) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(vi) except as provided in Section 2.18, increase the Commitments without the written Consent of each Lender directly affected thereby;

(vii) release any material Borrower from this Agreement or any material Security Instrument to which it is a party without the written consent of each Lender, except to the extent such Borrower is the subject of a Disposition permitted by Section 8.05 (in which case such release may be made by the Administrative Agent pursuant to Section 10.10);

(viii) release, or subordinate the Administrative Agent's Lien on, all or substantially all of the Collateral without the written consent of each Lender; or

(ix) [reserved]; or

(x) without the prior written consent of each Lender, impose any materially greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder.

(b) In addition to the foregoing, (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights, protections, immunities, privileges or duties of the Administrative Agent under this Agreement or any other Loan Document; (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the respective parties thereto; and (iii) the Administrative Agent and the Borrower Agent shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower Agent shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any such provision.

(c) Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Required Lenders, the Administrative Agent and the Borrowers (i) to add one or more additional term loan facilities (each a "Supplemental Facility") to this Agreement, in each case subject to the limitations in Section 2.18, and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, and (ii) in connection with the foregoing, to permit, as approved by the Required Lenders, the Lenders providing such Supplemental Facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

(d) If any Lender does not consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace such Non-Consenting Lender in accordance with Section 11.13; *provided* that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

(e) No Loan Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender or its Affiliates as consideration for agreement by such Lender to any amendment, waiver, consent or release with respect to any Loan Document, unless such remuneration or value is concurrently paid, on the same terms, on a ratable basis to all Lenders providing their agreement. Notwithstanding the terms of this Agreement or any amendment, waiver, consent or release with respect to any Loan Document, Non-Consenting Lenders shall not be entitled to receive any fees or other compensation paid to the Lenders in connection with any amendment, waiver, consent or release approved in accordance with the terms of this Agreement by the Required Lenders.

(f) IN NO EVENT SHALL THE REQUIRED LENDERS, WITHOUT THE PRIOR WRITTEN CONSENT OF EACH LENDER, DIRECT THE ADMINISTRATIVE AGENT TO ACCELERATE AND DEMAND PAYMENT OF THE LOANS HELD BY ONE LENDER WITHOUT ACCELERATING AND DEMANDING PAYMENT OF ALL OTHER LOANS. EACH LENDER AGREES THAT, EXCEPT AS OTHERWISE PROVIDED IN ANY OF THE LOAN DOCUMENTS AND WITHOUT THE PRIOR WRITTEN CONSENT OF THE REQUIRED LENDERS, IT WILL NOT TAKE ANY LEGAL ACTION OR INSTITUTE ANY ACTION OR PROCEEDING AGAINST ANY LOAN PARTY WITH RESPECT TO ANY OF THE OBLIGATIONS OR COLLATERAL, OR ACCELERATE OR OTHERWISE ENFORCE ITS PORTION OF THE OBLIGATIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO LENDER MAY EXERCISE ANY RIGHT THAT IT MIGHT OTHERWISE HAVE UNDER APPLICABLE LAW TO CREDIT BID AT FORECLOSURE SALES, UNIFORM COMMERCIAL CODE SALES OR OTHER SIMILAR SALES OR DISPOSITIONS OF ANY OF THE COLLATERAL EXCEPT AS AUTHORIZED BY THE REQUIRED LENDERS. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION OR ELSEWHERE HEREIN, EACH LENDER SHALL BE AUTHORIZED TO TAKE SUCH ACTION TO PRESERVE OR ENFORCE ITS RIGHTS AGAINST ANY LOAN PARTY WHERE A DEADLINE OR LIMITATION PERIOD IS OTHERWISE APPLICABLE AND WOULD, ABSENT THE TAKING OF SPECIFIED ACTION, BAR THE ENFORCEMENT OF OBLIGATIONS HELD BY SUCH LENDER AGAINST SUCH LOAN PARTY, INCLUDING THE FILING OF PROOFS OF CLAIM IN ANY INSOLVENCY PROCEEDING.

11.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or in the case of notices otherwise expressly provided herein (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to a Loan Party or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02, as changed pursuant to subsection (d) below; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire, as changed pursuant to subsection (d) below (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS OR OTHERWISE. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Borrower, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of a Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided*, *however*, that in no event shall any Agent Party have any liability to any Borrower, any Lender, or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrowers and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower Agent and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrowers or any other Loan Party or any of them (including enforcement action with respect to any Collateral) shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 9.02 for the benefit of all the Secured Parties; *provided*, *however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) [reserved], (c) any Lender from exercising setoff rights in accordance with Section 11.08, or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Borrower under any Debtor Relief Law but only to the extent the Administrative Agent shall have failed to do so within a reasonable time after notice; and provided further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable out-of-pocket expenses (including any Extraordinary Expenses and any expenses incurred after the occurrence and during the continuance of an Event of Default) incurred by the Administrative Agent, the Coliseum Investors and their respective Affiliates, (A) in connection with this Agreement and the other Loan Documents, the Warrants, the Incremental Warrants, and the Registration Rights Agreement, including without limitation (1) the reasonable fees, charges and disbursements of counsel for the Administrative Agent, (2) the reasonable fees, charges and disbursements of outside consultants for the Administrative Agent, (3) [reserved], (4) [reserved], (5) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (6) environmental site assessments, (7) the reasonable fees, charges and disbursements of counsel for the Coliseum Investors and (8) the reasonable fees, charges and disbursements of outside consultants for the Coliseum Investors, (B) in connection with (1) the syndication of the credit facilities provided for herein, (2) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (3) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral, or (4) any workout, restructuring or negotiations in respect of any Obligations, and (ii) [reserved], and (iii) without limiting (i) or (ii) above, all reasonable out-of-pocket expenses incurred by the Secured Parties (other than the Coliseum Investors) who are not the Administrative Agent or any Affiliate thereof, after the occurrence and during the continuance of an Event of Default (the foregoing, collectively being referred to as "Secured Party Expenses").

(b) Indemnification by the Borrowers. Each Loan Party shall indemnify the Administrative Agent (and any sub-agent thereof), each other Secured Party and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold harmless each Indemnitee from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 4.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Secured Party to, a Controlled Account Bank or other Person which has entered into a control agreement with any Secured Party hereunder, (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any other Loan Party, and regardless of whether any Indemnitee is a party thereto or (vi) the issuance of the Warrants ~~and the~~, the Incremental Warrants, the Warrant Shares, and the Incremental Warrant Shares; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties.

(c) Indemnification of Administrative Agent by Lenders. To the extent that (i) the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, or (ii) any liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever are be imposed on, incurred by, or asserted against, the Administrative Agent, or a Related Party (an "Agent Indemnitee") in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by any Agent Indemnitee in connection therewith (collectively, "Agent Indemnitee Liabilities"), then each Lender severally agrees to pay to the Administrative Agent for the benefit of such Agent Indemnitee, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such Agent Indemnitee Liabilities, so long as the Agent Indemnitee Liabilities were incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d). In no event shall any Lender have any obligation hereunder to indemnify or hold harmless an Agent Indemnitee with respect to any Agent Indemnitee Liabilities that are determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Agent Indemnitee. In the Administrative Agent's discretion, it may reserve for any Agent Indemnitee Liabilities of an Agent Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to the Secured Parties. If the Administrative Agent is sued by any creditor representative, debtor-in-possession or other Person for any alleged preference or fraudulent transfer, then any monies paid by the Administrative Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to the Administrative Agent by each Lender to the extent of its Pro Rata Share thereof.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation or replacement of the Administrative Agent, the replacement of any Lender and the occurrence of the Facility Termination Date.

11.05 Marshalling; Payments Set Aside. None of the Administrative Agent or Lenders shall be under any obligation to marshal any assets in favor of any Loan Party or against any Obligations. To the extent that any payment by or on behalf of any Loan Party is made to a Secured Party, or a Secured Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Secured Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate, in the applicable currency of such recovery or payment. The obligations of the Loan Parties under clause (a) of this section and the Lenders under clause (b) of this section shall survive the occurrence of the Facility Termination Date.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder (except in connection with the joinder of a Loan Party in accordance with Section 7.12) without the prior written consent of each Lender, and acknowledged by the Administrative Agent, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Secured Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts. Except in the case of (A) an assignment of the entire remaining amount of the assigning Lender's Loans at the time owing to it under the Facility or (B) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, the aggregate amount of the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, in the case of any assignment in respect of the Facility, unless, so long as no Event of Default has occurred and is continuing, the Borrower Agent otherwise consents (each such consent not to be unreasonably withheld or delayed); *provided*, *however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans assigned. No Lender shall assign all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment to an Eligible Assignee except to the extent required by subsection (b)(i)(B) of this Section; *provided* that the Borrower Agent shall be deemed to have given the consent required in the definition of "Eligible Assignee" to such assignment if Borrower Agent has not, on behalf of all Borrowers, responded in writing within ten (10) Business Days of a request for consent.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; *provided*, *however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and such tax documents and other information as the Administrative Agent shall reasonably request.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrowers or any of a Borrower's Affiliates or Subsidiaries or (B) to a natural person.

(vi) [reserved].

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request of any assignee Lender, the Borrower (at its expense) shall execute and deliver a Note to such assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated, as between the applicable Lender and its counterparty, for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers (and such agency being solely for tax purposes) (in such capacity, subject to Section 11.18), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders and principal amounts of the Loans and Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower Agent and any Lender at any reasonable time and from time to time upon reasonable prior written notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or a Borrower or any of the Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

If any Lender (or any assignee thereof) sells a participation, such Lender (or such assignee) shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); *provided* that no Lender (nor any assignee thereof) shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender (or such assignee) shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower Agent's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower Agent is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) [Reserved].

11.07 Treatment of Certain Information; Confidentiality. Each of the Secured Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its branches and Affiliates, its attorneys and other professional advisors and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as (or no less restrictive than) those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any direct or indirect actual or prospective party (or its Related Parties) to any swap, derivative, securitization or other transaction under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrowers or their Subsidiaries or any Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to any Facility; (h) with the consent of the Borrower Agent; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to a Secured Party or any of their respective branches or Affiliates on a nonconfidential basis from a source other than the Loan Parties that is not known to be subject to a confidentiality obligation with respect to such Information or (z) is independently discovered or developed by a party hereto without utilizing any Information received from a Loan Party or violating the terms of this Section; or to the extent required by a potential or actual insurer or reinsurer in connection with providing insurance, reinsurance or credit risk mitigation coverage under which payments are to be made or may be made by reference to this Agreement.

For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary relating to a Loan Party or any Subsidiary or any of their respective businesses, other than any such information that is available to any Secured Party on a nonconfidential basis prior to disclosure by a Loan Party or any Subsidiary, provided that, in the case of information received from a Loan Party or any Subsidiary after the date hereof, any information not marked "PUBLIC" at the time of delivery will be deemed to be confidential; *provided* that any information marked "PUBLIC" may also be marked "Confidential". Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Secured Parties acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including federal and state securities Laws.

Each of the Loan Parties hereby authorizes the Administrative Agent to publish the name of any Loan Party and the amount of the credit facility provided hereunder in any "tombstone" or comparable advertisement which the Administrative Agent elects to publish. The Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, only after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrowers against any and all of the obligations of the Borrowers now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower Agent and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Integration; Effectiveness. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto.

11.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Secured Parties, regardless of any investigation made by any Secured Party or on their behalf and notwithstanding that any Secured Party may have had notice or knowledge of any Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Further, the provisions of Sections 3.01, 3.04, 3.05 and 11.04 and Article X shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Administrative Agent may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Secured Parties against loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender fails to approve any amendment, waiver or consent requested by Borrower Agent pursuant to Section 11.01 that has received the written approval of not less than the Required Lenders but also requires the approval of such Lender, then in each such case the Borrower Agent may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower Agent shall have paid to the Administrative Agent the assignment fee specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Agent (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) in the case of any such assignment resulting from the refusal of a Lender to approve a requested amendment, waiver or consent, the Person to whom such assignment is being made has agreed to approve such requested amendment, waiver or consent; and

(e) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc.

(a) **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

(b) **EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWERS OR THEIR PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

(c) **EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THAT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN THIS SECTION 11.14 ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.**

(d) **EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.**

11.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 Electronic Execution; Electronic Records; Counterparts. This Agreement, any Loan Document, any Assignment and Assumption and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. The words "execution," "signed," "signature," and words of like import in the Loan Documents shall be deemed to include Electronic Signatures or the keeping of Electronic Records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar applicable state laws based on the Uniform Electronic Transactions Act. Each of the Loan Parties, the Administrative Agent and each Lender agrees that any Electronic Signature of such Person on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each Lender may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy") which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent nor any Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; *provided*, further, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Lender without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart.

Each of the Loan Parties and each Lender hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document or any Communication based solely on the lack of paper original copies of this Agreement, such other Loan Document or such Communication, and (ii) waives any claim against the Administrative Agent, each Lender and each of their Related Parties for any liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

11.17 USA PATRIOT Act Notice. Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrowers in accordance with the PATRIOT Act.

11.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Secured Parties are arm's-length commercial transactions between each Loan Party, on the one hand, and the Secured Parties, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Secured Party is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party or any of its Affiliates or any other Person and (B) no Secured Party has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iii) the Secured Parties may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and no Secured Party has any obligation to disclose any of such interests to any Loan Party or its Affiliates and (iv) the Secured Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against any Secured Party with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.19 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein; except, that, in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

11.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any Resolution Authority.

ARTICLE XII
CONTINUING GUARANTY

12.01 Guaranty. Holdings and each Subsidiary Guarantor hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations (other than Excluded Swap Obligations), whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrowers to the Secured Parties, arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof) (the "Guarantied Obligations"). The Administrative Agent's books and records showing the amount of the Guarantied Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon Holdings and each Subsidiary Guarantor, and conclusive for the purpose of establishing the amount of the Guarantied Obligations. This guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guarantied Obligations or any instrument or agreement evidencing any Guarantied Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Guarantied Obligations which might otherwise constitute a defense to the obligations of Holdings or any Subsidiary Guarantor under this guaranty, and Holdings and each Subsidiary Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

12.02 Rights of Secured Parties. Holdings and each Subsidiary Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guarantied Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this guaranty or any Guarantied Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guarantied Obligations. Without limiting the generality of the foregoing, Holdings and each Subsidiary Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of Holdings or any Subsidiary Guarantor under this Agreement or which, but for this provision, might operate as a discharge of Holdings or any Subsidiary Guarantor.

12.03 Certain Waivers. Holdings and each Subsidiary Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrowers or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrowers; (b) any defense based on any claim that Holdings' or any Subsidiary Guarantor's obligations exceed or are more burdensome than those of the Borrowers; (c) the benefit of any statute of limitations affecting Holdings' or any Subsidiary Guarantor's liability hereunder; (d) any right to proceed against the Borrowers, proceed against or exhaust any security for the Guarantied Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties (other than Payment In Full). Holdings and each Subsidiary Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guarantied Obligations, and all notices of acceptance of this guaranty or of the existence, creation or incurrence of new or additional Guarantied Obligations.

12.04 Obligations Independent. The obligations of Holdings and each Subsidiary Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guarantied Obligations and the obligations of any other guarantor, and a separate action may be brought against Holdings and each Subsidiary Guarantor to enforce this guaranty whether or not any Borrower or any other person or entity is joined as a party.

12.05 Subrogation. Neither Holdings nor any Subsidiary Guarantor shall exercise and each of them hereby subordinates any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this guaranty until the Facility Termination Date. If any amounts are paid to Holdings or any Subsidiary Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

12.06 Termination; Reinstatement. This guaranty is a continuing and irrevocable guaranty of all Guarantied Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or Holdings or any Subsidiary Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Guarantied Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of Holdings and each Subsidiary Guarantor under this paragraph shall survive termination of this guaranty.

12.07 Subordination. Holdings and each Subsidiary Guarantor hereby subordinates the payment of all obligations and indebtedness of any Loan Party owing to Holdings or any Subsidiary Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of the Borrowers, to Holdings or any Subsidiary Guarantor as subrogee of the Secured Parties or resulting from Holdings or any Subsidiary Guarantor's performance under this guaranty, to the Payment in Full of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of the Borrowers to Holdings or any Subsidiary Guarantor shall be enforced and performance received by Holdings or any Subsidiary Guarantor as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Guarantied Obligations, but without reducing or affecting in any manner the liability of Holdings or any Subsidiary Guarantor under this guaranty.

12.08 Stay of Acceleration. If acceleration of the time for payment of any of the Guarantied Obligations is stayed, in connection with any case commenced by or against Holdings or any Subsidiary Guarantor or the Borrowers under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by Holdings and each Subsidiary Guarantor immediately upon demand by the Secured Parties.

12.09 Condition of Borrowers. Holdings and each Subsidiary Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as Holdings and each Subsidiary Guarantor requires, and that none of the Secured Parties has any duty, and neither Holdings nor any Subsidiary Guarantor is relying on the Secured Parties at any time, to disclose to Holdings or any Subsidiary Guarantor any information relating to the business, operations or financial condition of the Borrowers or any other guarantor (Holdings and each Subsidiary Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

12.10 [Reserved.].

12.11 Limitation of Guaranty. Notwithstanding anything to the contrary herein or otherwise, the Borrowers, the Administrative Agent and the Lenders hereby irrevocably agree that the Guarantied Obligations of Holdings and each Subsidiary Guarantor in respect of the guarantee set forth in this Section 12 at any time shall be limited to the maximum amount as will result in the Guarantied Obligations of Holdings and such Subsidiary Guarantor not constituting a fraudulent transfer or conveyance after giving full effect to the liability under such guarantee set forth in this Section 12 and its related contribution rights but before taking into account any liabilities under any other guarantee by Holdings or such Subsidiary Guarantor.

12.12 Effect of Amendment and Restatement on Existing Credit Agreement; No Novation. On the Closing Date, the Original Term Loan Credit Agreement shall be amended, restated and superseded in its entirety by this Agreement. The parties hereto acknowledge and agree that this Agreement and the other Loan Documents, whether executed and delivered in connection herewith or otherwise, other than as a result of the Closing Date Refinancing, do not constitute a novation or re-borrowing or constitute a satisfaction, payment or termination of any of the "Obligations" (as defined in the Original Term Loan Credit Agreement) in respect any of the Loan Documents as in effect prior to the Closing Date (the "Continuing Obligations"), and that all such Continuing Obligations other than as a result of the Restatement Date Refinancing are in all respects continued and outstanding (as amended and restated hereby). This Agreement shall not operate as a waiver of any right, power or remedy of any Lender under any Loan Document, and the Continuing Obligations are in all respects other than as a result of the Closing Date Refinancing continuing (as amended and restated hereby and which are in all respects hereafter subject to the terms herein) and the Liens and security interest as granted under the applicable Loan Documents securing payments of the Obligations (including in respect of the Loans) are in all respects continuing, unaltered and in full force and effect and with the same priority to secure the Obligations, whether heretofore or hereafter incurred and outstanding on and after the Closing Date, and are reaffirmed hereby.

[Remainder of page is intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

PURPLE INNOVATION, LLC, a Delaware limited liability company

By: Purple Innovation, Inc., its Manager

By: /s/
Name:
Title:

GUARANTORS:

PURPLE INNOVATION, INC., a Delaware corporation

By: /s/
Name:
Title:

INTELLIBED, LLC, a Delaware limited liability company

By: /s/
Name:
Title:

ADMINISTRATIVE AGENT:

CSC DELAWARE TRUST COMPANY, as Administrative Agent

By: /s/
Name:
Title:

LENDERS:

[ ], as a Lender

By: /s/
Name:
Title:

Exhibit 10.42

Form of Incremental Warrant

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION (THE "***COMMISSION***") OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***SECURITIES ACT***"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES; PROVIDED THAT IF ANY SECURITIES ARE PLEDGED AND THE PLEDGEE TAKES POSSESSION OF SUCH SECURITIES, SUCH PLEDGEE MUST AGREE TO BE SUBJECT TO THE SAME RESTRICTIONS THE PLEDGOR WAS SUBJECT TO WITH RESPECT TO SUCH SECURITIES.

CLASS A COMMON STOCK PURCHASE WARRANT

PURPLE INNOVATION, INC.

Warrant Shares: [●] Initial Exercise Date: March 12, 2025

THIS CLASS A COMMON STOCK PURCHASE WARRANT (this "***Incremental Warrant***") certifies that, for value received, [●] or its assigns (the "***Holder***"), is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date set forth above (the "***Initial Exercise Date***") and on or prior to 5:00 p.m. (New York City time) on March 12, 2035 (the "***Expiration Date***"), to subscribe for and purchase from Purple Innovation, Inc., a Delaware corporation (the "***Company***"), up to [●] shares (as subject to adjustment hereunder, the "***Warrant Shares***") of Class A common stock of the Company, par value $.0001 ("***Common Stock***"). The purchase price of each share of Common Stock under this Incremental Warrant shall be equal to the Warrant Price, as defined in Section 2.1.

1. Warrant.

1.1 Warrant Register. The Company shall register this Incremental Warrant, upon records to be maintained by the Company for that purpose (the "***Warrant Register***"), in the name of the record Holder hereof from time to time.

1.2 Registered Holder. Prior to due presentment for registration of transfer of any Incremental Warrant, the Company may deem and treat the person in whose name such Incremental Warrant is registered in the Warrant Register as the absolute owner of such Incremental Warrant and of each Incremental Warrant represented thereby, for the purpose of any exercise thereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

2. Terms and Exercise of Incremental Warrant.

2.1 Warrant Price. This Incremental Warrant shall entitle the Holder hereof to purchase from the Company the number of shares of Common Stock stated herein, at the price of $1.50 per share, subject to the adjustments provided in Section 3 hereof. The term "***Warrant Price***" as used in this Agreement shall mean the price per share at which shares of Common Stock may be purchased at the time this Incremental Warrant is exercised.

2.2 Duration of Incremental Warrant. This Incremental Warrant may be exercised only during the period (the "***Exercise Period***") commencing on the Initial Exercise Date and terminating at 5:00 p.m., New York City time on the Expiration Date. Except with respect to the right to receive the Redemption Price (as defined below) in the event of a redemption (as set forth in Section 5 hereof), if this Incremental Warrant is not exercised on or before the Expiration Date it shall become void, and all rights hereunder shall cease at 5:00 p.m. New York City time on the Expiration Date. The Company in its sole discretion may extend the duration of this Incremental Warrant by delaying the Expiration Date.

2.3 Exercise of Incremental Warrant.

2.3.1 Payment. Subject to the provisions of this Incremental Warrant, this Incremental Warrant may be exercised by the Holder hereof, in whole or in part, by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by email (or email attachment) of the Notice of Exercise in the form annexed hereto (the "***Notice of Exercise***"), and by paying in full the Warrant Price for each full share of Common Stock as to which this Incremental Warrant is exercised and any and all applicable taxes due in connection with the exercise of this Incremental Warrant, the exchange of this Incremental Warrant for the shares of Common Stock and the issuance of such Common Stock, as follows:

(a) in lawful money of the United States, in good certified check or good bank draft payable to the order of the Company; or

(b) by surrendering this Incremental Warrant for that number of shares of Common Stock equal to (x) the product of the number of shares of Common Stock for which this Incremental Warrant is being exercised, multiplied by the difference between the Warrant Price and the Fair Market Value, as defined in this Section 2.3.1(b), divided by (y) the Fair Market Value. Solely for the purposes of this Section 2.3.1(b), the term "***Fair Market Value***" means the volume weighted average price of the Common Stock as reported during the ten (10) Trading Day period ending on the third Trading Day prior to the date on which notice of exercise of this Incremental Warrant is sent to the Company. The term "***Trading Day***" as used in this Incremental Warrant shall mean any day on which the Common Stock is traded for any period on Nasdaq, or on the principal United States securities exchange or market on which the Common Stock is then being traded; provided, however, that during any period in which the Common Stock is not listed or quoted on Nasdaq, or any other United States securities exchange or market, the term "***Trading Day***" shall mean any Business Day.

2.3.2 Issuance of Shares of Common Stock on Exercise. Within the earlier of (i) two Trading Days and (ii) the number of Trading Days comprising the standard settlement period for equity trades effected by U.S. broker-dealers after the exercise of this Incremental Warrant and the clearance of the funds in payment of the Warrant Price (if payment is pursuant to Section 2.3.1(a)) (such period, the "***Delivery Period***"), the Company shall issue to the Holder of this Incremental Warrant a book-entry position or certificate, as applicable, for the number of full shares of Common Stock to which he, she or it is entitled, registered in such name or names as may be directed by him, her or it, and if this Incremental Warrant shall not have been exercised in full, a new countersigned Incremental Warrant for the number of shares as to which this Incremental Warrant shall not have been exercised. Subject to Section 3.8 of this Agreement, the Holder of this Incremental Warrant may exercise this Incremental Warrant only for a whole number of shares of Common Stock. In no event will the Company be required to net cash settle the Incremental Warrant exercise. If, by reason of any exercise of warrants on a "cashless basis", the Holder would be entitled, upon the exercise of this Incremental Warrant, to receive a fractional interest in a share of Common Stock, the Company shall round down to the nearest whole number, the number of shares of Common Stock to be issued to the Holder.

2.3.3 Valid Issuance. All shares of Common Stock issued upon the proper exercise of this Incremental Warrant shall be validly issued, fully paid and nonassessable.

2.3.4 Date of Issuance. Each person in whose name any book-entry position or certificate, as applicable, for shares of Common Stock is issued shall for all purposes be deemed to have become the holder of record of such shares of Common Stock on the date on which this Incremental Warrant was surrendered and payment of the Warrant Price was made, irrespective of the date of delivery of such certificate, except that, if the date of such surrender and payment is a date when the share transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares of Common Stock at the close of business on the next succeeding date on which the share transfer books are open.

2.3.5 Buy-In. In addition to any other rights or remedies available to the Holder hereunder or otherwise at law or in equity, if the Company fails to cause Pacific Stock Transfer Company (the "***Transfer Agent***") to deliver to the Holder the Warrant Shares in accordance with Section 2.3.2, and if after such Delivery Period the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder or Holder's brokerage firm otherwise purchases shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder was entitled to receive upon such exercise (a "***Buy-In***"), then the Company shall (1) pay in cash to the Holder the amount by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (A) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue by (B) the price at which the sell order giving rise to such purchase obligation was executed, and (2) at the option of the Holder, either reinstate the portion of the Incremental Warrant and equivalent number of Warrant Shares for which such exercise was not honored and refund the Warrant Price therefor, to the extent paid by Holder, or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise to cover the sale of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (1) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In, together with applicable confirmations and other evidence reasonably requested by the Company. Without duplication of the Buy-In remedy described in this Section 2.3.5, nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver the shares of Common Stock upon Exercise of the Incremental Warrant as required pursuant to the terms hereof.

2.3.6 Maximum Percentage. The Company shall not effect the exercise of this Incremental Warrant, and the Holder shall not have the right to exercise this Incremental Warrant, and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, the Holder (together with the Holder's affiliates (as defined in Rule 405 of the Securities Act)), to the Company's actual knowledge, would beneficially own in excess of 49.9% (the "***Maximum Percentage***") of the shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and its affiliates shall include the number of shares of Common Stock issuable upon exercise of this Incremental Warrant with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock that would be issuable upon (x) exercise of the remaining, unexercised portion of this Incremental Warrant beneficially owned by the Holder and its affiliates and (y) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such person and its affiliates (including, without limitation, any convertible notes, convertible preferred stock or other warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"). For purposes of this Incremental Warrant, in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent annual report on Form 10-K, quarterly report on Form 10-Q, current report on Form 8-K or other public filing with the Commission as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written request of the Holder, the Company shall, within two (2) Business Days, confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. "***Business Day***" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of equity securities of the Company by the Holder and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. In the event that the issuance of shares of Common Stock to the Holder upon exercise of this Incremental Warrant results in the Holder and its affiliates being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and its affiliates' aggregate beneficial ownership exceeds the Maximum Percentage (the "***Excess Shares***") shall be deemed null and void and shall be cancelled *ab initio*, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall reinstate the portion of the Incremental Warrant and equivalent number of Warrant Shares for which such Excess Shares were voided and return to the Holder the Warrant Price paid by the Holder for the Excess Shares. By written notice to the Company, the Holder of this Incremental Warrant may from time to time increase or decrease the Maximum Percentage applicable to such Holder to any other percentage specified in such notice; provided, however, that any such increase shall not be effective until the sixty-first (61st) day after such notice is delivered to the Company and provided, further, that the Maximum Percentage shall in no event exceed 49.9% prior to the termination of the Tax Receivable Agreement, dated February 2, 2018, by and between Purple Innovation, Inc. and InnoHold, LLC.

3. Adjustments.

3.1 Stock Dividends and Splits.

3.1.1 Split-Ups. If, at any time while this Incremental Warrant is outstanding and unexpired, and subject to the provisions of Section 3.8 below, the number of outstanding shares of Common Stock is increased by a stock dividend or other distribution payable in shares of Common Stock, or by a split-up, stock split or other reclassification of shares of Common Stock, or other similar event, then, on the effective date of such stock dividend, distribution, split-up, stock split, reclassification or similar event, the number of shares of Common Stock issuable on exercise of this Incremental Warrant shall be increased in proportion to such increase in the outstanding shares of Common Stock.

3.1.2 Rights Offering. If the Company, at any time while this Incremental Warrant is outstanding and unexpired, shall undertake a rights offering to holders of the Common Stock entitling such holders to purchase shares of Common Stock at a price less than the "Fair Market Value" (as defined in this Section 3.1.2), other than as described in Section 3.4 below (any such non-excluded event being referred to as a "***Rights Offering***"), such Rights Offering shall be deemed a stock dividend of a number of shares of Common Stock equal to the product of (i) the number of shares of Common Stock actually sold in such Rights Offering (or issuable under any other equity securities sold in such Rights Offering that are convertible into or exercisable for the Common Stock) multiplied by (ii) one (1) minus the quotient of (x) the price per share of Common Stock paid in such Rights Offering divided by (y) the Fair Market Value. The number of shares of Common Stock issuable on exercise of this Incremental Warrant shall be increased in proportion to such deemed increase in the outstanding shares of Common Stock and the Warrant Price shall be adjusted (to the nearest cent) by multiplying the Warrant Price immediately prior to such adjustment by a fraction (x) the numerator of which shall be the number of shares of Common Stock purchasable upon the exercise of this Incremental Warrant immediately prior to such adjustment, and (y) the denominator of which shall be the number of shares of Common Stock so purchasable immediately thereafter. For purposes of this Section 3.1.2, (i) if the Rights Offering is for securities convertible into or exercisable for Common Stock, in determining the price payable for Common Stock, there shall be taken into account any consideration received for such rights, as well as any additional amount payable upon exercise or conversion and (ii) "Fair Market Value" means the volume weighted average price of the Common Stock as reported during the five (5) Trading Day period ending on, and including, the second Trading Day immediately preceding the record date used to determine which holders of Common Stock will receive such rights.

3.1.3 Extraordinary Dividends. If the Company, at any time while this Incremental Warrant is outstanding and unexpired, shall pay a dividend or make a distribution in cash, securities or other assets to the holders of the Common Stock on account of such shares of Common Stock (or other shares of the Company's capital stock into which this Incremental Warrant is convertible), other than as described in Section 3.1.1 or 3.1.2 above, (any such non-excluded event being referred to herein as an "***Extraordinary Dividend***"), then the Warrant Price shall be decreased, effective immediately after the effective date of such Extraordinary Dividend, by the amount of cash and the fair market value (as determined by the Board of Directors of the Company, in good faith) of any securities or other assets paid on each share of Common Stock in respect of such Extraordinary Dividend.

3.2 Aggregation of Shares. If, at any time while this Incremental Warrant is outstanding and unexpired, and subject to the provisions of Section 3.8 hereof, the number of outstanding shares of Common Stock is decreased by a consolidation, combination, reverse stock split or reclassification of shares of Common Stock or other similar event, then, on the effective date of such consolidation, combination, reverse stock split, reclassification or similar event, the number of shares of Common Stock issuable on exercise of this Incremental Warrant shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

3.3 Adjustments in Warrant Price. Whenever the number of shares of Common Stock purchasable upon the exercise of this Incremental Warrant is adjusted as provided in Section 3.1.1 or Section 3.2 above, the Warrant Price shall be adjusted (to the nearest cent) by multiplying such Warrant Price immediately prior to such adjustment by a fraction (x) the numerator of which shall be the number of shares of Common Stock purchasable upon the exercise of this Incremental Warrant immediately prior to such adjustment, and (y) the denominator of which shall be the number of shares of Common Stock so purchasable immediately thereafter.

3.4 Adjustment Upon Issuance of Shares of Common Stock. If, at any time while this Incremental Warrant is outstanding and unexpired, the Company grants, issues or sells (or enters into any agreement to grant, issue or sell), or in accordance with this Section 3 is deemed to have granted, issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding any Excluded Securities granted, issued or sold or deemed to have been granted, issued or sold) for a consideration per share (the "***New Issuance Price***") less than a price equal to the Warrant Price in effect immediately prior to such granting, issuance or sale or deemed granting, issuance or sale (such Warrant Price then in effect is referred to herein as the "***Applicable Price***") (the foregoing a "***Dilutive Issuance***"), then immediately after such Dilutive Issuance, the Warrant Price then in effect shall be reduced to an amount equal to the New Issuance Price. The term "***Excluded Securities***" shall mean (i) shares of Common Stock and/or restricted stock, restricted stock units, options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such restricted stock, restricted stock units, options, warrants or other rights issued or to be issued after the date hereof to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary, pursuant to stock purchase, stock option plans, stock incentive plans, or other arrangements that are approved by the board of directors of the Company; (ii) shares of Common Stock issued upon the conversion or exercise of Options or Convertible Securities that are outstanding as of the Initial Exercise Date, including this Incremental Warrant or any other similar warrants outstanding on the Initial Exercise Date, provided that the conversion or exercise price of any such Options or Convertible Securities is not lowered, none of such Options or Convertible Securities are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Options or Convertible Securities are otherwise changed in any manner that adversely affects the Holder (other than in connection with any stock split or combination); and (iii) securities issued pursuant to acquisitions or strategic transactions, or a series of transactions, approved by a majority of the disinterested directors of the Company, provided that such securities shall not in the aggregate represent more than 10% of the total voting power of all voting securities of the Company and, provided, further, such securities are issued as "restricted securities" (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith during the 90 day period following the Initial Exercise Date, and provided that any such issuance shall only be to a person (or to the equityholders of a person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, in each case as determined in good faith by the Board of Directors of the Company. For the avoidance of doubt, Excluded Securities shall not include securities issued in a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities. For the avoidance of doubt, the provisions of this Section 3.4 shall not apply to any shares issued pursuant to that certain Agreement and Plan of Merger dated August 31, 2022, by and among the Company, Gelato Intermediate, LLC, Gelato Merger Sub, Inc., Advanced Comfort Technologies, Inc., and D. Scott Peterson. For all purposes of the foregoing (including, without limitation, determining the adjusted Warrant Price and the New Issuance Price under this Section 3.4), the following shall be applicable:

3.4.1 Issuance of Options. If the Company in any manner grants, issues or sells (or enters into any agreement to grant, issue or sell) any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities, as defined in Section 3.4.2 ("***Options***") and the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 3.4.1, the "lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof" shall be equal to (1) the sum of the lowest amounts of consideration (if any) received or receivable (in each case, assuming all possible market conditions) by the Company with respect to any one share of Common Stock upon the granting, issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other person) upon the granting, issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (or any other person). Except as contemplated below, no further adjustment of the Warrant Price shall be made upon the actual issuance of such shares of Common Stock or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms of or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

3.4.2 Issuance of Convertible Securities. If the Company in any manner issues or sells (or enters into any agreement to issue or sell) any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock ("***Convertible Securities***") and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale (or the time of execution of such agreement to issue or sell, as applicable) of such Convertible Securities for such price per share. For the purposes of this Section 3.4.2, the "lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof" shall be equal to (1) the sum of the lowest amounts of consideration (if any) received or receivable (in each case, assuming all possible market conditions) by the Company with respect to one share of Common Stock upon the issuance or sale (or pursuant to the agreement to issue or sell, as applicable) of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other person) upon the issuance or sale (or the agreement to issue or sell, as applicable) of such Convertible Security plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Convertible Security (or any other person). Except as contemplated below, no further adjustment of the Warrant Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issuance or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of this Incremental Warrant has been or is to be made pursuant to other provisions of this Section 3.4, except as contemplated below, no further adjustment of the Warrant Price shall be made by reason of such issuance or sale.

3.4.3 Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time (other than proportional changes in conversion or exercise prices, as applicable, in connection with an event referred to in Sections 3.1 and 3.2), the Warrant Price in effect at the time of such increase or decrease shall be adjusted to the Warrant Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 3.4.3, if the terms of any Option or Convertible Security (including, without limitation, any Option or Convertible Security that was outstanding as of the Initial Exercise Date) are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 3.4 shall be made if such adjustment would result in an increase of the Warrant Price then in effect.

3.4.4 Calculation of Consideration Received. If any Option, Convertible Security or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company (as determined by the Holder, the "Primary Security", and such Option, Convertible Security or Adjustment Right together with the Primary Security, each a "Unit"), together comprising one integrated transaction, the aggregate consideration per share of Common Stock with respect to such Primary Security shall be deemed to be the lower of (x) the purchase price of such Unit, (y) if such Primary Security is an Option or Convertible Security, the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise or conversion of the Primary Security in accordance with Sections 3.4.1 or 3.4.2 above and (z) the lowest volume weighted average price of the shares of Common Stock on any Trading Day during the five (5) Trading Day period (the "Adjustment Period") immediately following the public announcement of such Dilutive Issuance (for the avoidance of doubt, if such public announcement is released prior to the opening of Nasdaq on a Trading Day, such Trading Day shall be the first Trading Day in the Adjustment Period and if this Incremental Warrant is exercised on any given date during any such Adjustment Period, solely with respect to such portion of this Incremental Warrant exercised on such date, the applicable Adjustment Period shall be deemed to have ended on, and included, the Trading Day immediately prior to such date of exercise). If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security) will be deemed to be the net amount of consideration received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security) will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company in respect of such securities will be the volume weighted average price of such security as reported during the five (5) Trading Day period immediately preceding the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security) will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "Valuation Event"), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10th) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company. For purposes of this Section 3.4.4, "Adjustment Right" means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with this Section 3) of shares of Common Stock that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

3.4.5 Record Date. If the Company sets a record date for purposes of determining the holders of shares of Common Stock entitled (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

3.5 Number of Warrant Shares. Simultaneously with any adjustment of the Warrant Price pursuant to Section 3.4, the number of Warrant Shares that may be purchased upon exercise of this Incremental Warrant shall be increased (and in no event decreased) to a number of Warrant Shares equal to: (i) the product of (A) the Warrant Price in effect immediately prior to any such adjustment multiplied by (B) the number of Warrant Shares issuable upon exercise of this Incremental Warrant immediately prior to any such adjustment; divided by (ii) the Warrant Price resulting from such adjustment before giving effect to the Incremental Warrant Floor Price, as defined below.

3.6 Replacement of Securities upon Reorganization, Etc.

3.6.1 Fundamental Transaction. In the case of (a) any reclassification or reorganization of the outstanding shares of Common Stock (other than a change solely under Section 3.1 or Section 3.2 hereof or that solely affects the par value of such shares of Common Stock or any internal reorganization, including but not limited to the merger of Intellibed, LLC into Purple Innovation, LLC), (b) any (i) merger or consolidation of the Company with or into another corporation (other than a consolidation or merger in which the Company is the continuing corporation and that does not result in any reclassification or reorganization of the outstanding shares of Common Stock) or (ii) merger or consolidation of the Company or any subsidiary of the Company with or into another corporation (other than any internal reorganization, including but not limited to the merger of Intellibed, LLC into Purple Innovation, LLC), in which stockholders of the Company immediately prior to such transaction own or receive less than a majority of the outstanding stock of the surviving entity, (c) any sale or conveyance to another corporation or entity of the assets or other property of the Company as an entirety or substantially as an entirety, or (d) any tender, exchange or redemption offer made to and accepted by the holders of the Common Stock under circumstances in which, upon completion of such tender or exchange offer, the maker thereof, together with members of any group (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) of which such maker is a part, and together with any affiliate or associate of such maker (within the meaning of Rule 12b-2 under the Exchange Act) and any members of any such group of which any such affiliate or associate is a part, own beneficially (within the meaning of Rule 13d-3 under the Exchange Act) more than 50% of the outstanding shares of Common Stock (each of (a)-(d), a "***Fundamental Transaction***"), then the Holder of this Incremental Warrant shall thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions specified in this Incremental Warrant and in lieu of the shares of Common Stock of the Company immediately theretofore purchasable and receivable upon the exercise of the rights represented thereby, for each share of Common Stock which may be purchased upon exercise of this Incremental Warrant at the effective time of the Fundamental Transaction (without giving effect to the Maximum Percentage), the kind and amount of shares of stock or other securities or property (including cash) receivable in respect of each share of Common Stock upon such Fundamental Transaction (the "***Alternate Consideration***"); provided, however, that (i) if the holders of the Common Stock were entitled to exercise a right of election as to the kind or amount of securities, cash or other assets receivable upon a Fundamental Transaction, then the kind and amount of securities, cash or other assets constituting the Alternate Consideration for which this Incremental Warrant shall become exercisable shall be deemed to be the weighted average of the kind and amount received per share by the holders of the Common Stock in such Fundamental Transaction that affirmatively make such election, and (ii) in the event of a Fundamental Transaction under clause (d) above, the Holder of this Incremental Warrant shall be entitled to receive as the Alternate Consideration, the highest amount of cash, securities or other property to which the Holder would actually have been entitled as a stockholder if the Holder had exercised this Incremental Warrant in full (without giving effect to the Maximum Percentage) prior to the expiration of such tender or exchange offer, accepted such offer and all of the Common Stock held by such holder had been purchased pursuant to such tender or exchange offer, subject to adjustments (from and after the consummation of such tender or exchange offer) as nearly equivalent as possible to the adjustments provided for in this Section 3. The Company shall cause any successor to the Company, surviving entity or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation to assume the obligation to deliver to the Holder such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to receive, and the other obligations under this Incremental Warrant.

3.6.2 Warrant Price Adjustment. In the event (a) any Fundamental Transaction occurs, (b) any person (other than the Holder and its affiliates), together with members of any group (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) of which such person is a part, and together with any affiliate or associate of such person (within the meaning of Rule 12b-2 under the Exchange Act) and any members of any such group of which any such affiliate or associate is a part, becomes the beneficial owner, directly or indirectly, through purchase, merger or other acquisition transaction or series of transactions, of securities of the Company entitling such person or group to exercise 25% or more of the total voting power of all voting securities of the Company, (c) in connection with any purchase, merger or other acquisition transaction or series of transactions, the Company issues securities which entitle the recipients thereof (other than Holder and its affiliates), in the aggregate, to exercise 25% or more of the total voting power of all voting securities of the Company, or (d) the Board of Directors of the Company ceases to be comprised of a majority of independent directors (as defined under Nasdaq rules) for a period of longer than 60 consecutive days (each of (a)-(d), a "***Warrant Price Adjustment Transaction***"), then in each such case the Warrant Price shall be reduced by the Black-Scholes Warrant Value (as defined below) unless the Holder has made an election under Section 3.6.3 below in relation to the same Warrant Price Adjustment Transaction in which case the Warrant Price for the portion of this Incremental Warrant for which such election under Section 3.6.3 was made shall not be adjusted.

3.6.3 Warrant Repurchase. Upon (a) the consummation of any Fundamental Transaction or (b) any person (other than the Holder and its affiliates), together with members of any group (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) of which such person is a part, and together with any affiliate or associate of such person (within the meaning of Rule 12b-2 under the Exchange Act) and any members of any such group of which any such affiliate or associate is a part, becoming the beneficial owner, directly or indirectly, through purchase, merger or other acquisition transaction or series of transactions, of securities of the Company entitling such person or group to exercise 50% or more of the total voting power of all voting securities of the Company (each of (a) and (b), a "***Repurchase Transaction***"), at the request of the Holder delivered at any time during the period commencing on the earliest to occur of (i) the public disclosure of any Repurchase Transaction, (ii) the consummation of any Repurchase Transaction and (iii) the Holder first becoming aware of any Repurchase Transaction, in each case through the date that is 45 days after the public disclosure of the consummation of such Repurchase Transaction by the Company pursuant to a Current Report on Form 8-K filed with the Commission, the Company (or the successor entity to the Company) shall purchase all or a portion of this Incremental Warrant requested by the Holder from the Holder by paying to the Holder, within five Trading Days after such request (or, if such request is given prior to the consummation of such Repurchase Transaction, on the effective date of (and subject to) the consummation of the Repurchase Transaction), cash in an amount equal to the Black-Scholes Warrant Value multiplied by the number of Warrant Shares for the portion of this Incremental Warrant which has been requested to be repurchased.

3.6.4 Black-Scholes Warrant Value. "***Black-Scholes Warrant Value***" means the value of the right to exercise this Incremental Warrant in respect of each Incremental Warrant Share immediately prior to the consummation of the Fundamental Transaction, Warrant Price Adjustment Transaction or Repurchase Transaction, or at such other time as set forth herein as the case may be, based on the Black-Scholes Warrant Model for a Capped American Call on Bloomberg Financial Markets ("***Bloomberg***", obtained from the "OVME" function). For purposes of calculating such amount, (a) Section 5 of this Agreement shall be taken into account, (b) the price of each share of Common Stock shall be the greater of the volume weighted average price of the Common Stock as reported during the thirty (30) Trading Day period ending on the Trading Day prior to the effective date of the applicable event or the volume weighted average price of the Common Stock as reported during the Trading Day immediately preceding the effective date of consummation of the applicable event, (c) the assumed volatility shall be the greater of 100% or the 90 day volatility obtained from the HVT function on Bloomberg determined as of the Trading Day immediately prior to the day of the announcement of the applicable event, and (d) the assumed risk-free interest rate shall correspond to the U.S. Treasury rate for a period equal to the remaining term of this Incremental Warrant.

3.6.5 Subsequent Adjustments. The provisions of this Section 3.6 shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or other transfers. In no event will the Warrant Price be reduced to less than the par value per share issuable upon exercise of this Incremental Warrant.

3.7 Notices of Changes in Incremental Warrant. Upon every adjustment of the Warrant Price or the number of shares of Common Stock issuable upon exercise of this Incremental Warrant, the Company shall give written notice thereof to the Holder, which notice shall state the Warrant Price resulting from such adjustment and the increase or decrease, if any, in the number of shares of Common Stock purchasable at such price upon the exercise of this Incremental Warrant, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Upon the occurrence of any event specified in this Section 3, the Company shall give written notice of the occurrence of such event to the Holder of this Incremental Warrant, of the record date or the effective date of the event. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such event.

3.8 No Fractional Shares. Notwithstanding any provision contained in this Incremental Warrant to the contrary, the Company shall not issue fractional shares upon the exercise of this Incremental Warrant. If, by reason of any adjustment made pursuant to this Section 3, the Holder of this Incremental Warrant would be entitled, upon the exercise of this Incremental Warrant, to receive a fractional interest in a share, the Company shall, upon such exercise, round down to the nearest whole number the number of shares of Common Stock to be issued to the Holder.

3.9 Other Events. In case any event shall occur affecting the Company as to which none of the provisions of preceding subsections of this Section 3 are strictly applicable, but which would require an adjustment to the terms of this Incremental Warrant in order to (i) avoid an adverse impact on this Incremental Warrant and (ii) effectuate the intent and purpose of this Section 3, then, in each such case, the Company shall appoint a firm of independent public accountants, investment banking or other appraisal firm of recognized national standing, which shall give its opinion as to whether or not any adjustment to the rights represented by this Incremental Warrant is necessary to effectuate the intent and purpose of this Section 3 and, if they determine that an adjustment is necessary, the terms of such adjustment. The Company shall adjust the terms of this Incremental Warrant in a manner that is consistent with any adjustment recommended in such opinion.

3.10 Voluntary Adjustment by Company. The Company in its sole discretion may lower the Warrant Price at any time prior to the Expiration Date for a period of not less than twenty (20) Business Days, provided, however, that the Company shall provide at least twenty (20) days prior written notice of such reduction to the Holder of this Incremental Warrant.

3.11 Warrant Floor Price. No adjustment pursuant to Section 3.1.2, Section 3.4, Section 3.6.2 or Sections 3.9 - 3.10 shall cause the Warrant Price to be less than $0.6979 (as adjusted pursuant to Section 3.1.3 and Section 3.3) "***Warrant Floor Price***". Notwithstanding the foregoing, the Company may at its option seek stockholder approval to allow the Warrant Price to go below the Warrant Floor Price, and in the event that it does, nothing contained in this Section 3.11 shall apply and any adjustments that would otherwise have occurred in this Section 3 but for this Section 3.11 shall be deemed to have occurred immediately after the occurrence of such stockholder approval.

4. Transfer and Exchange of Incremental Warrant.

4.1 New Incremental Warrants. This Incremental Warrant may be divided or combined with other Incremental Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Incremental Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4.2, as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Incremental Warrant or Incremental Warrants in exchange for this Incremental Warrant or Incremental Warrants to be divided or combined in accordance with such notice. All Incremental Warrants issued on transfer or exchanges shall be dated the Initial Exercise Date and shall be identical with this Incremental Warrant except as to the number of Warrant Shares issuable pursuant thereto.

4.2 Transfer of Incremental Warrants. Subject to compliance with any applicable securities laws, this Incremental Warrant and all rights hereunder (including, without limitation, any related registration rights) are transferable, in whole or in part, upon surrender of this Incremental Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Incremental Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Incremental Warrant or Incremental Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Incremental Warrant evidencing the portion of this Incremental Warrant not so assigned, and this Incremental Warrant shall promptly be cancelled. This Incremental Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Incremental Warrant issued.

4.3 Fractional Incremental Warrants. The Company shall not be required to effect any registration of transfer or exchange which shall result in the issuance of a warrant certificate or book-entry position for a fraction of a warrant.

4.4 Service Charges. No service charge shall be made for any exchange or registration of transfer of this Incremental Warrant.

5. Redemption.

5.1 Redemption. This Incremental Warrant may be redeemed, in full but not in part, at the option of the Company, at any time while it is exercisable and prior to its expiration upon notice to the Holder of this Incremental Warrant, as described in Section 5.2 below, at the price of $0.01 per Incremental Warrant Share (the "***Redemption Price***"), at such time that all of the following conditions are satisfied:

5.1.1 the last sales price of the Common Stock reported has been at least $24.00 per share (subject to adjustment in compliance with Sections 3.1-3.3 hereof), on each of twenty (20) Trading Days within the thirty (30) Trading Day period ending on the third Business Day prior to the date on which notice of the redemption is given;

5.1.2 there is an effective registration statement covering the shares of Common Stock issuable upon exercise of this Incremental Warrant, and a current prospectus relating thereto, available throughout the Redemption Period (as defined in Section 5.2 below);

5.1.3 the number of shares of Common Stock issuable upon the exercise in full of this Incremental Warrant during the Redemption Period would not be reduced by the application of Section 2.3.6 (the Maximum Percentage); and

5.1.4 all other warrants of the Company redeemable at such time also are redeemed or required to exercise by the Company.

5.2 Date Fixed for, and Notice of, Redemption. In the event that the Company elects to redeem this Incremental Warrant in full, the Company shall fix a date for the redemption (the "***Redemption Date***"). Notice of redemption shall be mailed by first class mail, postage prepaid, by the Company not less than forty-five (45) days prior to the Redemption Date (such period, the "***Redemption Period***") to the Holder of this Incremental Warrant to be redeemed at his, her or its last addresses as it shall appear on the registration books. Any notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Holder received such notice.

5.3 Exercise After Notice of Redemption. This Incremental Warrant may be exercised, for cash (or on a "cashless basis" in accordance with Section 2.3.1(b) of this Agreement) at any time after notice of redemption shall have been given by the Company pursuant to Section 5.2 hereof and prior to the Redemption Date. In the event that the Company determines to require the Holders to exercise this Incremental Warrant on a "cashless basis" pursuant to Section 2.3.1, the notice of redemption shall contain the information necessary to calculate the number of shares of Common Stock to be received upon exercise of this Incremental Warrant on a "cashless basis" pursuant to Section 2.3.1, including the "Fair Market Value" (as such term is defined in Section 2.3.1(b) hereof) in such case. On and after the Redemption Date, the record holder of this Incremental Warrant shall have no further rights except to receive, upon surrender of this Incremental Warrant, the Redemption Price.

6. Other Provisions Relating to Rights of Holder.

6.1 No Rights as Stockholder. This Incremental Warrant does not entitle the Holder hereof to any of the rights of a stockholder of the Company, including, without limitation, the right to receive dividends, or other distributions, exercise any preemptive rights to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of the Company or any other matter.

6.2 Lost, Stolen, Mutilated, or Destroyed Incremental Warrants. If this Incremental Warrant is lost, stolen, mutilated, or destroyed, the Company may on such terms as to indemnity or otherwise as they may in their reasonable discretion impose (which shall, in the case of a mutilated Incremental Warrant, include the surrender thereof), issue a new Incremental Warrant of like denomination, tenor, and date as this Incremental Warrant so lost, stolen, mutilated, or destroyed. Any such new Incremental Warrant shall constitute a substitute contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated, or destroyed Incremental Warrant shall be at any time enforceable by anyone.

6.3 Reservation of Common Stock. The Company shall at all times reserve and keep available a number of its authorized but unissued shares of Common Stock that shall be sufficient to permit the exercise in full of this Incremental Warrant. If at any time the number of shares of Common Stock authorized and reserved for issuance is below the number of shares sufficient for the exercise in full of this Incremental Warrant, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations under this Section 6.3 in the case of an insufficient number of authorized shares, and using its best efforts to obtain stockholder approval of an increase in such authorized number of shares. The Company covenants and agrees that upon the exercise of this Incremental Warrant, all shares of Common Stock issuable upon such exercise shall be duly and validly issued, fully paid and nonassessable and not subject to preemptive rights, rights of first refusal or similar rights of any person. The Company covenants and agrees that all shares of Common Stock issuable upon exercise of this Incremental Warrant shall be approved for listing on Nasdaq, or, if that is not the principal trading market for the Common Stock at such time, such principal market on which the Common Stock is then traded or listed.

6.4 Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Incremental Warrant, and will at all times in good faith carry out all the provisions of this Incremental Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Incremental Warrant above the Warrant Price then in effect, and (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Incremental Warrant.

7. Payment of Taxes. The Company shall from time to time promptly pay all taxes and charges that may be imposed upon the Company in respect of the issuance or delivery of shares of Common Stock upon the exercise of this Incremental Warrant, but the Company shall not be obligated to pay any transfer taxes in respect of this Incremental Warrant or such shares.

8. Miscellaneous Provisions.

8.1 Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company shall bind and inure to the benefit of their respective successors and assigns.

8.2 Notices. Any notice, statement or demand authorized by this Agreement to be given or made by the Holder to or on the Company shall be sufficiently given when so delivered if by email, hand or overnight delivery or if sent by certified mail or private courier service within five (5) days after deposit of such notice, postage prepaid, addressed, as follows:

Purple Innovation, Inc.
4100 North Chapel Ridge Rd., Suite 200
Lehi, UT 84043
Email: legal@purple.com

8.3 Applicable Law. The validity, interpretation, and performance of this Incremental Warrant shall be governed in all respects by the laws of the State of New York, without giving effect to conflicts of law principles that would result in the application of the substantive laws of another jurisdiction. The Company hereby agrees that any action, proceeding or claim against it arising out of or relating in any way to this Incremental Warrant shall be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum.

8.4 Persons Having Rights under this Agreement. Nothing in this Agreement shall be construed to confer upon, or give to, any person or corporation other than the parties hereto and the Holder of this Incremental Warrant any right, remedy, or claim under or by reason of this Incremental Warrant or of any covenant, condition, stipulation, promise, or agreement hereof. All covenants, conditions, stipulations, promises, and agreements contained in this Incremental Warrant shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns and of the Holder of this Incremental Warrant.

8.5 Counterparts. This Incremental Warrant may be executed in any number of original or facsimile counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. An electronic signature (including a ".pdf" or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) to this Incremental Warrant shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such electronic (including ".pdf") signature page were an original thereof.

8.6 Effect of Headings. The section headings herein are for convenience only and are not part of this Agreement and shall not affect the interpretation thereof.

8.7 Amendments. This Incremental Warrant may be amended only in a writing signed by the Company and the Holder. Notwithstanding the foregoing, the Company may lower the Warrant Price or extend the duration of the Exercise Period as set forth herein, without the consent of the Holder.

8.8 Severability. This Incremental Warrant shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Incremental Warrant or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Incremental Warrant a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

Appendix A — Notice of Exercise

Appendix B — Form of Assignment

IN WITNESS WHEREOF, the parties hereto have caused this Incremental Warrant to be duly executed as of the date first above written.

PURPLE INNOVATION, INC.

By: _____

Name: Todd Vogensen
Title: Chief Financial Officer

[Signature Page to Incremental Warrant Agreement]

[●]

By: _____

Name:

Title:

[Signature Page to Incremental Warrant Agreement]

Appendix A

NOTICE OF EXERCISE

TO: PURPLE INNOVATION, INC.

(1) The undersigned hereby elects to exercise for _____ Warrant Shares of the Company pursuant to the terms of the attached Incremental Warrant, and tenders herewith payment of the Warrant Price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ lawful money of the United States; or

☐ the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in Section 2, to exercise this Incremental Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in Section 2.

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

_____

(4) Accredited Investor. The undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Exercising Entity:

Signature of Authorized Signatory of Exercising Entity: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

Appendix B

ASSIGNMENT FORM

(To assign all or a portion of the foregoing Incremental Warrant, execute this form and supply required information. Do not use this form to exercise the Incremental Warrant.)

FOR VALUE RECEIVED, [●] Warrant Shares under the foregoing Incremental Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____ _____,_____

Holder's Signature: _____

Holder's Address: _____

Exhibit 10.43

SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

THIS SECOND AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this "***Agreement***") is entered into as of March 12, 2025, by and among **Purple Innovation, Inc.**, a Delaware corporation (including any successor entity thereto, "***Parent***"), and the undersigned parties listed under Investors on the signature page hereto (each an "***Investor***" and collectively, the "***Investors***"). This Agreement amends and restates in its entirety that certain Amended and Restated Registration Rights Agreement, dated as of January 23, 2024, among the Parent and the Investors set forth therein (the "***Prior Agreement***").

WHEREAS, Purple Innovation, LLC (the "***Borrower***"), a wholly owned subsidiary of Parent, and certain of the Investors entered into that certain Amended and Restated Credit Agreement, dated as of the date of the Prior Agreement (the "***Credit Agreement***"), together with Delaware Trust Company, as Administrative Agent;

WHEREAS, in connection with the entering into of the Credit Agreement, Parent issued to the Investors warrants (the "***Initial Warrants***") to purchase shares of Class A Common Stock of Parent (the "***Initial Warrant Shares***");

WHEREAS, Borrower and certain of the Investors are entering into that certain First Amendment to the Credit Agreement, dated as of the date of this Agreement (the "***Credit Agreement Amendment***");

WHEREAS, in connection with the entering into of the Credit Agreement Amendment, Parent is issuing to the Investors additional warrants (the "***Incremental Warrants***" and, together with the Initial Warrants, the "***Warrants***") to purchase shares of Class A Common Stock of Parent (the "***Incremental Warrant Shares***" and, together with the Initial Warrant Shares, the "***Warrant Shares***"); and

WHEREAS, the parties desire to amend and restate the Prior Agreement to provide the Investors with certain rights relating to the registration of the Incremental Warrants, the Incremental Warrant Shares and the other Registrable Securities (as defined below).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS. The following capitalized terms used herein have the following meanings:

"***Agreement***" means this Agreement, as amended, restated, supplemented, or otherwise modified from time to time.

"***Coliseum Group***" means Coliseum Capital Partners, L.P., Coliseum Capital Co-Invest III, L.P., Blackwell Partners LLC – Series A and each of their affiliates, and any transferee of the Registrable Securities (so long as they remain Registrable Securities) of a member of the Coliseum Group that is assigned or delegated the Demand Registrations afforded solely to members of the Coliseum Group in accordance with Section 6.2 of this Agreement (each of the foregoing being referred to as a member of the Coliseum Group).

"***Class A Common Stock***" means the class A common stock, par value $0.0001 per share, of Parent (including any successor common equity securities into which such securities are exchanged or converted).

"***Existing Coliseum Registrable Securities***" means those securities included in the definition of "Registrable Securities" specified in the Registration Rights Agreement, dated as of February 26, 2019, among the Parent and the Investors set forth therein.

"***Demand Registration***" is defined in Section 2.1.1.

"***Demanding Holder***" is defined in Section 2.1.1.

"***Form S-3***" is defined in Section 2.3.

"***Incremental Warrant Shares***" is defined in the recitals to this Agreement.

"***Incremental Warrants***" is defined in the recitals to this Agreement.

"***Indemnified Party***" is defined in Section 4.3.

"***Indemnifying Party***" is defined in Section 4.3.

"***Initial Warrant Shares***" is defined in the recitals to this Agreement.

"***Initial Warrants***" is defined in the recitals to this Agreement.

"***Investor(s)***" is defined in the preamble to this Agreement, and includes each member of the Coliseum Group and any transferee of the Registrable Securities (so long as they remain Registrable Securities) of an Investor permitted under Section 6.2 of this Agreement.

"***Investor Indemnified Party***" is defined in Section 4.1.

"***Maximum Number of Shares***" is defined in Section 2.1.4.

"***Parent***" is defined in the preamble to this Agreement, and shall include Parent's successors by merger, acquisition, reorganization or otherwise.

"***Person***" means any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated organization, government or any department or agency thereof or any other entity.

"***Piggy-Back Registration***" is defined in Section 2.2.1.

"***Prior Agreement***" is defined in the preamble to this Agreement.

"***Pro Rata***" is defined in Section 2.1.4.

"***Proceeding***" is defined in Section 6.10.

"***Register***," "***Registered***" and "***Registration***" mean a registration effected by preparing and filing a registration statement or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

"***Registrable Securities***" means: (i) all of the Warrants and the Warrant Shares issuable upon exercise of the Warrants, and any warrants, share capital or other securities of Parent issued as a dividend or other distribution with respect to or in exchange for or in replacement of such Warrants and Warrant Shares; and (ii) any Class A Common Stock or other equity securities of Parent held by the Investors as of the date of this Agreement as set forth in Exhibit A hereto. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when: (a) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement; (b) such securities shall have been otherwise transferred, new certificates for them not bearing a legend restricting further transfer shall have been delivered by Parent and subsequent public distribution of them shall not require registration under the Securities Act; (c) such securities shall have ceased to be outstanding or (d) the Registrable Securities are freely saleable under Rule 144 without volume limitations or manner-of-sale restrictions as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to Parent's transfer agent and the affected Investors, as reasonably determined by Parent, upon the advice of counsel to Parent and are held by an Investor that holds, on an as-converted or as-exercised basis, no more than 5% of the applicable class outstanding.

"***Registration Expenses***" is defined in Section 3.3.

"***Registration Statement***" means a registration statement filed by Parent with the SEC in compliance with the Securities Act and the rules and regulations promulgated thereunder for a public offering and sale of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities (other than a registration statement on Form S-4 or Form S-8, or their successors, or any registration statement covering only securities proposed to be issued in exchange for securities or assets of another entity).

"***Rule 405***" means Rule 405 promulgated under the Securities Act (or any successor rule promulgated thereafter by the SEC).

"***Rule 415***" means Rule 415 promulgated under the Securities Act (or any successor rule promulgated thereafter by the SEC).

"***SEC***" means the U.S. Securities and Exchange Commission.

"***Securities Act***" means the Securities Act of 1933, as amended.

"***Shelf Registration Statement***" is defined in Section 2.3.

"***Specified Courts***" is defined in Section 6.10.

"***Underwriter***" means a securities dealer who purchases any Registrable Securities as principal in an underwritten offering and not as part of such dealer's market-making activities.

"***Warrant Shares***" is defined in the recitals to this Agreement.

"***Warrants***" is defined in the recitals to this Agreement.

"***WKSI***" has the meaning given to such term in Section 2.5.

2. REGISTRATION RIGHTS.

2.1 Demand Registration.

2.1.1 Request for Registration. Subject to Section 2.4, at any time and from time to time after the date of this Agreement, any Investor may make a written demand for registration under the Securities Act of all or part of their Registrable Securities (a "***Demand Registration***"). Any demand for a Demand Registration shall specify the number of Registrable Securities proposed to be sold and the intended method(s) of distribution thereof. Within five (5) days following receipt of any request for a Demand Registration, Parent will notify all other Investors holding Registrable Securities of the demand, and each Investor holding Registrable Securities who wishes to include all or a portion of such Investor's Registrable Securities in the Demand Registration (each such Investor including shares of Registrable Securities in such registration, a "***Demanding Holder***") shall so notify Parent within fifteen (15) days after the receipt by such Investor of the notice from Parent. Upon any such request, the Demanding Holders shall be entitled to have their Registrable Securities included in the Demand Registration, subject to Section 2.1.4 and the provisos set forth in Section 3.1.1. Parent shall not be obligated to effect more than an aggregate of (i) six (6) Demand Registrations under this Section 2.1.1 demanded by the Coliseum Group and (ii) one (1) Demand Registration under this Section 2.1.1 demanded by each other Investor that holds, as of the date of such Demand Registration, on an as-converted or as-exercised basis, at least 5% of the outstanding Class A Common Stock.

2.1.2 Effective Registration. A registration will not count as a Demand Registration until the Registration Statement filed with the SEC with respect to such Demand Registration has been declared effective and Parent has complied with all of its obligations under this Agreement with respect thereto; provided, however, that if, after such Registration Statement has been declared effective, the offering of Registrable Securities pursuant to a Demand Registration is interfered with by any stop order or injunction of the SEC or any other governmental agency or court, the Registration Statement with respect to such Demand Registration will be deemed not to have been declared effective, unless and until, (i) such stop order or injunction is removed, rescinded or otherwise terminated, and (ii) a majority-in-interest of the Demanding Holders within thirty (30) days of such removal, rescission or termination elect to continue the offering; provided, further, that Parent shall not be obligated to file a second Registration Statement until a Registration Statement that has been filed is counted as a Demand Registration, is terminated or a majority-in-interest fail to elect to continue the offering in accordance with the immediately preceding clause (ii).

2.1.3 Underwritten Offering. If the initiating Demanding Holder so elects and advises Parent as part of its written demand for a Demand Registration that the offering of such Registrable Securities pursuant to such Demand Registration shall be in the form of an underwritten offering, then the right of any other Demanding Holder to include their Registrable Securities in such registration shall be conditioned upon such Demanding Holder's participation in such underwriting and the inclusion of its Registrable Securities in the underwriting to the extent provided herein. All Demanding Holders proposing to distribute their Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the Underwriter or Underwriters selected for such underwriting by a majority-in-interest of the Demanding Holders.

2.1.4 Reduction of Offering. If the managing Underwriter or Underwriters for a Demand Registration that is to be an underwritten offering advises Parent and the Demanding Holders in writing that the dollar amount or number of Registrable Securities which the Demanding Holders desire to sell, taken together with all other Class A Common Stock or other securities which Parent desires to sell and the Class A Common Stock or other securities, if any, as to which registration by Parent has been requested pursuant to written contractual piggy-back registration rights held by other security holders of Parent who desire to sell, exceeds the maximum dollar amount or maximum number of shares that can be sold in such offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of shares, as applicable, the "***Maximum Number of Shares***"), then Parent shall include in such registration: (i) first, the Registrable Securities as to which Demand Registration has been requested by the Demanding Holders that can be sold without exceeding the Maximum Number of Shares, with such Registrable Securities being included pro rata in accordance with the number of securities that each such Investor has requested be included in such registration, regardless of the number of Registrable Securities held by each such Investor (such proportion is referred to herein as "***Pro Rata***"); (ii) second, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (i), the Class A Common Stock or other securities that Parent desires to sell that can be sold without exceeding the Maximum Number of Shares; and (iii) third, to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (i) and (ii), the Class A Common Stock or other securities for the account of other Persons that Parent is obligated to register pursuant to written contractual arrangements with such Persons and that can be sold without exceeding the Maximum Number of Shares. In the event that Parent securities that are convertible into Class A Common Stock are included in the offering, the calculations under this Section 2.1.4 shall include such Parent securities on an as-converted to Class A Common Stock basis.

2.1.5 Withdrawal. If the initiating Demanding Holder disapproves of the terms of any underwriting or is not entitled to include all of its Registrable Securities in any offering, such initiating Demanding Holder may elect to withdraw from such offering by giving written notice to Parent and the Underwriter or Underwriters of its request to withdraw prior to the effectiveness of the Registration Statement filed with the SEC with respect to such Demand Registration. If the initiating Demanding Holder withdraws from a proposed offering relating to a Demand Registration in such event, then such registration shall not count as a Demand Registration provided for in Section 2.1 unless any other Demanding Holder that had provided notice of their intent to participate in such Demand Registration elects not to withdraw, in which case such registration shall count as a Demand Registration of such non-withdrawing Investor. Notwithstanding anything to the contrary in this Agreement, but subject to Section 4, Parent shall be responsible for the Registration Expenses incurred in connection with a Registration pursuant to a Demand Registration prior to its withdrawal under this Section 2.1.5.

2.2 Piggy-Back Registration.

2.2.1 Piggy-Back Rights. Subject to Section 2.4, if at any time after the date of this Agreement Parent proposes to file a Registration Statement under the Securities Act with respect to an offering of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities, by Parent for its own account or for security holders of Parent for their account (or by Parent and by security holders of Parent including pursuant to Section 2.1), other than a Registration Statement (i) filed in connection with any employee share option or other benefit plan, (ii) for an exchange offer or offering of securities solely to Parent's existing shareholders, (iii) for an offering of debt that is convertible into equity securities of Parent, (iv) for a dividend reinvestment plan, then Parent shall (x) give written notice of such proposed filing to Investors holding Registrable Securities as soon as practicable but in no event less than ten (10) days before the anticipated filing date, which notice shall describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, of the offering, and (y) offer to Investors holding Registrable Securities in such notice the opportunity to register the sale of such number of Registrable Securities as such Investors may request in writing within five (5) days following receipt of such notice (a "***Piggy-Back Registration***"). To the extent permitted by applicable securities laws with respect to such registration by Parent or another demanding shareholder, Parent shall cause such Registrable Securities to be included in such registration and shall use its best efforts to cause the managing Underwriter or Underwriters of a proposed underwritten offering to permit the Registrable Securities requested to be included in a Piggy-Back Registration on the same terms and conditions as any similar securities of Parent and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. All Investors holding Registrable Securities proposing to distribute their Registrable Securities through a Piggy-Back Registration that involves an Underwriter or Underwriters shall enter into an underwriting agreement in customary form with the Underwriter or Underwriters selected for such Piggy-Back Registration.

2.2.2 Reduction of Offering. If the managing Underwriter or Underwriters for a Piggy-Back Registration that is to be an underwritten offering advises Parent and the Investors holding Registrable Securities proposing to distribute their Registrable Securities through such Piggy-Back Registration in writing that the dollar amount or number of Class A Common Stock or other Parent securities which Parent desires to sell, taken together with (i) the Class A Common Stock or other Parent securities, if any, as to which registration has been demanded pursuant to written contractual arrangements with Persons other than the Investors hereunder, (ii) the Registrable Securities as to which registration has been requested under this Section 2.2, and (iii) the Class A Common Stock or other Parent securities, if any, as to which registration has been requested pursuant to the written contractual piggy-back registration rights of other security holders of Parent, exceeds the Maximum Number of Shares, then Parent shall include in any such registration:

(a) If the registration is undertaken for Parent's account: (i) first, the Class A Common Stock or other securities that Parent desires to sell that can be sold without exceeding the Maximum Number of Shares; (ii) second, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (i), the Registrable Securities of the Investors as to which registration has been requested pursuant to this Section 2.2 that can be sold without exceeding the Maximum Number of Shares, with such Registrable Securities being included Pro Rata; and (iii) third, to the extent that the Maximum Number of shares has not been reached under the foregoing clauses (i) and (ii), the Class A Common Stock or other securities for the account of other Persons that Parent is obligated to register pursuant to written contractual arrangements with such Persons and that can be sold without exceeding the Maximum Number of Shares; and

(b) If the registration is a "demand" registration undertaken at the demand of Persons other than an Investor, (i) first, the Registrable Securities of the Investors as to which registration has been requested pursuant to this Section 2.2 that can be sold without exceeding the Maximum Number of Shares, with such Registrable Securities being included Pro Rata; (ii) second, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (i), the Class A Common Stock or other securities for the account of such demanding Persons that can be sold without exceeding the Maximum Number of Shares; (iii) third, to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (i) and (ii), the Class A Common Stock or other securities that Parent desires to sell that can be sold without exceeding the Maximum Number of Shares; and (iv) fourth, to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (i), (ii), and (iii), the Class A Common Stock or other securities for the account of other Persons that Parent is obligated to register pursuant to written contractual arrangements with such Persons and that can be sold without exceeding the Maximum Number of Shares.

In the event that Parent securities that are convertible into Class A Common Stock are included in the offering, the calculations under this Section 2.2.2 shall include such Parent securities on an as-converted to Class A Common Stock basis. Notwithstanding anything to the contrary contained above, to the extent that the registration of the Registrable Securities of the Investors would prevent Parent or the demanding stockholders from effecting such registration and offering, such Investors shall not be permitted to exercise Piggy-Back Registration rights with respect to such registration and offering.

2.2.3 Withdrawal. Any Investor holding Registrable Securities may elect to withdraw its request for inclusion of Registrable Securities in any Piggy-Back Registration by giving written notice to Parent of such request to withdraw prior to the effectiveness of the Registration Statement. Parent (whether on its own determination or as the result of a withdrawal by Persons making a demand pursuant to written contractual obligations) may withdraw a Registration Statement at any time prior to the effectiveness of such Registration Statement without any liability to the Investor, subject to the next sentence and the provisions of Section 4. Notwithstanding any such withdrawal, Parent shall pay all expenses incurred in connection with such Piggy-Back Registration as provided in Section 3.3 by Investors holding Registrable Securities that have requested to have their Registrable Securities included in such Piggy-Back Registration.

2.3 Shelf Registration. After the date of this Agreement, subject to Section 2.4, Investors holding Registrable Securities that are not already included on an effective Registration Statement may at any time and from time to time, request in writing that Parent, pursuant to Rule 415, register the resale of any or all of their Registrable Securities on Form S-3, or if Form S-3 is not available to Parent, Form S-1 (any such Registration Statement, a "***Shelf Registration Statement***"); provided, however, that except as provided in Section 2.6 Parent shall not be obligated to effect such request through an underwritten offering. As soon as practicable after receipt of such written request, Parent will give written notice of the proposed registration to all other Investors holding Registrable Securities, and, as soon as practicable thereafter Parent will effect the registration of all or such portion of Investors' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities, if any, of any other Investors joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from Parent; provided, however, that Parent shall not be obligated to effect any such registration pursuant to this Section 2.3 if Investors holding Registrable Securities, together with the holders of any other securities of Parent entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at any aggregate price to the public of less than $1,000,000. Registrations effected pursuant to this Section 2.3 shall not be counted as Demand Registrations effected pursuant to Section 2.1.

2.4 Registrable Securities Registration Statement. On or prior to April 10, 2025, or May 25, 2025 if Form S-3 is not then available to Parent (the "***Registrable Securities Registration Filing Date***"), Parent will prepare and file with the SEC pursuant to Rule 415 a Registration Statement on Form S-3, or if Form S-3 is not then available to Parent, Form S-1 (the "***Registrable Securities Registration Statement***") to register the resale of the Registrable Securities, which Registrable Securities Registration Statement will not be treated as a Demand Registration for purposes of Section 2.1.1 but will be treated as a Registration for all other purposes of this Agreement, including Sections 3 and 4 hereof; provided, however, that the Registrable Securities of each Investor will be included for registration in the Registrable Securities Registration Statement only to the extent that such Investor promptly provides to Parent upon request (and in any event at least two (2) Business Days prior to the Registrable Securities Registration Filing Date) all of the information required by Section 3.4 below with respect to the Registrable Securities Registration Statement. Parent shall use its best efforts to cause such Registrable Securities Registration Statement to become effective as soon as practicable, but in no event later than seventy-five (75) days after the filing of such Registrable Securities Registration Statement. Upon effectiveness of the Registrable Securities Registration Statement, the Parent shall use its reasonable best efforts to keep such Registrable Securities Registration Statement effective with the SEC at all times and to re-file such Registrable Securities Registration Statement upon its expiration, and to cooperate in any shelf take-down, whether or not underwritten, by amending or supplementing any prospectus related to such Registrable Securities Registration Statement as may be reasonably requested by the Investors or as otherwise required, until such time as all Registrable Securities that could be sold in such Registrable Securities Registration Statement have been sold or are no longer outstanding. At all times, the Parent shall use its reasonable best efforts to qualify for registration on Form S-3 or any comparable or successor form or forms or any similar short-form registration. To the extent that the Parent becomes ineligible to use Form S-3, the Parent shall file a Shelf Registration Statement on Form S-1 not later than 45 days after the date of such ineligibility and use its reasonable best efforts to have such registration statement declared effective as promptly as practicable.

2.5 Well-Known Seasoned Issuer. To the extent the Parent is a well-known seasoned issuer (as defined in Rule 405) (a "***WKSI***") at the time when it is obligated to file a Registration Statement pursuant to Section 2.3 or Section 2.4, the Parent shall file an automatic shelf registration statement (as defined in Rule 405) on Form S-3 (an "***Automatic Shelf Registration Statement***") in accordance with the requirements of the Securities Act and the rules and regulations of the SEC thereunder, which covers the Registrable Securities requested to be registered. The Parent shall pay the registration fee for all Registrable Securities to be registered pursuant to an Automatic Shelf Registration Statement at the time of filing of the Automatic Shelf Registration Statement and shall not elect to pay any portion of the registration fee on a deferred basis. The Parent shall use its reasonable best efforts to remain a WKSI (and not to become an ineligible issuer (as defined in Rule 405)) during the period during which any Automatic Shelf Registration Statement is effective. If at any time following the filing of an Automatic Shelf Registration Statement when the Parent is required to re-evaluate its WKSI status the Parent determines that it is not a WKSI, the Parent shall use its reasonable best efforts to post-effectively amend the Automatic Shelf Registration Statement to a Shelf Registration Statement on Form S-3 or file a new Shelf Registration Statement on Form S-3 or, if such form is not available, a Shelf Registration Statement on Form S-1; have such Shelf Registration Statement declared effective by the SEC; and keep such Shelf Registration Statement effective during the period during which such Shelf Registration Statement is required to be kept effective in accordance with Section 2.4. To the extent that the Parent is eligible to file an Automatic Shelf Registration Statement and an Investor notifies the Parent that it wishes to engage in a "block sale" off of such an Automatic Shelf Registration Statement and the Parent does not have an Automatic Shelf Registration Statement related to the Registrable Securities, the Parent shall use its reasonable best efforts to file an Automatic Shelf Registration Statement within five (5) business days of such notification by the Investor.

2.6 Shelf Take-Downs. At any time that a Shelf Registration Statement covering Registrable Securities is effective, if any Investor delivers a notice to the Parent (a "***Take-Down Notice***") stating that it intends to effect an underwritten offering of all or part of its Registrable Securities included by it on the Shelf Registration Statement (a "***Shelf Underwritten Offering***"), then the Parent shall as promptly as practicable (and within five (5) days of such Take-Down Notice) amend or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be distributed pursuant to the Shelf Underwritten Offering (taking into account the inclusion of Registrable Securities by any other Investors pursuant to Section 2.6(a)); provided, however, that Parent shall not be obligated to effect any Shelf Underwritten Offering pursuant to this Section 2.6 if Investors holding Registrable Securities, together with the holders of any other securities of Parent entitled to inclusion in such offering, propose to sell Registrable Securities and such other securities (if any) at any aggregate price to the public of less than $1,000,000. Investors shall be entitled to request an unlimited number of shelf take-downs to effect a Shelf Underwritten Offering, if available to the Parent, with respect to the Registrable Securities, in addition to the other registration rights provided in this Agreement, provided, however, Parent shall not be required to facilitate more than four (4) Shelf Underwritten Offerings in any calendar year. In connection with any Shelf Underwritten Offering:

(a) Parent shall also promptly deliver the Take-Down Notice to all other Investors with securities included on such Shelf Registration Statement and permit each such Investor to include its Registrable Securities included on the Shelf Registration Statement in the Shelf Underwritten Offering if such Investor notifies the requesting Investor and Parent within two (2) days after distribution or dissemination (including via e-mail, if available) of the Take-Down Notice to such Investor;

(b) in the event that the managing Underwriter or Underwriters advises the requesting Investor and Parent in its good faith opinion that the dollar amount or number of Registrable Securities proposed to be sold in such offering is such as to adversely affect the success of such offering (including, without limitation, adversely affect the per share offering price), then the Underwriter or Underwriters may limit the number of Registrable Securities which would otherwise be included in such take-down offering in the same manner as described in Section 2.1.4 with respect to the limitation of securities to be included in a Demand Registration; and

(c) if at any time or from time to time, an Investor desires to sell Registrable Securities in a Shelf Underwritten Offering, the Underwriter or Underwriters, including the managing Underwriter, shall be selected by the Investors holding a majority-in-interest of the Registrable Securities included in such Shelf Underwritten Offering.

3. REGISTRATION PROCEDURES.

3.1 Filings; Information. Whenever Parent is required to effect the registration of any Registrable Securities by Investors pursuant to Section 2, Parent shall use its best efforts to effect the registration and sale of such Registrable Securities in accordance with the intended method(s) of distribution thereof as expeditiously as practicable, and in connection with any such request:

3.1.1 Filing Registration Statement. Parent shall use its best efforts to, as expeditiously as possible, but in no event more than forty-five (45) days, after receipt of a request for a Demand Registration pursuant to Section 2.1, prepare and file with the SEC a Registration Statement on any form for which Parent then qualifies or which counsel for Parent shall deem appropriate and which form shall be available for the sale of all Registrable Securities to be registered thereunder in accordance with the intended method(s) of distribution thereof, and shall use its best efforts to cause such Registration Statement to become effective as soon as practicable, but in no event later than seventy-five (75) days after the filing of such Registration Statement, and use its best efforts to keep it effective for the period required by Section 3.1.3; provided, however, that Parent shall have the right to defer any Demand Registration for up to an additional fifteen (15) days, and any Piggy-Back Registration for such period as may be applicable to deferment of any demand registration to which such Piggy-Back Registration relates, in each case if Parent shall furnish to Investors requesting to include their Registrable Securities in such registration a certificate signed by the President, Chief Executive Officer or Chairman of Parent stating that, in the good faith judgment of the Board of Directors of Parent, it would be materially detrimental to Parent and its shareholders for such Registration Statement to be effected at such time; provided, further, that Parent shall not have the right to exercise the right set forth in the immediately preceding proviso more than once in any 365-day period in respect of a Demand Registration hereunder.

3.1.2 Copies. Parent shall, prior to filing a Registration Statement or prospectus, or any amendment or supplement thereto, furnish without charge to Investors holding Registrable Securities included in such registration, and such Investors' legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such Registration Statement (including each preliminary prospectus), and such other documents as Investors holding Registrable Securities included in such registration or legal counsel for such Investors may request in order to facilitate the disposition of the Registrable Securities owned by such Investors.

3.1.3 Amendments and Supplements. Parent shall prepare and file with the SEC such amendments, including post-effective amendments, and supplements to such Registration Statement and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and in compliance with the provisions of the Securities Act until all Registrable Securities and other securities covered by such Registration Statement have been disposed of in accordance with the intended method(s) of distribution set forth in such Registration Statement or such securities have been withdrawn or until such time as the Registrable Securities cease to be Registrable Securities as defined by this Agreement.

3.1.4 Notification. After the filing of a Registration Statement, Parent shall promptly, and in no event more than three (3) Business Days after such filing, notify Investors holding Registrable Securities included in such Registration Statement of such filing, and shall further notify such Investors promptly and confirm such advice in writing in all events within three (3) Business Days after the occurrence of any of the following: (i) when such Registration Statement becomes effective; (ii) when any post-effective amendment to such Registration Statement becomes effective; (iii) the issuance or threatened issuance by the SEC of any stop order (and Parent shall take all actions required to prevent the entry of such stop order or to remove it if entered); (iv) subject to the last sentence of this Section 3.1.4, the occurrence or existence of any pending corporate development with respect to Parent that Parent believes may be material and that, in the determination of Parent's Board of Directors, makes it not in the best interest of Parent to allow continued availability of such Registration Statement or any prospectus relating thereto; and (v) any request by the SEC for any amendment or supplement to such Registration Statement or any prospectus relating thereto or for additional information or of the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of the securities covered by such Registration Statement, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and promptly make available to Investors holding Registrable Securities included in such Registration Statement any such supplement or amendment; except that before filing with the SEC a Registration Statement or prospectus or any amendment or supplement thereto, Parent shall furnish to Investors holding Registrable Securities included in such Registration Statement and the legal counsel of such Investors copies of all such documents proposed to be filed sufficiently in advance of filing to provide such Investors and legal counsel with a reasonable opportunity to review such documents and comment thereon, and Parent shall not file any Registration Statement or prospectus or amendment or supplement thereto to which such Investors or their legal counsel shall object. In no event shall any notification pursuant to this Agreement contain any information which would constitute material, non-public information regarding Parent or any of its subsidiaries.

3.1.5 State Securities Laws Compliance. Prior to any public offering of Registrable Securities, Parent shall use its best efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as Investors holding Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may reasonably request and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of Parent and do any and all other acts and things that may be necessary or advisable to enable Investors holding Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that Parent shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph or take any action to which it would be subject to general service of process or taxation in any such jurisdiction where it is not then otherwise so subject.

3.1.6 Agreements for Disposition. Parent shall enter into customary agreements (including, if applicable, an underwriting agreement in customary form) and take such other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities. The representations, warranties and covenants of Parent in any underwriting agreement which are made to or for the benefit of any Underwriters, to the extent applicable, shall also be made to and for the benefit of Investors holding Registrable Securities included in such Registration Statement. No Investor holding Registrable Securities included in such Registration Statement shall be required to make any representations or warranties in the underwriting agreement except, if applicable, with respect to such Investor's organization, good standing, authority, title to Registrable Securities, lack of conflict of such sale with such Investor's material agreements and organizational documents, and with respect to written information relating to such Investor that such Investor has furnished in writing expressly for inclusion in such Registration Statement.

3.1.7 Cooperation. The principal executive officer of Parent, the principal financial officer of Parent, the principal accounting officer of Parent and all other officers and members of the management of Parent shall cooperate fully in any offering of Registrable Securities hereunder, which cooperation shall include the preparation of the Registration Statement with respect to such offering and all other offering materials and related documents, and participation in meetings with Underwriters, attorneys, accountants and potential investors.

3.1.8 Records. Parent shall make available for inspection by Investors holding Registrable Securities included in such Registration Statement, any Underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other professional retained by any Investor holding Registrable Securities included in such Registration Statement or any Underwriter, all financial and other records, pertinent corporate documents and properties of Parent, as shall be necessary to enable them to exercise their due diligence responsibility, and cause Parent's officers, directors and employees to supply all information requested by any of them in connection with such Registration Statement.

3.1.9 Opinions and Comfort Letters. Parent shall furnish to each Investor holding Registrable Securities included in such Registration Statement a signed counterpart, addressed to such Investor, of (i) any opinion of counsel to Parent delivered to any Underwriter and (ii) any comfort letter from Parent's independent public accountants delivered to any Underwriter. In the event no legal opinion is delivered to any Underwriter, Parent shall furnish to each Investor holding Registrable Securities included in such Registration Statement, at any time that such Investor elects to use a prospectus, an opinion of counsel to Parent to the effect that the Registration Statement containing such prospectus has been declared effective and that no stop order is in effect.

3.1.10 Earnings Statement. Parent shall comply with all applicable rules and regulations of the SEC and the Securities Act, and make available to its shareholders, as soon as practicable, an earnings statement covering a period of twelve (12) months, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

3.1.11 Listing. Parent shall use its best efforts to cause all Registrable Securities included in any registration to be listed on such exchanges or otherwise designated for trading in the same manner as similar securities issued by Parent are then listed or designated or, if no such similar securities are then listed or designated, in a manner satisfactory to Investors holding a majority-in-interest of the Registrable Securities included in such registration.

3.1.12 Road Show. If the registration involves the registration of Registrable Securities involving gross proceeds in excess of $25,000,000, Parent shall make available senior executives of Parent to participate in customary "road show" presentations that may be reasonably requested by the Underwriter in any underwritten offering.

3.1.13 Transfer Agent. Parent shall provide and cause to be maintained a transfer agent and registrar for all such Registrable Securities from and after the effective date of a Registration Statement providing for the sale of such Registrable Securities (and in connection therewith, if required by the Parent's transfer agent, the Parent will, as soon as reasonably practicable, after the effective date of the Registration Statement, use its best efforts to cause an opinion of counsel in customary form as to the effectiveness of the Registration Statement to be delivered to and maintained with such transfer agent, together with any other authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without any legend upon sale by the Investors or the managing Underwriter or Underwriters of an underwritten offering of Registrable Securities, if any, of such Registrable Securities under the Registration Statement and to deposit such Registrable Securities with the Depository Trust Company);

3.2 Obligation to Suspend Distribution. Upon receipt of any notice from Parent of the happening of any event of the kind described in Section 3.1.4(iii), (iv) or (v), each Investor holding Registrable Securities included in such Registration Statement shall immediately discontinue disposition of its Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Investor receives the supplemented or amended prospectus contemplated by Section 3.1.4(iii), (iv) or (v) to the extent required, and, if so directed by Parent, each such Investor will deliver to Parent all copies, other than permanent file copies then in such Investor's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. Parent shall be entitled to exercise its right under this Section 3.2 to suspend the availability of a Registration Statement and related prospectus for a period not to exceed thirty (30) calendar days once in any 365-day period.

3.3 Registration Expenses. Subject to Section 4, Parent shall bear all costs and expenses incurred in connection with any Demand Registration pursuant to Section 2.1, any Piggy-Back Registration pursuant to Section 2.2, and any registration or sale effected pursuant to Sections 2.3-2.6, and all expenses incurred in performing or complying with its other obligations under this Agreement, whether or not the Registration Statement becomes effective ("Registration Expenses"), including: (i) all registration and filing fees; (ii) fees and expenses of compliance with securities or "blue sky" laws (including fees and disbursements of counsel in connection with blue sky qualifications of the Registrable Securities); (iii) printing expenses; (iv) Parent's internal expenses (including all salaries and expenses of its officers and employees); (v) the fees and expenses incurred in connection with the listing of the Registrable Securities as required by Section 3.1.11; (vi) Financial Industry Regulatory Authority fees; (vii) fees and disbursements of counsel for Parent and fees and expenses for independent certified public accountants retained by Parent (including the expenses or costs associated with the delivery of any opinions or comfort letters requested pursuant to Section 3.1.9); (viii) the fees and expenses of any special experts retained by Parent in connection with such registration; (ix) solely with respect to the Warrants, Warrant Shares and Existing Coliseum Registrable Securities, any actual underwriting discounts or selling commissions, placement agent or broker fees or similar discounts, commissions or fees and any related expenses incurred with respect to the sale of the Warrants, Warrant Shares or Existing Coliseum Registrable Securities by any Investor; provided that if such sale is effected as a "block sale" without stated underwriting discounts or selling commissions, the applicable amount of discounts, commissions or fees for purposes of this Section 3.3 will be negotiated in good faith between the Investor and Parent; and (x) the fees and expenses of one legal counsel selected by each Investor with Registrable Securities included in such registration or sale.

3.4 Information. Investors holding Registrable Securities included in such Registration Statement shall provide such information as may reasonably be requested by Parent, or the managing Underwriter, if any, in connection with the preparation of any Registration Statement including any Registrable Securities of the Investors, including amendments and supplements thereto, in order to effect the registration of any Registrable Securities under the Securities Act pursuant to Section 2 and in connection with the obligation to comply with federal and applicable state securities laws.

4. INDEMNIFICATION AND CONTRIBUTION.

4.1 Indemnification by Parent. Parent agrees to indemnify and hold harmless each Investor, and each Investor's officers, employees, affiliates, directors, partners, members, attorneys and agents, and each Person, if any, who controls an Investor (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) (each, an "***Investor Indemnified Party***"), from and against any expenses, losses, judgments, claims, damages or liabilities, whether joint or several, arising out of or based upon any untrue statement of a material fact contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to such Registration Statement, or arising out of or based upon any omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by Parent of the Securities Act or any rule or regulation promulgated thereunder applicable to Parent and relating to action or inaction required of Parent in connection with any such registration; and Parent shall promptly reimburse the Investor Indemnified Party for any legal and any other expenses reasonably incurred by such Investor Indemnified Party in connection with investigating and defending any such expense, loss, judgment, claim, damage, liability or action; provided, however, that Parent will not be liable in any such case to the extent that any such expense, loss, claim, damage or liability arises out of or is based upon any untrue statement or omission made in such Registration Statement, preliminary prospectus, final prospectus, or summary prospectus, or any such amendment or supplement, in reliance upon and in conformity with information furnished to Parent, in writing, by such selling holder expressly for use therein. Parent also shall indemnify any Underwriter of the Registrable Securities, their officers, affiliates, directors, partners, members and agents and each Person who controls such Underwriter on substantially the same basis as that of the indemnification provided above in this Section 4.1.

4.2 Indemnification by the Investors. Each Investor selling Registrable Securities will, in the event that any registration is being effected under the Securities Act pursuant to this Agreement of any Registrable Securities held by such selling Investor, indemnify and hold harmless Parent, each of its directors and officers and each Underwriter (if any), and each other selling holder and each other Person, if any, who controls another selling holder or such Underwriter within the meaning of the Securities Act, against any losses, claims, judgments, damages or liabilities, whether joint or several, insofar as such losses, claims, judgments, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement of a material fact contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or arise out of or are based upon any omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading, if the statement or omission was made in reliance upon and in conformity with information furnished in writing to Parent by such Investor expressly for use therein, and shall reimburse Parent, its directors and officers, each Underwriter and each other selling holder or controlling Person for any legal or other expenses reasonably incurred by any of them in connection with investigation or defending any such loss, claim, damage, liability or action. Each selling Investor's indemnification obligations hereunder shall be several and not joint and shall be limited to the amount of any net proceeds actually received by such selling Investor.

4.3 Conduct of Indemnification Proceedings. Promptly after receipt by any Person of any notice of any loss, claim, damage or liability or any action in respect of which indemnity may be sought pursuant to Section 4.1 or 4.2, such Person (the "***Indemnified Party***") shall, if a claim in respect thereof is to be made against any other Person for indemnification hereunder, notify such other Person (the "***Indemnifying Party***") in writing of the loss, claim, judgment, damage, liability or action; provided, however, that the failure by the Indemnified Party to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which the Indemnifying Party may have to such Indemnified Party hereunder, except and solely to the extent the Indemnifying Party is actually prejudiced by such failure. If the Indemnified Party is seeking indemnification with respect to any claim or action brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in such claim or action, and, to the extent that it wishes, jointly with all other Indemnifying Parties, to assume control of the defense thereof with counsel satisfactory to the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume control of the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that in any action in which both the Indemnified Party and the Indemnifying Party are named as defendants, the Indemnified Party shall have the right to employ separate counsel (but no more than one such separate counsel) to represent the Indemnified Party and its controlling Persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Indemnified Party against the Indemnifying Party, with the fees and expenses of such counsel to be paid by such Indemnifying Party if, based upon the written opinion of counsel of such Indemnified Party, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, consent to entry of judgment or effect any settlement of any claim or pending or threatened proceeding in respect of which the Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such judgment or settlement includes an unconditional release of such Indemnified Party from all liability arising out of such claim or proceeding.

4.4 Contribution.

4.4.1 If the indemnification provided for in the foregoing Sections 4.1, 4.2 and 4.3 is unavailable to any Indemnified Party in respect of any loss, claim, damage, liability or action referred to herein, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties and the Indemnifying Parties in connection with the actions or omissions which resulted in such loss, claim, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of any Indemnified Party and any Indemnifying Party shall be determined by reference to, among other things, whether the untrue statement of a material fact or the omission to state a material fact relates to information supplied by such Indemnified Party or such Indemnifying Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

4.4.2 The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding Section 4.4.1.

4.4.3 The amount paid or payable by an Indemnified Party as a result of any loss, claim, damage, liability or action referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 4.4, no holder of Registrable Securities shall be required to contribute any amount in excess of the dollar amount of the net proceeds (after payment of any underwriting fees, discounts, commissions or taxes) actually received by such holder from the sale of Registrable Securities which gave rise to such contribution obligation. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

5. UNDERWRITING AND DISTRIBUTION.

5.1 Rule 144. Parent covenants that it shall file any reports required to be filed by it under the Securities Act and the Exchange Act and shall take such further action as Investors holding Registrable Securities may reasonably request, all to the extent required from time to time to enable such Investors to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

5.2 In Kind Distribution. If an Investor seeks to effectuate an in-kind distribution, a transfer or an assignment of all or part of its Registrable Securities to its direct or indirect equityholders or any affiliates thereof, then Parent will cooperate with such Investor and Parent's transfer agent to facilitate such transaction in the manner reasonably requested by such Investor.

5.3 Transfer of Registrable Securities Without Any Legend. Parent shall, if requested by any Investor and following Rule 144 becoming available for the sale of the Registrable Securities (including, for the avoidance of doubt, any sale subject to the requirement for the Parent to be in compliance with the current public information required under Rule 144(i)(2) as to such securities), use its best efforts to facilitate the transfer of Registrable Securities without any legend prior to the sale thereof to an account of such Investor held in "street name" and, in connection therewith, cause Parent's counsel to issue any legend removal opinion in standard form reasonably required by the transfer agent; provided that such Investor provides customary representation letters in form reasonably required by Parent's counsel and/or the transfer agent; provided further that such account will have reasonable restrictions designed to ensure the sale of any such Registrable Securities would be pursuant to Rule 144 or another available exemption from registration under the Securities Act which would allow such Registrable Securities to be delivered without any legend; provided further that any fees (with respect to the Parent or the transfer agent, Parent's counsel or otherwise) associated with the issuance of such opinion or the removal of such legend shall be borne by the Parent.

6. MISCELLANEOUS.

6.1 Other Registration Rights. Parent represents and warrants that as of the date of this Agreement, no Person, other than the holders of the Registrable Securities has any right to require Parent to register any of Parent's capital stock for sale or to include Parent's capital stock in any registration filed by Parent for the sale of capital stock for its own account or for the account of any other Person. Parent will not (i) grant any registration right to third parties which are more favorable than or inconsistent with the rights granted hereunder or (ii) enter into any agreement, take any action or permit any change to occur, with respect to its securities that violates or subordinates the rights expressly granted to the Investors.

6.2 Assignment; No Third Party Beneficiaries. This Agreement and the rights, duties and obligations of Parent hereunder may not be assigned or delegated by Parent in whole or in part. This Agreement and the rights, duties and obligations of Investors holding Registrable Securities hereunder may be freely assigned or delegated by such Investor in conjunction with and to the extent of any permitted transfer of Registrable Securities by such Investor; provided, that in connection with any such transfer, the Investor and such transferee may, in their discretion, make any arrangements as they deem appropriate relating to the allocation or exercise of such rights. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties, to the permitted assigns of the Investors or of any assignee of the Investors. Without prejudice to any other or similar conditions imposed hereunder with respect to such transfer, no assignment permitted under the terms of this Section 6.2 will be effective unless and until the assignee to which the assignment is being made, if not an Investor, has delivered to Parent the executed Joinder Agreement in the form attached as Exhibit B hereto agreeing to be bound by, and be party to, this Agreement. This Agreement is not intended to confer any rights or benefits on any Persons that are not party hereto other than as expressly set forth in Article 4 and this Section 6.2.

6.3 Notices. All notices, consents, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered (i) in person, (ii) by facsimile or other electronic means, with affirmative confirmation of receipt, (iii) one Business Day after being sent, if sent by reputable, nationally recognized overnight courier service or (iv) three (3) Business Days after being mailed, if sent by registered or certified mail, pre-paid and return receipt requested, in each case to the applicable Party at the following addresses (or at such other address for a Party as shall be specified by like notice):

If to Parent, to:

Purple Innovation, Inc.
4100 North Chapel Ridge Road Suite 200
Lehi, Utah 84043
Attn: Tricia McDermott
Email: tricia@purple.com

With a copy to (which shall not constitute notice):

Dorsey & Whitney LLP
111 S. Main St., Suite 2100
Salt Lake City, UT 84111
Attn: Nolan S. Taylor
Email: taylor.nolan@dorsey.com
Fax: (801) 933-7373
Tel: (801) 933-7366

If to an Investor, to the address set forth next to such Investor's name on Exhibit A hereto.

Any Investor may from time to time give notice to Parent to opt out of such notice and rights pursuant to Sections 2.1, 2.2, 2.3 and 2.6, it being understood that such Investor may rescind such opt out notice at any time and that for as long as such opt out notice is effective, any notice sent to other Investors pursuant to Sections 2.1, 2.2, 2.3 or 2.6 will not prohibit or otherwise prejudice the ability of the Investor that has opted out from acquiring or disposing of any securities of Parent.

6.4 Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible that is valid and enforceable.

6.5 Counterparts. This Agreement may be executed in multiple counterparts (including by facsimile or pdf or other electronic document transmission), each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

6.6 Entire Agreement. This Agreement (including all agreements entered into pursuant hereto or thereto or referenced herein or therein and all certificates and instruments delivered pursuant hereto and thereto) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, understandings, negotiations and discussions between the parties, whether oral or written, relating to the subject matter hereof.

6.7 Interpretation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement. In this Agreement, unless the context otherwise requires: (i) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (ii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding or succeeding such term and shall be deemed in each case to be followed by the words "without limitation"; (iii) the words "herein," "hereto," and "hereby" and other words of similar import in this Agreement shall be deemed in each case to refer to this Agreement as a whole and not to any particular section or other subdivision of this Agreement; and (iv) the term "or" means "and/or". The parties have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

6.8 Amendments; Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written agreement or consent of Parent and Investors holding a majority-in-interest of the Registrable Securities. No failure or delay by a party in exercising any right hereunder shall operate as a waiver thereof. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision

6.9 Remedies Cumulative. In the event a party fails to observe or perform any covenant or agreement to be observed or performed under this Agreement, the other parties may proceed to protect and enforce its rights by suit in equity or action at law, whether for specific performance of any term contained in this Agreement or for an injunction against the breach of any such term or in aid of the exercise of any power granted in this Agreement or to enforce any other legal or equitable right, or to take any one or more of such actions, without being required to post a bond. None of the rights, powers or remedies conferred under this Agreement shall be mutually exclusive, and each such right, power or remedy shall be cumulative and in addition to any other right, power or remedy, whether conferred by this Agreement or now or hereafter available at law, in equity, by statute or otherwise.

6.10 Governing Law; Jurisdiction. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Delaware without regard to the conflict of laws principles thereof. All actions, claims or other legal proceedings arising out of or relating to this Agreement (a "***Proceeding***") shall be heard and determined exclusively in any state or federal court located in the State of Delaware (or in any court in which appeal from such courts may be taken) (the "***Specified Courts***"). Each party hereto hereby (a) submits to the exclusive jurisdiction of any Specified Court for the purpose of any Proceeding brought by any party hereto and (b) irrevocably waives, and agrees not to assert by way of motion, defense or otherwise, in any such Proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Proceeding is brought in an inconvenient forum, that the venue of the Proceeding is improper, or that this Agreement or the transactions contemplated hereby may not be enforced in or by any Specified Court. Each party agrees that a final judgment in any Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. Each party irrevocably consents to the service of the summons and complaint and any other process in any Proceeding, on behalf of itself, or its property, by personal delivery of copies of such process to such party at the applicable address set forth in Section 6.3. Nothing in this Section 6.10 shall affect the right of any party to serve legal process in any other manner permitted by applicable law.

6.11 WAIVER OF TRIAL BY JURY. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, COUNTERCLAIM OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF, CONNECTED WITH OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE ACTIONS OF THE INVESTORS IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW}

IN WITNESS WHEREOF, the parties have caused this Registration Rights Agreement to be executed and delivered as of the date first written above.

Parent:

PURPLE INNOVATION, INC.

By: /s/ Todd Vogensen
Name: Todd Vogensen
Title: Chief Financial Officer and Treasurer

[Signature Page to Registration Rights Agreement]

Investors:

COLISEUM CAPITAL PARTNERS, L.P.

By: Coliseum Capital, LLC, its general partner

By: /s/ Adam Gray
Name: Adam Gray
Title: Manager

BLACKWELL PARTNERS LLC – SERIES A

By: Coliseum Capital Management, LLC—Attorney-in-Fact

By: /s/ Adam Gray
Name: Adam Gray
Title: Managing Partner

COLISEUM CAPITAL CO-INVEST III, L.P.

By: Coliseum Capital, LLC, its general partner

By: /s/ Adam Gray
Name: Adam Gray
Title: Manager

[Signature Page to Registration Rights Agreement]

EXHIBIT A

INVESTORS

Name of Investor	Address of Investor	Shares of Class A Common Stock
Coliseum Capital Partners, L.P.	c/o Coliseum Capital Management, LLC 105 Rowayton Avenue Rowayton, CT 06853 Attn: Adam Gray; Christopher Shackelton; and Chivonne Cassar Email: agray@coliseumpartners.com; chris@coliseumpartners.com; ccassar@coliseumpartners.com	35,192,565
Blackwell Partners LLC – Series A	c/o Coliseum Capital Management, LLC 105 Rowayton Avenue Rowayton, CT 06853 Attn: Adam Gray; Christopher Shackelton; and Chivonne Cassar Email: agray@coliseumpartners.com; chris@coliseumpartners.com; ccassar@coliseumpartners.com	8,529,277[3]
Coliseum Capital Co-Invest III, L.P.	c/o Coliseum Capital Management, LLC 105 Rowayton Avenue Rowayton, CT 06853 Attn: Adam Gray; Christopher Shackelton; and Chivonne Cassar Email: agray@coliseumpartners.com; chris@coliseumpartners.com; ccassar@coliseumpartners.com	3,133,449

3 Held through a separate account managed by Coliseum Capital Management, LLC.

EXHIBIT B

JOINDER AGREEMENT

Reference is made to the Amended and Restated Registration Rights Agreement, dated as of [●] (as amended from time to time, the "***Registration Rights Agreement***"), by and among Purple Innovation, Inc., a Delaware corporation (including any successor entity thereto, "***Parent***"), and the Investors party thereto (each an "***Investor***" and collectively, the "***Investors***"), and the other parties thereto, if any. The undersigned agrees, by execution hereof, to become a party to, and to be subject to the rights and obligations under the Registration Rights Agreement.

[NAME]

By: _____
Name:
Title:

Date:

Address:

Number of Transferred Registrable Securities Received:

Acknowledged by:

[NAME]

By: _____
Name:
Title:

Exhibit 19.1

Insider Trading Policy

Revisions Effective as of October 31, 2023

This policy applies to all officers, directors, employees, and contractors of Purple Innovation, Inc. and its subsidiaries (collectively "Purple") that are exposed to material nonpublic information of Purple, and supersedes all prior insider trading policies.

Under the federal securities laws, it is illegal to trade in Purple's securities while in possession of material nonpublic information ("material information" is defined below in the Material Information section) about Purple. It is also illegal to disclose or give material nonpublic information to others who may trade on the basis of that information or to advise others how to trade while in possession of material nonpublic information. Any person who possesses material nonpublic information about Purple is deemed to be an "insider." The category of insiders is NOT limited to officers and directors and may not necessarily be the same as what is defined to be an "insider" in Regulation O of the Federal Reserve (12 C.F.R. Part 215).

Insider trading violations are pursued vigorously by the Securities and Exchange Commission (the "**SEC**") and the U.S. Attorneys and such violations are punished severely. While the regulatory authorities concentrate their efforts on the individuals who trade, or who tip inside information to others who trade, the federal securities laws also impose potential liability on companies and other controlling persons if they fail to take reasonable steps to prevent insider trading by company personnel. Both the SEC and The NASDAQ Stock Market are very effective at detecting and pursuing insider trading cases. The SEC has successfully prosecuted cases against employees trading through foreign accounts, trading by family members and friends, and trading involving only a small number of shares.

Purple has adopted this Insider Trading Policy (the "**Policy**") both to satisfy Purple's obligation to prevent insider trading and to help Purple personnel avoid the severe consequences associated with violations of the insider trading laws. This Policy is also intended to prevent even the appearance of improper conduct on the part of anyone employed by or associated with Purple (not just the officers or directors of Purple).

This Policy is divided into two parts: the first part prohibits trading in certain circumstances and applies to all directors, officers, employees, and contract personnel of Purple and the second part imposes special additional trading restrictions and applies to all (i) directors of Purple, (ii) executive officers of Purple and (iii) any other persons designated by the Chief Financial Officer and Chief Executive Officer as being subject to Purple's pre-clearance procedures, together with their family members (collectively, "**Covered Persons**").

PART I

I. APPLICABILITY

This Policy applies to all trading or other transactions in (i) Purple's securities, including any class of common stock, options and any other securities that Purple may issue, such as preferred stock, notes, bonds, and convertible securities, as well as to derivative securities relating to any of Purple's securities, whether or not issued by Purple and (ii) the securities of certain other companies, including common stock, options, and other securities issued by those companies as well as derivative securities relating to any of those companies' securities, where the person trading used information obtained while working for Purple.

This Policy applies to all employees of Purple, all officers of Purple and all members of Purple's board of directors.

II. STATEMENT OF POLICY

It is the policy of Purple that no director, officer, or other employee (this includes contractors of Purple for this Policy) of Purple who is aware of material nonpublic information relating to Purple may, directly or through family members or other persons or entities, (a) buy or sell securities of Purple (other than pursuant to a pre-approved trading plan that complies with SEC Rule 10b5-1 and Part I, Section III below regarding 10b5-1 plans), or engage in any other action to take personal advantage of that information, or (b) pass that information on to others outside Purple, including family, friends, and acquaintances. In addition, it is the policy of Purple that no director, officer, or other employee of Purple who, in the course of working for Purple, learns of material nonpublic information about a company with which Purple does business, including a customer or supplier of Purple, may trade in that company's securities until the information becomes public or is no longer material.

No Exception for Emergencies. Transactions that may be necessary or justifiable for independent reasons (such as the need to raise money for an emergency expenditure) are not excepted from this Policy. If the employee, officer, or director has material, nonpublic information, the prohibition still applies. The securities laws do not recognize such mitigating circumstances, and, in any event, even the appearance of an improper transaction must be avoided to preserve Purple's reputation for adhering to high standards of conduct.

Disclosure of Information to Others. Purple is required under Regulation FD of the federal securities laws to avoid the selective disclosure of material nonpublic information. Purple has established procedures, contained in Purple's Fair Disclosure and Corporate Communications Policy, for releasing material information in a manner that is designed to achieve broad public dissemination of the information immediately upon its release. You may not disclose such information to anyone outside Purple, including family members and friends, other than in accordance with those procedures. You may not pass on to others any inside information about Purple or recommend the purchase or sale of Purple's securities while in possession of material nonpublic information (even if that information itself is not disclosed). This includes all mediums of communication, including, but not limited to, verbal, written, or electronic communications or all other communications via the Internet, including Internet chat rooms or similar Internet-based forums.

Contract Personnel (Non-Employees). Purple may from time to time utilize the services of contract personnel who are not employees of Purple. As such, non-employee personnel may have access to material nonpublic information about Purple. Purple expects all such contract personnel to comply with this Policy to the same extent as employees are required to comply with this Policy. Purple will take appropriate action against any such personnel and the organizations at which they are employed if there is a failure to comply with the policies of Purple.

Material Information. Insider trading restrictions come into play only if the information you possess is "material." Materiality, however, involves a relatively low threshold. Material information is any information that a reasonable investor would consider important in making a decision to buy, hold, or sell securities. Any information that could be expected to affect Purple's stock price, whether it is positive or negative, should be considered material. Some examples of information that ordinarily would be regarded as material are set forth below, but this list is not exhaustive–other information may be deemed material based upon the circumstances:

- Financial information, including, but not limited to, revenue results, operating income or loss, or net income or loss;

- All earnings, regardless of whether they are consistent or inconsistent with the consensus expectations of the investment community or other earnings guidance, projections, or budgets;
- News about a significant contract or cancellation of an existing significant contract;
- News about significant new services, products, or lines of business;
- The gain or loss of a significant supplier or customer;
- A pending or proposed merger, acquisition, joint venture, or tender offer;
- A pending or proposed acquisition or disposition of a significant asset(s) or facility;
- A change in Purple's dividend policy or the declaration of a stock split;
- The implementation, change in, or results of a Purple stock buy-back;
- A public or private offering of additional securities, borrowings, credit facilities, or other financing transactions;
- A change in the Board of Directors, senior management, or any other major personnel changes;
- Regulatory enforcement actions;
- Significant legal exposure due to actual, pending, or threatened litigation; or
- Impending bankruptcy or the existence of financial or liquidity problems.

If you are unsure whether information is material, you should consult the Chief Legal Officer before making any decision to disclose such information or to trade in or recommend securities to which that information relates or assume that the information is material.

When Information is "Public". Insider trading prohibitions come into play only when you possess information that is material and "nonpublic." The fact that information has been disclosed to a few members of the public does not make it public for insider trading purposes. Nonpublic information may include:

- Information available to a select group of analysts or brokers or institutional investors;
- Undisclosed facts that are the subject of rumors, even if the rumors are widely circulated; and
- Information that has been entrusted to Purple on a confidential basis until a public announcement of the information has been made and enough time has elapsed for the market to respond to a public announcement of the information.

If you are aware of material nonpublic information, you may not trade until the information has been disclosed broadly to the marketplace (such as by press release or an SEC filing) and the investing public has had time to absorb the information fully. To avoid the appearance of impropriety, as a general rule, **information should not be considered fully absorbed by the marketplace until after the second full trading day after the information is released**. If, for example, Purple were to make an announcement after the close of the market on a Monday, a director, officer, or other employee of Purple should not complete a trade in Purple's securities until after the market closes on Wednesday. If an announcement was made before the market opens on a Friday, Monday after the market closes generally would be the first eligible trading time after the announcement.

As with questions of materiality, if you are not sure whether information is considered public, you should either consult with the Chief Legal Officer or assume that the information is nonpublic and treat it as confidential.

Twenty-Twenty Hindsight. Remember, anyone scrutinizing your transactions will be doing so after the fact, with the benefit of 20/20 hindsight. As a practical matter, before engaging in any transaction, you should carefully consider how enforcement authorities and others might view the transaction in hindsight.

Transactions by Family Members. This Policy also applies to your family members who reside with you, anyone else who lives in your household, and any family members who do not live in your household but whose transactions in Purple securities are directed by you or are subject to your influence or control (such as parents or children who consult with you before they trade in Purple securities). You are responsible for the transactions of these other persons, and therefore should make them aware of the need to confer with you before they trade in Purple's securities.

Stock Option Exercises. This Policy does not apply to the exercise of an employee stock option, or to the exercise of a tax withholding right pursuant to which you elect to have Purple withhold shares subject to an option to satisfy tax withholding requirements. This Policy does apply, however, to any sale of stock as part of a broker-assisted cashless exercise of an option, or any other market sale for the purpose of generating the cash needed to pay the exercise price of an option.

Additional Prohibited Transactions. Purple considers it improper and inappropriate for any director, officer, or other employee of Purple to engage in short-term or speculative transactions in Purple's securities. **It therefore is Purple's policy that directors, officers, and other employees may NOT engage in any of the following transactions**:

A. **Short Sales.** Short sales of Purple's securities evidence an expectation on the part of the seller that the securities will decline in value, and therefore signal to the market that the seller has no confidence in Purple or its short-term prospects. In addition, short sales may reduce the seller's incentive to improve Purple's performance. For these reasons, short sales of Purple's securities are prohibited by this Policy. In addition, Section 16(c) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") prohibits officers and directors from engaging in short sales.

B. **Publicly Traded Options.** A transaction in options is, in effect, a bet on the short-term movement of Purple's stock, and therefore creates the appearance that the director, officer, or employee is trading based on inside information. Transactions in options also may focus the director's, officer's, or employee's attention on short-term performance at the expense of Purple's long-term objectives. Accordingly, transactions in puts, calls, or other derivative securities involving Purple, on an exchange or in any other organized market, are prohibited by this Policy. (Option positions arising from certain types of hedging transactions are governed by the section below captioned "Hedging Transactions".)

C. **Margin Accounts and Pledges.** Securities held in a margin account may be sold by the broker without the customer's consent if the customer fails to meet a margin call. Similarly, securities pledged (or hypothecated) as collateral for a loan may be sold in foreclosure if the borrower defaults on the loan. Because a margin sale or foreclosure sale may occur at a time when the pledgor is aware of material nonpublic information or otherwise is not permitted to trade in Purple securities, directors, officers, and other employees are prohibited from holding Purple securities in a margin account or pledging Purple securities as collateral for a loan. An exception to this prohibition exists where a person wishes to pledge Purple securities as collateral for a loan (not including margin debt) and clearly demonstrates the financial capacity to repay the loan without resort to the pledged securities. Any director or officer of Purple wishing to enter into such an arrangement must first pre-clear the proposed transaction with the Board of Directors. Any request for pre-clearance of a margin account, pledge, or similar arrangement must be submitted to the Chief Legal Officer for approval at least one week prior to the proposed execution of documents evidencing the proposed transaction and must set forth a justification for the proposed transaction.

Hedging Transactions. Certain forms of hedging or monetization transactions, such as zero-cost collars and forward sale contracts, allow a director, officer, or employee to lock in much of the value of his or her stock holdings, often in exchange for all or part of the potential for upside appreciation in the stock. These transactions allow the director, officer, or employee to continue to own the covered securities, but without the full risks and rewards of ownership. When that occurs, the director, officer, or employee may no longer have the same objectives as Purple's other stockholders. Therefore, Purple discourages you from engaging in such transactions. Any person wishing to enter into such an arrangement must first pre-clear the proposed transaction with the Board of Directors. Any request for pre-clearance of a hedging or similar arrangement must be submitted to the Chief Legal Officer for approval at least one week prior to the proposed execution of documents evidencing the proposed transaction and must set forth a justification for the proposed transaction.

Post-Termination Transactions. This Policy continues to apply to your transactions in Purple securities even after you have terminated service as a director, officer, or employee of Purple. If you are in possession of material nonpublic information when your service terminates, you may not trade in Purple securities until that information has become public or is no longer material.

Quarterly Blackout Periods. Purple's announcement of its quarterly financial results almost always has the potential to have a material effect on the market for Purple's securities. Therefore, to avoid even the appearance of trading while aware of material nonpublic information, employees who are or may be expected to be aware of Purple's financial information are not allowed to trade in Purple's securities during the period beginning on the 1st calendar day following each fiscal quarter and ending after the second full trading day following the earlier of Purple's (1) issuance of its applicable earnings release, or (2) filing of its Form 10-Q or Form 10-K. Persons subject to these quarterly blackout periods include all directors and executive officers, all other employees working in the Finance, Accounting and Legal Departments, and all other persons who are informed by the Chief Legal Officer that they are subject to the quarterly blackout periods. The Chief Financial Officer and the Chief Executive Officer shall meet at least annually or at such more frequent intervals as they deem advisable to establish those employees subject to this trading window requirement.

Purple may on occasion issue interim earnings guidance or other potentially material information by means of a press release, a Form 8-K filed with the SEC or by other means designed to achieve widespread dissemination of the information. You should anticipate that trades are unlikely to be pre-cleared while Purple is in the process of assembling the information to be released and until the information has been released and fully absorbed by the market.

Event Specific Blackouts; Cancellation of Existing Orders. From time to time, an event may occur that is material to Purple and is known by only a few directors or employees. So long as the event remains material and nonpublic, directors, executive officers, and such other persons as are designated by the Chief Legal Officer may not trade in Purple's securities. Purple reserves the right to enforce a trading blackout window, and, in its sole discretion, may prohibit you from trading in Purple stock during such transaction or event. As such, Purple may require you to cancel existing orders (including good until cancelled orders) and also may instruct your broker to cancel any such orders.

The existence of an event-specific blackout will not be announced, other than to those who are aware of the event giving rise to the blackout. If, however, a person whose trades are subject to pre-clearance requests permission to trade in Purple's securities during an event-specific blackout, the Chief Legal Officer will inform the requester of the existence of a blackout period, without disclosing the reason for the blackout. Any person made aware of the existence of an event-specific blackout should not disclose the existence of the blackout to any other person. The failure of the Chief Legal Officer to designate a person as being subject to an event-specific blackout will not relieve that person of the obligation not to trade while aware of material nonpublic information.

You are not to assume that Purple will notify you when it believes you are in possession of inside information. The law states that no one may trade while in the possession of material nonpublic information. **Ultimately, the responsibility for adhering to this Policy and avoiding unlawful transactions rests with the individual employee, officer, or director.**

Hardship Exceptions. A person who is subject to a quarterly earnings blackout period and who has an unexpected and urgent need to sell Purple stock in order to generate cash may, in appropriate and very limited rare circumstances, be permitted to sell Purple stock even during the blackout period. A hardship exception may be granted only by the Audit Committee, at its sole discretion, and such exception must be requested at least two business days in advance of the proposed trade. A hardship exception may be granted only if the Audit Committee concludes that Purple's earnings information for the applicable quarter does not constitute material nonpublic information or if Purple does not have sufficient insight as to Purple's earnings information as of that time. It is highly unlikely that a hardship exception will be granted, and under no circumstance will a hardship exception be granted during an event-specific blackout period.

III. 10B5-1 PLANS

Approved 10b5-1 Plan Exception. The trading restrictions in this Policy do not apply to transactions under a pre-existing written plan, contract, instruction, or arrangement under Rule 10b5-1 under the Securities Exchange Act of 1934 (an "***Approved 10b5-1 Plan***") that meets the requirements described in Rule 10b5-1 and the following requirements:

- It has been reviewed and approved by the Chief Legal Officer at least five business days in advance of being entered into (or, if revised or amended, such revisions or amendments have been reviewed and approved by the Chief Legal Officer at least five business days in advance of being entered into);

- It provides that no trades may occur thereunder until expiration of the applicable cooling-off period specified in Rule 10b5-1(c)(ii)(B), and no trades occur until after that time. The appropriate cooling-off period will vary based on the status of the Covered Person. For directors and officers, the cooling-off period ends on the later of (x) ninety days after adoption or certain modifications of the 10b5-1 plan; or (y) two business days following disclosure of Purple's financial results in a Form 10-Q or Form 10-K for the quarter in which the 10b5-1 plan was adopted. In no case will the cooling-off period for directors and officers exceed 120 days. For all other Covered Persons, if a cooling-off period is required under Rule 10b5-1, the cooling-off period ends 30 days after adoption or modification of the 10b5-1 plan;

- It is entered into in good faith by the Covered Person, and not as part of a plan or scheme to evade the prohibitions of Rule 10b5-1, at a time when the Covered Person was not in possession of material nonpublic information about Purple; and, if the Covered Person is a director or officer, the 10b5-1 plan must include representations by the Covered Person certifying to that effect;

- It gives a third party the discretionary authority to execute such purchases and sales, outside the control of the Covered Person, so long as such third party does not possess any material nonpublic information about Purple; or explicitly specifies the security or securities to be purchased or sold, the number of shares, the prices and/or dates of transactions, or other formula(s) describing such transactions; and

- It is the only outstanding Approved 10b5-1 Plan entered into by the Covered Person (subject to the exceptions set out in Rule 10b5-1(c)(ii)(D)).

No Approved 10b5-1 Plan may be adopted during a blackout period.

If you are considering entering into, modifying or terminating an Approved 10b5-1 Plan or have any questions regarding Approved 10b5-1 Plans, please contact the Chief Legal Officer. You should consult your own legal and tax advisors before entering into, or modifying or terminating, an Approved 10b5-1 Plan. A trading plan, contract, instruction or arrangement will not qualify as an Approved 10b5-1 Plan without the prior review and approval of the Chief Legal Officer as described above.

IV. The Penalties

Penalties for trading on or communicating material nonpublic information can be severe, both for individuals involved in such unlawful conduct and their employers and supervisors, and may include jail terms, criminal fines, civil penalties, and civil enforcement injunctions. Given the severity of the potential penalties, compliance with this Policy is absolutely mandatory.

Legal Penalties. A person who violates insider trading laws by engaging in transactions in a company's securities when he or she has material nonpublic information can be sentenced to a substantial jail term (up to 20 years) and required to pay a criminal penalty of several times the amount of profits gained or losses avoided.

In addition, a person who tips others may also be liable for transactions by the tippees to whom he or she has disclosed material nonpublic information. Tippers can be subject to the same penalties and sanctions as the tippees, and the SEC has imposed large penalties even when the tipper did not profit from the transaction.

The SEC can also seek substantial civil penalties from any person who, at the time of an insider trading violation, "directly or indirectly controlled the person who committed such violation," which would apply to Purple and/or management and supervisory personnel. Even for violations that result in a small or no profit, the SEC can seek substantial penalties from a company and/or its management and supervisory personnel as control persons.

Company-Imposed Sanctions. Compliance with the policies of Purple is a condition of continued employment or service with Purple of each employee, officer and director. An employee's failure to comply with Purple's insider trading policy will subject the employee to Purple-imposed sanctions, which may include dismissal for cause, whether or not the employee's failure to comply results in a violation of law. Purple reserves the right to determine, in its own discretion and on the basis of the information available to it, whether this Policy has been violated. Purple may also determine that specific conduct violates this Policy whether or not the conduct also violates the law. It is not necessary for Purple to wait for the filing or conclusion of a civil or criminal action against the alleged violator before taking disciplinary action.

V. GENERAL

Purple Assistance. Any person who has a question about this Policy or its application to any proposed transaction may obtain additional guidance from Purple's Chief Legal Officer. In addition, if a director, officer, or other employee has any doubt as to whether they are in possession of material nonpublic information or whether a trade may otherwise violate this Policy, they should contact the foregoing person before trading any securities of Purple.

Other Procedures. Purple may change these procedures or adopt such other procedures in the future as Purple considers appropriate or advisable in order to carry out the purposes of this Policy or to comply with the federal securities laws. Wherever this Policy refers to or calls for action by or involving Purple's Chief Legal Officer, such reference shall include such other persons as the Chief Legal Officer may designate from time to time, if the Chief Legal Officer is unavailable or otherwise unable to act for any reason.

Ultimately, however, the responsibility for adhering to this Policy and avoiding unlawful transactions rests with the individual director, officer, or employee.

No Third-Party Rights. This Policy is not intended to create any rights in third parties with respect to any violation of its terms and is also not intended to create any legal liability for Purple or any employee, officer, or director beyond those for which they are already responsible under applicable securities laws.

Certifications. All employees, officers, and directors must certify their understanding of, and intent to comply with, this Policy. A copy of the certification that all employees, other than executive officers and certain employees identified by the Chief Legal Officer, must sign is attached to this Policy as Exhibit A. Please return an executed copy of the attached certification immediately. Directors, executive officers, and certain employees identified by the Chief Legal Officer are subject to additional restrictions on their transactions in Purple securities, which are described in Part II of this Policy. Directors, executive officers, and such identified employees subject to the additional restrictions in Part II should sign the certification attached to this Policy as Exhibit B.

PART II

VI. Pre-Clearance Procedures

To help prevent inadvertent violations of the federal securities laws and to avoid even the appearance of trading on inside information, no Covered Persons may engage in any transaction involving Purple's securities (including a stock plan transaction such as an option exercise, gift, loan or pledge or hedge, contribution to a trust, or any other transfer) without first obtaining pre-clearance of the transaction from the Chief Legal Officer. **A request for pre-clearance should be submitted to the Chief Legal Officer at least two business days in advance of the proposed transaction, unless earlier notice is otherwise required by the Policy (e.g., one week for hedging transactions).** The Chief Legal Officer is under no obligation to approve a trade submitted for pre-clearance, and may in the Chief Legal Officer's sole discretion, determine not to permit the trade.

Any person subject to the pre-clearance requirements who wishes to implement a trading plan under SEC Rule 10b5-1 must pre-clear the plan with the Chief Legal Officer and comply with Part I, Section III above regarding Approved 10b5-1 Plans. Transactions effected pursuant to a pre-cleared trading plan will not require further pre-clearance at the time of the transaction if the plan complies with the requirements of SEC Rule 10b5-1 and Part I, Section III above, including specifying the dates, prices, and amounts of the contemplated trades, or establishes a formula for determining the dates, prices, and amounts.

VII. Broker Interface Procedures

The accelerated reporting obligations for Section 16 reports require tight interface with brokers handling transactions for Purple's directors and officers. In the event a director or officer has requested and authorized Purple to file Section 16 reports on that person's behalf, Purple requires that such directors and officers provide a copy of this Policy to their broker and such broker must agree that he or she:

(a) Will not enter any orders for you (except for orders under an Approved Rule 10b5-1 Plan) without first:

(1) verifying with Purple that your transaction was pre-cleared; and

(2) complying with the brokerage firm's compliance procedures (e.g., Rule 144).

(b) Will report any transactions immediately to the Chief Legal Officer of Purple via:

(1) telephone; and

(2) in writing via e-mail to the Chief Legal Officer, describing the details of every transaction involving Purple stock, including gifts, transfers, pledges, and all 10b5-1 transactions.

Exhibit A

CERTIFICATION

I hereby certify that:

1. I have read and understand Purple's Insider Trading Policy dated October 31, 2023 (the "**Policy**"). I understand that the Chief Legal Officer of Purple Innovation, Inc. ("**Purple**") is available to answer any questions I have regarding the Policy.

2. I agree that I will comply with the Policy for as long as I am subject to the Policy.

3. I agree that Purple may at any time and in its sole discretion issue a prohibition on trading in Purple securities and that Purple shall have full power and authority to cancel any outstanding orders, including "good until cancelled" orders, that I may place, but I understand that I have the sole responsibility for compliance with the Policy. I further agree and represent that I will never trade in Purple securities while I am in possession of material nonpublic information regarding Purple.

4. This certification constitutes consent for Purple to issue any necessary stop-transfer orders to Purple's transfer agent to enforce compliance with this Policy.

Signature: _____

Print Name: _____

Date: _____

Exhibit B

CERTIFICATION

(For Directors, Executive Officers, and Certain Key Employees)

I hereby certify that:

1. I have read and understand Purple's Insider Trading Policy dated October 31, 2023 (the "**Policy**"). I understand that the Chief Legal Officer of Purple Innovation, Inc. ("**Purple**") is available to answer any questions I have regarding the Policy.

2. I agree that I will comply with the Policy for as long as I am subject to the Policy.

3. I understand that all of my trades must be pre-cleared by Purple's Chief Legal Officer or such other person as Purple may designate from time to time.

4. I agree that Purple may at any time and in its sole discretion issue a prohibition on trading in Purple securities and that Purple shall have full power and authority to cancel any outstanding orders, including "good until cancelled" orders, that I may place, but I understand that I have the sole responsibility for compliance with the Policy. I further agree and represent that I will never trade in Purple securities while I am in possession of material nonpublic information regarding Purple.

5. This certification constitutes consent for Purple to issue any necessary stop-transfer orders to Purple's transfer agent to enforce compliance with this Policy.

Signature: _____

Print Name: _____

Date: _____

Exhibit 21.1

Subsidiaries of Purple Innovation, Inc.

Subsidiary Name	Jurisdiction of Formation
Purple Innovation, LLC	Delaware
Intellibed, LLC	Delaware

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-223030, 333-230522, 333-234186, 333-237045, 333-248507, 333-263621 and 333-269005) and Form S-8 (Nos. 333-224220, 333-265449, 333-268323 and 333-272712) of Purple Innovation, Inc. (the Company) of our report dated March 13, 2025, relating to the consolidated financial statements, which appears in this Annual Report on Form 10-K.

/s/ BDO USA, P.C.

Salt Lake City, Utah
March 13, 2025

Exhibit 31.1

CERTIFICATIONS

I, Robert T. DeMartini, certify that:

1. I have reviewed this Annual Report on Form 10-K 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: March 13, 2025

/s/ Robert T. DeMartini

Robert T. DeMartini, Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, Todd E. Vogensen, certify that:

1. I have reviewed this Annual Report on Form 10-K 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: March 13, 2025

/s/ Todd E. Vogensen

Todd E. Vogensen, Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION

In connection with the Annual Report on Form 10-K of Purple Innovation, Inc. (the "Corporation") for the year ended December 31, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Robert T. DeMartini, 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: March 13, 2025

/s/ Robert T. DeMartini

Robert T. DeMartini, Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION

In connection with the Annual Report on Form 10-K of Purple Innovation, Inc. (the "Corporation") for the year ended December 31, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Todd E. Vogensen, 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: March 13, 2025

/s/ Todd E. Vogensen
Todd E. Vogensen, Chief Financial Officer
(Principal Financial Officer)