UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

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

FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2019

OR

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

FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission File Number: **001-37523**

PURPLE INNOVATION, INC.

(Exact name of registrant as specified in its charter)

Delaware	**47-4078206**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)

123 EAST 200 NORTH
ALPINE, UTAH 84004
(Address of principal executive offices, including zip code)

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

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

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

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 Date File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☑ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule12b-2 of the Exchange Act.

Large accelerated filer ☐
Non-accelerated filer ☑

Accelerated filer ☐
Smaller reporting company ☑
Emerging growth company ☑

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

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

As of August 13, 2019, 9,894,716 shares of the registrant's Class A common stock, $0.0001 par value per share, and 44,003,791 shares of the registrant's Class B common stock, $0.0001 par value per share, were outstanding.

PURPLE INNOVATION, INC.

QUARTERLY REPORT ON FORM 10-Q

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

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

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

PURPLE INNOVATION, INC.

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

	June 30, 2019	December 31, 2018
Assets		
Current assets:		
Cash and cash equivalents	$ 20,255	$ 12,232
Accounts receivable, net	24,845	10,241
Inventories, net	25,057	22,940
Prepaid inventory	883	790
Other current assets	2,591	1,494
Total current assets	73,631	47,697
Property and equipment, net	24,485	22,514
Intangible assets, net	1,574	1,493
Other long-term assets	46	5
Total assets	$ 99,736	$ 71,709
Liabilities and Stockholders' Deficit		
Current liabilities:		
Accounts payable	$ 29,457	$ 24,828
Accrued sales returns	6,001	5,457
Accrued compensation	4,760	2,691
Customer prepayments	5,074	7,522
Accrued sales tax	4,464	5,538
Other current liabilities	6,148	2,541
Total current liabilities	55,904	48,577
Long-term debt, related-party	33,653	21,411
Warrant liabilities	6,852	—
Other long-term liabilities, net of current portion	6,690	3,732
Total liabilities	103,099	73,720
Commitments and contingencies (Note 12)		
Stockholders' deficit:		
Class A common stock; $0.0001 par value, 210,000 shares authorized; 9,827 issued and outstanding at June 30, 2019 and 9,731 issued and outstanding at December 31, 2018	1	1
Class B common stock; $0.0001 par value, 90,000 shares authorized; 44,071 issued and outstanding at June 30, 2019 and December 31, 2018	4	4
Additional paid-in capital	10,364	3,655
Accumulated deficit	(5,790)	(4,322)
Total stockholders' deficit	4,579	(662)
Noncontrolling interest	(7,942)	(1,349)
Total deficit	(3,363)	(2,011)
Total liabilities and stockholders' deficit	$ 99,736	$ 71,709

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

PURPLE INNOVATION, INC.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Revenues, net	$ 103,004	$ 75,760	$ 186,652	$ 136,528
Cost of revenues	60,221	43,938	109,800	78,891
Gross profit	42,783	31,822	76,852	57,637
Operating expenses:				
Marketing and sales	35,967	30,723	59,984	52,768
General and administrative	7,933	5,213	12,498	12,066
Research and development	1,244	555	1,934	1,066
Total operating expenses	45,144	36,491	74,416	65,900
Operating income (loss)	(2,361)	(4,669)	2,436	(8,263)
Interest expense	1,301	971	2,445	1,673
Other income, net	(6)	(82)	(235)	(101)
Loss on extinguishment of debt	—	—	6,299	—
Change in fair value – warrant liabilities	3,685	—	1,988	—
Net loss	(7,341)	(5,558)	(8,061)	(9,835)
Net loss attributable to noncontrolling interest	(6,003)	(4,554)	(6,593)	(7,281)
Net loss attributable to Purple Innovation, Inc.	$ (1,338)	$ (1,004)	$ (1,468)	$ (2,554)
Net loss per common share—basic and diluted	$ (0.16)	$ (0.12)	$ (0.17)	$ (0.30)
Weighted average common shares outstanding—basic and diluted	8,457	8,410	8,447	8,399

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

PURPLE INNOVATION, INC.

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

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

	Class A Common Stock		Class B Common Stock		Additional Paid-in	Accumulated	Total Stockholders'	Noncontrolling	Member	Total
	Shares	Par Value	Shares	Par Value	Capital	Deficit	Equity	Interest	Deficit	Equity
Balance - December 31, 2017	—	$ —	—	$ —	$ —	$ —	$ —	$ —	$ (13,919)	$ (13,919)
Net loss	—	—	—	—	—	(1,550)	(1,550)	(7,051)	4,324	(4,277)
Effect of the Business Combination:										
Proceeds and shares issued in the Business Combination	9,683	1	44,071	4	(1,600)	—	(1,595)	17,912	9,595	25,912
Assignment of founder shares and sponsor warrants	—	—	—	—	4,691	—	4,691	—	—	4,691
Balance – March 31, 2018	9,683	1	44,071	4	3,091	(1,550)	1,546	10,861	—	12,407
Net loss	—	—	—	—	—	(1,004)	(1,004)	(4,554)	—	(5,558)
Stock-based compensation	—	—	—	—	313	—	313	—	—	313
Balance – June 30, 2018	9,683	$ 1	44,071	$ 4	$ 3,404	$ (2,554)	$ 855	$ 6,307	$ —	$ 7,162

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

PURPLE INNOVATION, INC.

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

	Six Months Ended June 30,	
	2019	**2018**
Cash flows from operating activities:		
Net loss	$ (8,061)	$ (9,835)
Adjustments to reconcile net loss to net cash from operating activities:		
Depreciation and amortization	1,574	1,001
Non-cash interest	1,565	1,092
Loss on extinguishment of debt	6,299	—
Loss on change in fair value - warrant liabilities	1,988	—
Stock-based compensation	6,806	313
Changes in operating assets and liabilities:		
Increase in accounts receivable	(14,604)	(3,056)
Increase in inventories	(2,117)	(17,994)
Increase in prepaid inventory and other assets	(1,231)	(1,629)
Increase (decrease) in accounts payable	4,610	(1,206)
Increase in accrued sales returns	544	805
Increase in accrued compensation	2,069	207
Increase (decrease) in customer prepayments	(2,448)	3,412
Increase (decrease) in other accrued liabilities	5,155	(718)
Net cash provided by (used in) operating activities	2,149	(27,608)
Cash flows from investing activities:		
Purchase of property and equipment	(3,136)	(6,968)
Investment in intangible assets	(121)	(117)
Net cash used in investing activities	(3,257)	(7,085)
Cash flows from financing activities:		
Proceeds from the Business Combination	—	25,912
Proceeds from related-party debt	10,000	24,000
Repurchase of stock options	(97)	—
Payments on line of credit	—	(8,000)
Payments for debt issuance costs	(758)	(367)
Principal payments on capital lease obligations	(14)	(14)
Net cash provided by financing activities	9,131	41,531
Net increase in cash	8,023	6,838
Cash, beginning of the period	12,232	3,593
Cash, end of the period	$ 20,255	$ 10,431
Supplemental schedule of non-cash investing and financing activities:		
Property and equipment included in accounts payable	$ 482	$ 73
Equipment acquired through capital lease	$ 350	$ —
Assignment of founder shares and sponsor warrants	$ —	$ 4,691
Equipment acquired under build-to-suit service agreement	$ —	$ 1,288
Sale-leaseback of equipment under build-to-suit service agreement	$ —	$ (1,288)

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

1. Organization

Purple Innovation, Inc., collectively with its subsidiary (the "Company" or "Purple Inc."), is a comfort innovation company which designs and manufactures products to improve how people live. The Company designs and manufactures a range of comfort technology products, including mattresses, pillows, cushions and other products, using its proprietary Hyper-Elastic Polymer technology designed to improve comfort. The Company markets and sells its products through direct-to-consumer online channels, traditional wholesale partners, third-party online retailers and our Company outlet store.

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

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

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The Company consists of Purple Inc. and its consolidated subsidiary Purple LLC. Pursuant to the Business Combination described in Note 3 — *Merger Transaction* , Purple Inc. has acquired approximately 18% of the common units of Purple LLC, while InnoHold, LLC ("InnoHold") and others retain approximately 82% of the common units in Purple LLC.

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

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting and reflect the financial position, results of operations and cash flows of the Company. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. As such, these unaudited condensed consolidated financial statements should be read in conjunction with the audited financial statements and accompanying notes included in the Company's Annual Report on Form 10-K filed March 14, 2019. The unaudited condensed consolidated financial statements were prepared on the same basis as the audited financial statements and, in the opinion of management, reflect all adjustments (all of which were considered of normal recurring nature) considered necessary to present fairly the Company's financial results. The results of the six months ended June 30, 2019 are not necessarily indicative of the results to be expected for the fiscal year ending December 31, 2019 or for any other interim period or other future year.

Variable Interest Entities

Purple LLC is a variable interest entity ("VIE"). The Company determined that it is the primary beneficiary of Purple LLC as Purple Inc. is the sole managing member and has the power to direct the activities most significant to Purple LLC's economic performance as well as the obligation to absorb losses and receive benefits that are potentially significant. At June 30, 2019, Purple Inc. had approximately an 18% economic interest in Purple LLC and consolidated 100% of Purple LLC's assets, liabilities and results of operations in the Company's unaudited condensed consolidated financial statements contained herein. At June 30, 2019, InnoHold and other parties owned approximately 82% of the economic interest in Purple LLC; however, InnoHold and other parties have disproportionally fewer voting rights, and are shown as the noncontrolling interest ("NCI") holder of Purple LLC. For further discussion see Note 13 — *Stockholders' Equity.*

Reclassification

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

Use of Estimates

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

Revenue Recognition

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

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

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

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

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

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

Customer prepayments include cash amounts transacted with customers prior to product delivery.

Debt Issuance Costs and Discounts

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

Fair Value Liability Warrants

The Company accounts for fair value liability warrants under the provisions of ASC 480 - *Distinguishing Liabilities from Equity* . ASC 480 requires the recording of certain liabilities at their fair value. Changes in the fair value of these liabilities are recognized in earnings. As a result of certain terms, conditions and features included in the incremental warrants issued by the Company, they are required to be accounted for as a liability at estimated fair value, with changes in fair value recognized in earnings. Refer to Note 9 – *Warrant Liabilities* .

Fair Value Measurements

The Company uses the fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, essentially an exit price, based on the highest and best use of the asset or liability. The levels of the fair value hierarchy are:

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

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

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

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

Income Taxes

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

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 condensed consolidated statements of operations.

Purple LLC, the Company's accounting predecessor, is a limited liability company treated as a partnership for U.S. federal income tax purposes that is not subject to U.S. federal income tax.

Net Loss Per Share

The two-class method of computing net income (loss) per share is required for entities that have participating securities. The two-class method is an earnings allocation formula that determines net income (loss) per share for participating securities according to dividends declared (or accumulated) and participation rights in undistributed earnings. The Company's Class B Stock has no economic interest in the earnings of the Company, resulting in the two-class method not being applicable as of June 30, 2019 or in prior periods. Basic net loss per common share is calculated by dividing net loss attributable to common shareholders by the weighted average number of shares of Class A Stock outstanding each period. Diluted net loss per share adds to those shares the incremental shares that would have been outstanding and potentially dilutive assuming exchanges of the Company's outstanding warrants and stock options for Class A Stock, and the vesting of unvested Class A Stock. An anti-dilutive impact is an increase in net income per share or a reduction in net loss per share resulting from the conversion, exercise or contingent issuance of certain securities.

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

Recent Accounting Pronouncements

New Revenue Guidance

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

New Business Combination Guidance

In January 2017, the FASB issued ASU 2017-01, "Business Combinations: Clarifying the Definition of a Business." The purpose of this ASU is to clarify the definition of a business to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. The amendments affect all companies and other reporting organizations that must determine whether they have acquired or sold a business. The Company adopted this ASU effective January 1, 2019. The guidance in this standard did not have a material impact on the financial statements.

New Lease Guidance

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

3. Merger Transaction

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

Additionally, at the Closing, 9.7 million Class A Units of Purple LLC were issued and are solely held by Purple Inc. They are voting common units entitled to share in the profits and losses of Purple LLC and receive distributions as declared by Purple LLC's manager. 44.1 million Class B Units of Purple LLC were issued to InnoHold who has limited voting rights in Purple LLC and is entitled to share in the profits and losses of Purple LLC and to receive distributions as declared by Purple LLC's manager. The amended operating agreement appoints Purple Inc. as the sole managing member of Purple LLC. As the sole managing member, Purple Inc. operates and controls all of the business and affairs of Purple LLC. Accordingly, although Purple Inc. has a minority economic interest in Purple LLC, Purple Inc. has the sole voting interest in and control of the management and operations of Purple LLC.

4. Revenue from Contracts with Customers

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

Contract Balances

Payment for sale of products through the direct-to-consumer online channels and third-party online retailers is collected at point of sale in advance of shipping the products. Amounts received for unshipped products are recorded as customer prepayments. Customer prepayments were $5.1 million at June 30, 2019 and $7.5 million at December 31, 2018. During the six months ended June 30, 2019, the Company recognized $7.5 million of revenue that was deferred in customer prepayments at December 31, 2018.

Disaggregated Revenue

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

Channel	Three Months Ended June 30, 2019	Six Months Ended June 30, 2019
Direct-to-consumer	$ 63,710	$ 117,474
Wholesale partner	39,294	69,178
Revenues, net	$ 103,004	$ 186,652

Product	Three Months Ended June 30, 2019	Six Months Ended June 30, 2019
Bedding	$ 96,383	$ 173,826
Other	6,621	12,826
Revenues, net	$ 103,004	$ 186,652

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

5. Inventories

Inventories consist of the following (in thousands):

	June 30, 2019	December 31, 2018
Raw materials	$ 9,660	$ 10,763
Work-in-process	1,568	521
Finished goods	14,862	12,364
Inventory obsolescence reserve	(1,033)	(708)
Inventories, net	$ 25,057	$ 22,940

6. Property and Equipment

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

	June 30, 2019	December 31, 2018
Equipment	$ 16,223	$ 15,465
Equipment in progress	4,328	2,895
Leasehold improvements	3,458	3,359
Furniture and fixtures	3,405	2,817
Office equipment	958	799
Equipment under capital lease	626	159
Total property and equipment	28,998	25,494
Accumulated depreciation and amortization	(4,513)	(2,980)
Property and equipment, net	$ 24,485	$ 22,514

The Company recorded depreciation and amortization related to property and equipment of $0.8 million and $0.5 million during the three months ended June 30, 2019 and 2018, respectively. Depreciation and amortization of $1.5 million and $1.0 million were recorded during the six months ended June 30, 2019 and 2018, respectively.

7. Other Current Liabilities

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

	June 30, 2019	December 31, 2018
Co-op advertising, rebates, promotions	$ 3,360	$ 430
Warranty accrual – current portion	1,248	893
Website commissions	773	823
Insurance financing	358	—
Accrued expenses	361	363
Capital leases – current portion	48	32
Total other current liabilities	$ 6,148	$ 2,541

8. Long-Term Debt, Related-Party

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

	June 30, 2019	December 31, 2018
Long-term debt, related-party	$ 37,821	$ 26,647
Less: unamortized debt issuance costs and discounts	(4,168)	(5,236)
Total long-term debt, related-party	$ 33,653	$ 21,411

Credit Agreement

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

The Company paid debt issuance costs, incurred an original issuance discount and discounts related to the Founder Shares (as defined in Note 13 – *Stockholders' Equity*) and Sponsor Warrants that were assigned in conjunction with the Credit Agreement. The amount of these reductions collectively allocated to debt at the time of the Business Combination was $6.1 million.

Amended and Restated Credit Agreement

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

The Company paid fees in the amount of $0.5 million and debt issuance costs in the amount of $0.3 million in conjunction with the incremental loan under the Amended and Restated Credit Agreement. Interest expense related to the Credit Agreement and the Amended and Restated Credit Agreement was $1.3 million and $0.8 million for the three months ended June 30, 2019 and 2018, respectively, and $2.4 million and $1.2 million for the six months ended June 30, 2019 and 2018, respectively.

Loss on Extinguishment of Debt

The Company accounted for the debt restructuring under the Amended and Restated Credit Agreement in accordance with ASC 470 - *Debt* . The Company determined that there are separate lenders for purposes of determining if there was an extinguishment or modification. The amended debt terms with CDF were not determined to be substantial and therefore the existing debt attributable to CDF was accounted for as a modification of debt. The amended debt terms with the Incremental Lenders were determined to be substantially different terms from their existing debt and therefore required to be accounted for as an extinguishment of their existing debt. Accordingly, the Company recognized a loss on the extinguishment of their existing debt of approximately $6.3 million for the six months ended June 30, 2019. This is a non-cash expense primarily associated with the recognition of related unamortized debt discount and debt issuance costs and the fair value of the incremental warrants issued.

9. Warrant Liabilities

The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement contain a warrant repurchase provision which, upon an occurrence of a fundamental transaction as defined in the warrant agreement, could give rise to an obligation of the Company to pay cash to the warrant holders. The Company has determined that this provision requires the warrants to be accounted for as a liability at fair value on the date of the transaction under guidance prescribed in ASC 480 - *Distinguishing Liabilities from Equity* . The liability for the warrants is subsequently re-measured to fair value at each reporting date with changes in the fair value included in earnings. The Company recorded a $3.7 million and a $2.0 million loss on the increase in fair value of the Incremental Loan Warrants for the three and six months ended June 30, 2019, respectively.

The Company determined the fair value of the Incremental Loan Warrants to be $4.9 million on the date of the transaction on February 26, 2019 using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model with the following assumptions:

Trading price of common stock on measurement date	$	5.59
Exercise price	$	5.74
Risk free interest rate		2.45%
Warrant lives in years		5.0
Expected volatility		34.37%
Expected dividend yield		—

The Company determined the fair value of the Incremental Loan Warrants to be $6.9 million on June 30, 2019 using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model with the following assumptions:

Trading price of common stock on measurement date	$	6.75
Exercise price	$	5.74
Risk free interest rate		1.76%
Warrant life in years		4.7
Expected volatility		35.29%
Expected dividend yield		—

10. Other Long-Term Liabilities

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

	June 30, 2019	December 31, 2018
Deferred rent expense	$ 2,801	$ 2,531
Warranty accrual	4,725	2,009
Capital leases	460	117
Total other long-term liabilities	7,986	4,657
Less: current portion of long-term liabilities	(1,296)	(925)
Other long-term liabilities, net of current portion	$ 6,690	$ 3,732

11. Related Party Transactions

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

Coliseum Capital Management, LLC

Immediately following the Business Combination, Adam Gray was appointed to the Company's board of directors ("Board"). Mr. Gray is a manager of Coliseum Capital, LLC, which is the general partner of CCP and CDF, and he is also a managing partner of Coliseum Capital Management, LLC ("CCM"), which is the investment manager of Blackwell. Mr. Gray has voting and dispositive control over securities held by CCP, CDF and Blackwell which are the "Lenders" under the Credit Agreement. On February 26, 2019, the Amended and Restated Credit Agreement between Purple LLC and the Lenders thereto, and each of the related documents, including the issuance of additional warrants to the Incremental Lenders, was closed and an incremental loan of $10.0 million was funded (see Note 8 – *Long Term Debt, Related Party*). The Lenders in aggregate had $37.8 million in principal borrowings outstanding as of June 30, 2019, comprised of $25.0 million in original loan amount, $10.0 million in incremental loan amount and $2.8 million in capitalized interest. The Company made interest payments to the Lenders in the amount of $0.5 million and $0.5 million during the three months ended June 30, 2019 and 2018, respectively. The Company made interest payments to the Lenders in the amount of $0.8 million and $0.5 million during the six months ended June 30, 2019 and 2018, respectively.

Purple Founder Entities

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

TNT Holdings owns the Alpine facility Purple LLC leases. Effective as of October 31, 2017, Purple LLC entered into an Amended and Restated Lease Agreement with TNT Holdings. The Company determined that TNT Holdings is not a VIE as neither the Company nor Purple LLC hold any explicit or implicit variable interest in TNT Holdings and do not have a controlling financial interest in TNT Holdings. The Company incurred $0.3 million and $0.3 million in rent expense to TNT Holdings for the building lease of the Alpine facility for the three months ended June 30, 2019 and 2018, respectively and $0.6 million and $0.6 million for the six months ended June 30, 2019 and 2018, respectively. The Company has been leasing its headquarters facility in Alpine, Utah from TNT Holdings since 2010. The Company has leased a new facility in Lehi, Utah and will be moving its headquarters into that building before the end of the first quarter 2020. The Company intends currently to continue to lease from TNT Holdings the building in Alpine, Utah and use it as its facility for research and development and video productions.

On February 2, 2019, the lock-up agreement expired that was entered into in connection with the Closing. The lock-up agreement was entered into by InnoHold between the Company and the Parent Representative with respect to the equity securities that both the Company and Purple LLC received in the Business Combination (the "Restricted Securities"). As of June 30, 2019, there have not been any transactions of the Restricted Securities since the lock-up agreement expired.

12. Commitments and Contingencies

Required Member Distributions

Prior to the Business Combination and pursuant to the then applicable First Amended and Restated Limited Liability Company Agreement (the "First Purple LLC Agreement"), Purple LLC was required to distribute to InnoHold an amount equal to 45 percent of Purple LLC's net taxable income following the end of each fiscal year. The First Purple LLC Agreement was amended and replaced by the Second Amended and Restated Limited Liability Company Agreement (the "Second Purple LLC Agreement") on February 2, 2018 as part of the Business Combination. The Second Purple LLC Agreement does not include any mandatory distributions, other than tax distributions. No distributions have been made under the Second Purple LLC Agreement in 2019 or 2018.

Service Agreement

In October 2017, the Company entered into an electric service agreement with the local power company. The agreement provided for the construction and installation of certain utility improvements to provide increased power capacity to the manufacturing and warehouse facility in Grantsville, Utah. The Company prepaid $0.5 million related to the improvements and agreed to a minimum contract billing amount over a 15-year period based on regulated rate schedules and changes in actual demand during the billing period. The agreement includes an early termination clause that requires the Company to pay a pro-rata termination charge if the Company terminates within the first 10 years of the service start date. The early termination charge is $1.3 million and is reduced annually on a straight-line basis over the 10-year period. During 2018, the utility improvements construction was completed and were made available to the Company. As of June 30, 2019, the Company expects to fulfill its commitments under the agreement in the normal course of business, and as such, no liability has been recorded.

Operating Leases

The Company leases various office and warehouse facilities under non-cancellable operating leases. Office and manufacturing space for its headquarters facility in Alpine, Utah is leased from TNT Holdings an entity that prior to the Business Combination was under common control with InnoHold, which was the majority and controlling owner of Purple LLC. The lease was originally entered into in 2010, but in October 2017 was amended with a lease term of 10 years that expires in September 2027 with an early-out clause without penalties after 5 years and includes an option for a 5-year extension. The Company leases a facility located in Grantsville, Utah for use primarily as manufacturing and warehouse space. The lease was entered into in August 2016 with a lease term of 66 months and expires in January 2022 with two 5-year extension options. The Company also leases another facility in Grantsville, Utah for use as temporary warehouse space. The lease was entered into in May 2019 with a lease term of 4 months and expires in August 2019 with a holdover option on a month to month basis. The Company entered into a lease for its Company outlet store in Salt Lake City, UT. The lease was entered into in June 2019 with a lease term of 36 months with one 5-year extension option. The Company has also entered into a lease for Corporate office space in Lehi, Utah. The lease was entered into in June 2019 with a lease term of 10 years with an option to early terminate after the eighty-fourth calendar month and an option for two 5-year extensions. The Company will be moving its headquarters into the building before the end of the first quarter 2020. The Company recognizes rent expense on lease payments, including those with rent escalations and rent free periods, on a straight-line basis over the expected lease term. During the three months ended June 30, 2019 and 2018, the Company recognized rent expense in the amount of $0.9 million and $0.9 million, respectively. During the six months ended June 30, 2019 and 2018, the Company recognized rent expense in the amount of $1.8 million and $1.8 million, respectively.

Purchase Agreement

In February 2018, the Company entered into a purchase contract with a supplier of mineral oil that includes a minimum purchase commitment over a two-year period. In April 2019, the contract was amended to provide for a minimum purchase commitment over a four-year period ending in April 2023. In exchange, the Company is offered a further discount per gallon. As of June 30, 2019, approximately $21.2 million remains on the purchase contract. Based on current usage rates, the Company expects to fulfill its commitments under the agreement in the normal course of business, and as such, no liability has been recorded.

Indemnification Obligations

From time to time, the Company enters into contracts that contingently require it to indemnify parties against claims. These contracts primarily relate to provisions in the Company's services agreements with related parties that may require the Company to indemnify the related parties against services rendered; and certain agreements with the Company's officers and directors under which the Company may be required to indemnify such persons for liabilities. In connection with the Closing, to secure the payment of a certain portion of specified post-closing indemnification rights of the Company under the Merger Agreement, 0.5 million shares of Class B Stock and 0.5 million Class B Units otherwise issuable to InnoHold as equity consideration have been deposited in an escrow account for up to three years from the Closing pursuant to a contingency escrow agreement. As of June 30, 2019, 0.5 million shares of Class B Stock and 0.5 million Class B Units otherwise issuable to InnoHold as equity consideration remain deposited in an escrow account and no indemnification claims have been made.

Rights of Securities Holders

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

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

Purple LLC Class B Unit Exchange Right.

On February 2, 2018, in connection with the Closing, the Company entered into an exchange agreement with Purple LLC and InnoHold (the "Exchange Agreement"), which provides for the exchange of Purple LLC Class B Units (the "Class B Units") and shares of Class B Stock (together with an equal number of Class B Units, the "Paired Securities") for, at the Company's option, either (A) shares of Class A Stock at an initial exchange ratio equal to one Paired Security for one share of Class A Stock or (B) a cash payment equal to the product of the average of the volume-weighted closing price of one share of Class A Stock for the ten trading days immediately prior to the date InnoHold delivers a notice of exchange multiplied by the number of Paired Securities being exchanged.

Holders of Class B Units may elect to exchange all or any portion of their Class B Units (together with an equal number of shares of Class B Stock) as described above by delivering a notice to Purple LLC. However, the Class B Units (together with an equal number of shares of Class B Stock) may not be exchanged during a lock-up period ending on the earliest of (x) the one year anniversary of the Closing, (y) the date on which the last sale price of the Class A Stock (or any successor publicly traded common equity security) equals or exceeds $12.00 per share (as equitably adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after the Closing or (z) the date on which the Company consummates a liquidation, merger, share exchange or other similar transaction with an unaffiliated third party that results in all of the Company's stockholders having the right to exchange either equity holdings in the Company for cash, securities or other property. The exchange will occur automatically upon the occurrence of a change of control or sale of substantially all of the assets of the Company or Purple LLC. The lock-up period ended on the one-year anniversary of the Closing, as set forth above, on February 2, 2019.

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

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

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

Maintenance of One-to-One Ratios.

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

Non-Income Related Taxes

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

Legal Proceedings

On January 9, 2018, Chris Knudsen, a former consultant to the company, filed a complaint against Purple LLC in the Fourth Judicial District Court of the State of Utah. Mr. Knudsen alleges that before his consulting contract ended in March 2016, he and Purple LLC reached an oral agreement under which Mr. Knudsen would become the company's chief executive officer on April 1, 2016, and under which Mr. Knudsen would immediately receive a 4% equity interest in Purple LLC. Mr. Knudsen alleges that Purple LLC's failure to make him the company's chief executive officer on April 1, 2016, constitutes a breach of that oral agreement, and Mr. Knudsen claims damages of $12 to $25 million, based on his calculation of the value of a 4% interest in Purple LLC. In the alternative, Mr. Knudsen seeks declaratory relief that he owns the 4% equity position in Purple LLC. Purple LLC denies that it reached an agreement with Mr. Knudsen for him to assume the role of chief executive officer and denies that it reached an agreement to provide equity to Mr. Knudsen. Purple LLC believes that Mr. Knudsen's lawsuit is without merit and is vigorously contesting it. The Company maintains insurance to defend against claims of this nature, which management believes is adequate to cover the cost of its defense of Mr. Knudsen's claims. Fact discovery in this matter has been completed and expert discovery is scheduled to be completed in September 2019.

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.

13. Stockholders' Equity

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

Class A Common Stock

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

In connection with the Business Combination, all of GPAC's issued and outstanding shares of common stock were renamed to Class A Stock. The Company distributed approximately $90.6 million of the cash proceeds from the Company's initial public offering to redeem approximately 9.0 million shares of Class A Stock, which shares were then cancelled by GPAC. In addition, the Sponsor agreed to forfeit an aggregate of 1.3 million of the 3.9 million shares of common stock it received at GPAC's formation (the "Founder Shares"), which forfeited shares were then cancelled by the Company. GPAC issued an additional 4.0 million shares of Class A Stock to investors as part of a private investment in public equity (PIPE financing). At June 30, 2019, 9.8 million shares of Class A Stock were outstanding.

The Founder Shares are identical to the shares of Class A Stock sold in GPAC's initial public offering, and holders of these shares have the same stockholder rights as public stockholders, except that the Founder Shares are subject to certain transfer and vesting restrictions described below.

The Sponsor agreed not to transfer, assign or sell, except to certain permitted transferees, including to its members or in connection with a business combination, any of its Founder Shares until either one year passed after the completion of the Business Combination or certain other events occurred. Upon its own terms this restriction expired on February 2, 2019.

In accordance with the terms of the Business Combination, the Sponsor agreed to subject 0.6 million shares of Class A Stock owned by it to vesting and forfeiture. The shares of Class A Stock subject to vesting will be forfeited eight years from the Closing, unless any of the following events (each a "Triggering Event") occurs prior to that time:(i) the closing price of the Class A Stock on the principal exchange on which it is listed is at or above $12.50 for 20 trading days over a thirty trading day period (subject to certain adjustments), (ii) a change of control of the Company, (iii) a "going private" transaction by the Company pursuant to Rule 13e-3 under the Exchange Act or such other time as the Company ceases to be subject to the reporting obligations under Section 13 or 15(d) of the Exchange Act, or (iv) the time that the Company's Class A Stock ceases to be listed on a national securities exchange. Such shares of Class A Stock will no longer be subject to forfeiture upon the occurrence of a Triggering event. In addition, in connection with the Coliseum Private Placement, the Sponsor assigned 1.3 million shares of Class A Stock of which 0.6 million shares are subject to the same vesting and forfeiture conditions described above. Further, the Sponsor had distributed the remaining Founder Shares to its members during the first quarter of 2018. Such distributed Founder Shares remain subject to the vesting and forfeiture conditions described above.

Class B Common Stock

The Company has 90.0 million shares of Class B Stock authorized at a par value of $0.0001 per share. Holders of the Company's Class B Stock will vote together as a single class with holders of the Company's Class A Stock on all matters properly submitted to a vote of the stockholders. Shares of Class B Stock may be issued only to InnoHold, their respective successors and assigns, as well as any permitted transferees of InnoHold. A holder of Class B Stock may transfer shares of Class B Stock to any transferee (other than the Company) only if such holder also simultaneously transfers an equal number of such holder's Purple LLC Class B units to such transferee in compliance with the Second Purple LLC Agreement. Additionally, InnoHold agreed to restrictions on certain transfers of the Company's securities which include, subject to certain exceptions, restrictions on the transfer of their common stock from the date of the Business Combination until the earliest of the one-year anniversary of the date of the Business Combination or the occurrence of certain other events. Upon its own terms this transfer restriction expired on February 2, 2019. The Class B Stock is not entitled to receive dividends, if declared by the Board, or to receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock.

In connection with the Business Combination, approximately 44.1 million shares of Series B Stock were issued to InnoHold as part of the equity consideration. At June 30, 2019, 44.1 million shares of Class B Stock were outstanding.

Public and Sponsor Warrants

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

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

From the time of GPAC's IPO up to the Business Combination with Purple LLC, GPAC had 28.3 million warrants outstanding. At June 30, 2019, all 28.3 million warrants remain outstanding.

Incremental Loan Warrants

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

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

In the event of a "fundamental transaction" as defined in the warrant agreement, the holder will have the right to purchase and receive the same kind and amount of consideration receivable by the stockholders of the Company upon the occurrence of such fundamental transaction. The warrant agreement requires the Company to cause the surviving company in a fundamental transaction, to assume the obligations of the Company under the Incremental Loan Warrants. In addition, a clause in the Incremental Loan Warrant Agreement states, upon the occurrence of a fundamental transaction, that the holders of the Incremental Loan Warrants may elect to either (i) have the exercise price of the warrant reduced by the Black-Scholes value of the Incremental Loan Warrants (as set forth in the Incremental Loan Warrants Agreement) or (ii) cause the Company or its successor to repurchase all or a portion of the Incremental Loan Warrants at the Black-Scholes value (as set forth in the Incremental Loan Warrants). As a result of this clause, the Incremental Loan Warrants embody an obligation to repurchase the Company's equity shares, or is indexed to such an obligation, and may require the Company to settle the obligation by transferring assets. As such, the Incremental Loan Warrants are classified as liabilities under ASC 480 - *Distinguishing Liabilities from Equity* .

Preferred Stock

The Company has 5.0 million shares of preferred stock authorized at a par value of $0.0001 per share. The preferred stock may be issued from time to time in one or more series. The directors are expressly authorized to provide for the issuance of shares of the preferred stock in one or more series and to establish from time to time the number of shares to be included in each such series and to fix the voting rights, designations and other special rights or restrictions. At June 30, 2019, there were no shares of preferred stock outstanding.

Noncontrolling Interest

NCI represents the membership interest held in Purple LLC by holders other than the Company. On February 2, 2018, upon the close of the Business Combination, and at June 30, 2019, InnoHold's and other Purple LLC Class B Unit holders' combined NCI percentage in Purple LLC was approximately 82%. The Company has consolidated the financial position and results of operations of Purple LLC and reflected the proportionate interest held by all such Purple LLC Class B Unit holders as NCI.

14. Income Taxes

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

As of June 30, 2019, the Company has a full valuation allowance on its net deferred tax assets. In assessing the realizability of deferred tax assets, including the deferred tax assets recorded in connection with the Business Combination and generated under the Tax Receivable Agreement described below, management determined that it was more likely than not that its net deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible and consideration of tax-planning strategies. Considering these factors, a valuation allowance was recorded in the year ended December 31, 2018, and the Company continues to be in a full valuation allowance position for the period ended June 30, 2019.

The Company currently estimates its annual effective income tax rate to be 0%. The effective tax rate for Purple Inc. differs from the federal rate of 21% primarily due to (1) a full valuation allowance, (2) NCI in Purple LLC that is allocated to InnoHold and (3) various other items such as limitations on meals and entertainment, certain stock compensation and other costs.

No current income tax liability was recorded as a result of the Business Combination since its legal form was treated as a purchase of interests or assets in a non-taxable pass through partnership for U.S. federal income tax purposes such that the Company did not assume an existing tax obligation on the purchased assets. The excess of the Company's tax basis in its investment in Purple LLC over its book carrying value in this investment resulted in a deferred tax asset that may reduce certain income tax payments in the future. This deferred tax asset encompasses the basis increase in the assets of Purple LLC as a result of the Business Combination and Tax Receivable Agreement as well as the Company's share of Purple LLC's unrecognized temporary timing differences between book and tax. For the year ended December 31, 2018, the Company recorded a deferred tax asset of $9.5 million related to this initial outside basis difference, with an offsetting effect recorded in additional paid in capital. As noted above, due to uncertainties relating to the realization of the outside basis difference deferred tax asset, the Company recorded a full valuation allowance in 2018, with an offsetting effect recorded in additional paid in capital, such that the net effect to additional paid in capital was zero.

In connection with the Business Combination the Company entered into the Tax Receivable Agreement with the NCI holder, 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 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 Tax Receivable Agreement. As realization of the tax benefit related to the Business Combination is not currently deemed probable, no liability under the Tax Receivable Agreement has been recognized in the accompanying condensed consolidated balance sheet.

As InnoHold and its assignees of Paired Securities 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 (a "TRA 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 TRA Liability to be recorded will depend on the price of the Company's Class A Stock at the time of the relevant redemption or exchange. Due to the uncertainty surrounding the amount and timing of future redemptions of Paired Securities and uncertainty about the ability of the Company to realize net cash savings, and other factors, the Company currently does not believe it is likely that tax benefits from an exchange of Paired Securities is likely to result in net cash savings and further does not believe it is appropriate to record a TRA Liability related to past and future exchanges until such time that the Company believes that the associated tax benefits are more-likely-than-not to result in net cash savings.

The Company is treated as acquiring historical net deferred tax assets of GPAC of approximately $0.3 million in the Business Combination. These deferred tax assets, including those to be recorded in connection with the Business Combination, the Tax Receivable Agreement and for net operating loss carryforwards generated in 2019, are offset by a valuation allowance such that no net deferred tax assets are presently recorded on the financial statements, as the Company does not presently believe that the deferred tax assets are more likely than not realizable.

The effects of uncertain tax positions are recognized in the condensed consolidated financial statements if these positions meet a "more-likely-than-not" threshold. For those uncertain tax positions that are recognized in the condensed 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. As of June 30, 2019, no uncertain tax positions were recognized as liabilities in the condensed consolidated financial statements.

15. Net Loss Per Common Share

The Business Combination was structured similar to a reverse recapitalization by which the Company issued stock for the net assets of Purple LLC accompanied by a recapitalization. Earnings per share has been recast for all historical periods to reflect the Company's capital structure of all comparative periods.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Numerator:				
Net loss attributable to Purple Innovation, Inc.	$ (1,338)	$ (1,004)	$ (1,468)	$ (2,554)
Denominator:				
Weighted average shares—basic and diluted	8,457	8,410	8,447	8,399
Net loss per common share:				
Basic	$ (0.16)	$ (0.12)	$ (0.17)	$ (0.30)
Diluted	$ (0.16)	$ (0.12)	$ (0.17)	$ (0.30)

For the three and six months ended June 30, 2019, the Company excluded 1.3 million shares of issued Class A common stock subject to vesting and 18.1 million shares of common stock issuable upon conversion of certain Company warrants and stock options as the effect was anti-dilutive. For the three and six months ended June 30, 2018, the Company excluded 1.3 million shares of issued common stock subject to vesting and 14.2 million shares of common stock issuable upon conversion of the Company's warrants as the effect was anti-dilutive.

16. Equity Compensation Plans

2017 Equity Incentive Plan

The Purple Innovation, Inc. 2017 Equity Incentive Plan (the "2017 Incentive Plan") provides for grants of stock options, stock appreciation rights, restricted stock and other stock-based awards. Directors, officers and other employees and subsidiaries and affiliates, as well as others performing consulting or advisory services for the Company and its subsidiaries, will be eligible for grants under the 2017 Incentive Plan. The aggregate number of shares of Common Stock which may be issued or used for reference purposes under the 2017 Incentive Plan or with respect to which awards may be granted may not exceed 4.1 million shares. As of June 30, 2019, approximately 3.2 million shares remain available under the 2017 Incentive Plan.

Class A Common Stock Awards

In May 2019, the Company granted stock awards under the Company's 2017 Equity Incentive Plan to the independent directors on the Board. The stock awards vested immediately, and for the three and six months ended June 30, 2019, the Company recognized $0.3 million in expense which represents the fair value of the stock award on the grant date.

In May 2019, the Company granted a restricted stock award to Joseph B. Megibow, the Company's Chief Executive Officer (the "CEO") pursuant to the terms of his employment agreement. The restricted stock award is for 0.1 million shares and has certain vesting conditions, including vesting on the earlier of a change in control or the satisfaction of all three specific service and market conditions. Such conditions require: (i) the CEO to stay employed as CEO through September 30, 2021, unless terminated without cause; (ii) the CEO to retain certain shares of common stock owned at the time of the grant through September 30, 2021; and (iii) the common stock of the Company to trade above $10 a share for any twenty of thirty consecutive trading days during the year ended March 31, 2022. Accordingly, the earliest the three vesting conditions could all be met is at some point during the year ended March 31, 2022. As this award includes a market vesting condition, the estimated fair value of the restricted stock is measured on the grant date and incorporates the probability of vesting occurring. Such fair value is recognized over the derived service period (as determined by the valuation model) on a straight-line basis, with such recognition occurring whether the instrument ultimately vests or not. The Company determined the fair value of the restricted stock on the grant date to be $0.2 million and the derived service period to be 2.58 years using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model with the following assumptions:

Trading price of common stock on measurement date	$ 6.56
Risk free interest rate	1.9%
Expected life in years	3.0
Expected volatility	36.5%
Expected dividend yield	—

In May 2018, the Company granted stock awards under the Company's 2017 Equity Incentive Plan to the independent directors on the Board. The stock awards vested immediately, and for the three and six months ended June 30, 2018, the Company recognized $0.3 million in expense which represents the fair value of the stock award on the grant date.

Employee Stock Options

During the six months ended June 30, 2019, the Company granted 0.8 million stock options under the Company's 2017 Equity Incentive Plan to certain management of the Company. The stock options have exercise prices that range from $5.75 to $6.65 per option. The stock options expire in five years and vest over a four-year period. The estimated fair value of the stock options, less expected forfeitures, is amortized over the options vesting period on a straight-line basis. The Company determined the fair value of the 0.8 million options granted during the six months ended June 30, 2019 to be $1.5 million which will be expensed over the vesting period of four years.

During the six months ended June 30, 2019, 0.3 million unvested stock options were forfeited by Mark Watkins, the former Chief Financial Officer of the Company, upon his resignation and departure from the Company. As the Chief Financial Officer, Mr. Watkins was not permitted to exercise and sell all of his 0.1 million vested options during the limited 90-day exercise time period under the terms of his option grant. The Company entered into an agreement whereby the Company paid Mr. Watkins a settlement amount equal to the difference between the closing price of the stock on the date of the settlement and the exercise strike price of $5.95. The Company paid Mr. Watkins $0.1 million and cancelled his vested stock options.

The following are the assumptions used in calculating the fair value of the total stock options granted during the six months ended June 30, 2019 using the Black-Scholes method:

Fair market value	$5.75 - $6.65
Exercise price	$5.75 - $6.65
Risk free interest rate	2.09% - 2.50 %
Expected term in years	3.47 - 3.58
Expected volatility	37.1% - 37.3 %
Expected dividend yield	—

The following table summarizes the Company's total stock option activity for the six months ended June 30, 2019:

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Intrinsic Value $
As of June 30, 2019:				
Options outstanding as of January 1, 2019	933	$ 5.96	4.8	$ —
Granted	809	6.31	—	—
Exercised	—	—	—	—
Forfeited/cancelled	(395)	5.97	—	—
Options outstanding as of June 30, 2019	1,347	6.17	4.6	786

Outstanding and exercisable stock options as of June 30, 2019 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
$ 5.75	250	4.64	—	$ —	$ —
5.95	538	4.25	—	—	—
6.51	359	4.90	—	—	—
6.65	200	4.86	—	—	—

The estimated fair value of the Company stock options, less expected forfeitures, is amortized over the options vesting period on the straight-line basis. The Company recognized $0.1 million and $0.2 million in stock-based compensation expenses related to stock options during the three and six months ended June 30, 2019, respectively. There were no stock options awarded or outstanding as of June 30, 2018.

As of June 30, 2019, there was $2.0 million of total unrecognized compensation cost with a remaining recognition period of 3.5 years.

InnoHold Incentive Units

In January 2017, pursuant to the 2016 Equity Incentive Plan approved by InnoHold and Purple LLC that authorized the issuance of 12.0 million incentive units, Purple LLC granted 11.3 million incentive units to Purple Team LLC, an entity for the benefit of certain employees who were participants in that plan.

In conjunction with the Business Combination, Purple Team LLC was merged into InnoHold with InnoHold being the surviving entity and the Purple Team LLC incentive units were cancelled and new incentive units were issued by InnoHold under its own limited liability company agreement (the "InnoHold Agreement"), which was considered a modification for accounting purposes. Under the revised terms of the incentive units granted under the InnoHold Agreement, the incentive unit holders were only eligible to participate in InnoHold's distributions, if any, after the distribution threshold of approximately $135.0 million is met and in accordance with the same vesting schedule that had existed at the time of the initial grant.

On February 8, 2019, InnoHold initiated a tender offer to each of these incentive unit holders, some of which are current employees of Purple LLC, to distribute to each a pro rata number of the Paired Securities held by InnoHold in exchange for the cancellation of their ownership interests in InnoHold. All InnoHold incentive unit holders accepted the offer, and the terms and distribution of each transaction were finalized and closed on June 25, 2019. As of the closing, those incentive unit holders were potentially entitled to receive, based on their pro rata holdings of InnoHold Class B Units, a portion of 2.5 million shares of Paired Securities held by InnoHold, of which a total of 1.7 million Paired Securities were distributed at the closing and the remaining 0.8 million may be distributed in the future. The potential distribution by InnoHold of the remaining Paired Securities has no impact upon the eventual cancellation of all their ownership interest in InnoHold. The distribution by InnoHold to current employees of Purple LLC as of the distribution date resulted in the recognition of non-cash stock compensation expense for Purple LLC in the amount of $6.3 million which represents the fair value of the Paired Securities as of the distribution date of June 25, 2019. These transactions are not dilutive to any stockholder holding or having rights to purchase the Company's Class A Common Stock.

The following table summarizes the total incentive unit activity granted first by Purple Team LLC and then continued through InnoHold for the benefit of the Company:

(in thousands)	Incentive Units
As of June 30, 2019	
Incentive units outstanding as of January 1, 2019	7
Granted	—
Exercised	—
Forfeited/Cancelled	(7)
Incentive units outstanding as of June 30, 2019	0
Incentive units vested as of June 30, 2019	0

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 the distribution by InnoHold of Paired Securities.

(in thousands)	Three Months Ended June 30,		Six Months Ended June 30,	
Non-Cash Stock Compensation	**2019**	**2018**	**2019**	**2018**
Cost of revenues	$ 453	$ —	$ 465	$ —
Marketing and sales	2,883	—	2,883	—
General and administrative	2,881	313	2,942	313
Research and development	516	—	516	—
Total non-cash stock compensation	$ 6,733	$ 313	$ 6,806	$ 313

17. Employee Retirement Plan

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

18. Subsequent Events

In July 2019, 0.2 million shares of the remaining Paired Securities described above were distributed by InnoHold and 0.1 million Paired Securities were exchanged for shares of Class A Common Stock.

During August 2019, we completed construction and successful testing of the Company's fifth proprietary Mattress Max machine with similar design and capabilities to the existing Mattress Max machines already in operation. All construction in process costs associated with the development of this equipment will be moved to in-service and depreciation will begin in the third quarter of 2019.

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

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

FORWARD-LOOKING STATEMENTS

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

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

We caution and advise readers that these statements are based on assumptions that may not be realized and involve risks and uncertainties that could cause actual results to differ materially from the expectations and beliefs contained herein. For a summary of these risks, see the risk factors included in the "Risk Factors" section in this Quarterly Report and in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 14, 2019.

Introductory Note

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

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

On January 28, 2019, Purple LLC entered into the First Amendment with the Lenders which amends the Credit Agreement. In the First Amendment, Purple LLC agreed to enter into the Amended and Restated Credit Agreement, under which the Lenders agreed to provide an incremental loan of $10.0 million such that the total amount of principal indebtedness provided to Purple LLC was increased to $35.0 million. A stockholder meeting was held on February 25, 2019 at which time a majority of non-interested stockholders voted in favor of this transaction. The Amended and Restated Credit Agreement, and each of the related documents, was accordingly closed and this incremental loan was funded on February 26, 2019. In addition, the Company issued to the Lenders warrants to purchase 2.6 million shares of the Company's Class A Stock at a price of $5.74 per share, subject to certain adjustments.

On February 8, 2019, InnoHold initiated a tender offer to each of these incentive unit holders, some of which are current employees of Purple LLC, to distribute to each a pro rata number of the Paired Securities held by InnoHold in exchange for the cancellation of their ownership interests in InnoHold. All InnoHold incentive unit holders accepted the offer, and the terms and distribution of each transaction were finalized and closed on June 25, 2019. As of the closing, those incentive unit holders were potentially entitled to receive, based on their pro rata holdings of InnoHold Class B Units, a portion of 2.5 million shares of Paired Securities held by InnoHold, of which a total of 1.7 million Paired Securities were distributed at the closing and the remaining 0.8 million may be distributed in the future. The potential distribution by InnoHold of the remaining Paired Securities has no impact upon the eventual cancellation of all their ownership interest in InnoHold. The distribution by InnoHold to current employees of Purple LLC as of the distribution date resulted in the recognition of non-cash stock compensation expense for Purple LLC in the amount of $6.3 million which represents the fair value of the Paired Securities as of the distribution date of June 25, 2019. These transactions are not dilutive to any stockholder holding or having rights to purchase the Company's Class A Common Stock.

Overview of Our Business

The Company is a comfort innovation company that designs and manufactures products to improve how people live. We design and manufacture a range of comfort technology products, including mattresses, pillows, and cushions, using our patented Hyper-Elastic Polymer technology designed to improve comfort. We market and sell our products through our direct-to-consumer online channel, traditional wholesale partners, third-party online retailers and our Company outlet store.

Operating Results for the Three Months Ended June 30, 2019 and 2018

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

	Three Months Ended June 30,			
	2019	% of Net Revenues	2018	% of Net Revenues
Revenues, net	$ 103,004	100.0%	$ 75,760	100.0%
Cost of revenues	60,221	58.5	43,938	58.0
Gross profit	42,783	41.5	31,822	42.0
Operating expenses:				
Marketing and sales	35,967	34.9	30,723	40.6
General and administrative	7,933	7.7	5,213	6.9
Research and development	1,244	1.2	555	0.7
Total operating expenses	45,144	43.8	36,491	48.2
Operating loss	(2,361)	(2.3)	(4,669)	(6.2)
Interest expense	1,301	1.3	971	1.3
Other income, net	(6)	(0.0)	(82)	(0.1)
Loss on extinguishment of debt	—	—	—	—
Change in fair value – warrant liabilities	3,685	3.6	—	—
Net loss	(7,341)	(7.1)	(5,558)	(7.3)
Net loss attributable to noncontrolling interest	(6,003)	(5.8)	(4,554)	(6.0)
Net loss attributable to Purple Innovation, Inc.	$ (1,338)	(1.3)	$ (1,004)	(1.3)

Revenue

Total net revenue increased $27.2 million, or 36.0%, to $103.0 million for the three months ended June 30, 2019 from $75.8 million for the three months ended June 30, 2018 due mainly to a $27.4 million increase in bedding sales partially offset by a $0.2 million decrease in other products. The increase in bedding sales was primarily attributable to an increase in wholesale revenue driven by an increase of over 1,000 stores as compared to the same period last year.

Cost of Revenues

The cost of revenues increased $16.3 million, or 37.1%, to $60.2 million for the three months ended June 30, 2019 from $43.9 million for the three months ended June 30, 2018. The increase is primarily due to a proportionate increase in direct materials, labor and overhead related to the increased mattress sales and non-cash stock compensation of $0.5 million. The gross profit percentage decreased 0.5% of net revenues to 41.5% for the three months ended June 30, 2019 from 42.0% for the three months ended June 30, 2018. The decrease was primarily driven by a shift in sales mix to more sales with wholesale pricing which was partially offset by efficiencies in operations and logistics.

Marketing and Sales

Marketing and sales expenses increased $5.2 million, or 17.1%, to $36.0 million for the three months ended June 30, 2019 from $30.7 million for the three months ended June 30, 2018. The increase is primarily due to added resources and infrastructure to drive increased sales and non-cash stock compensation of $2.9 million. The overall marketing and sales expense as a percentage of net revenue decreased to 34.9% for the three months ended June 30, 2019 from 40.6% for the three months ended June 30, 2018 due to efforts to improve the efficiency of marketing spend for the revenue generated.

General and Administrative

General and administrative expenses increased $2.7 million, or 52.2%, to $7.9 million for the three months ended June 30, 2019 from $5.2 million for the three months ended June 30, 2018. The increase was primarily due to non-cash stock compensation of $2.6 million.

Research and Development

Research and development costs increased $0.7 million, or 124.1%, to $1.2 million for the three months ended June 30, 2019 from $0.6 million for the three months ended June 30, 2018. The increase is primarily due to non-cash stock compensation of $0.5 million and increases in salaries and wages as we added resources for new product innovation.

Operating loss

Operating loss was $2.4 million for the three months ended June 30, 2019, a decrease of $2.3 million from an operating loss of $4.7 million for the three months ended June 30, 2018. The decrease was primarily due to higher revenues than the prior year at a consistent margin rate and lower marketing spend as a percentage of net revenue in 2019 partially offset by $6.4 million in non-cash stock compensation.

Interest Expense

Interest expense increased $0.3 million, or 34.0%, to $1.3 million for the three months ended June 30, 2019 from $1.0 million for the three months ended June 30, 2018. The increase is due primarily to the additional $10.0 million funds borrowed in February 2019 pursuant to the Amended and Restated Credit Agreement as well as interest added to the outstanding loan balance as allowed by the Agreement. The outstanding loan balance was $37.8 million as of June 30, 2019 and $26.6 million as of December 31, 2018.

Change in Fair Value – Warrant Liabilities

The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement are classified as liabilities and recorded at fair value on the date of the transaction and subsequently re-measured to fair value at each reporting date with changes in the fair value included in earnings. The change in fair value from the date of the transaction resulted in a non-cash loss in the amount of $3.7 million recorded in earnings for the three months ended June 30, 2019 due mainly to the increase in stock price over the previous quarter.

Noncontrolling Interest

As a result of the Business Combination in 2018, we attribute net income or loss to the Class B units in Purple LLC, owned by InnoHold and other Class B unit holders, as a noncontrolling interest at their ownership percentage. At June 30, 2019, this noncontrolling ownership percentage was approximately 82%.

Operating Results for the Six Months Ended June 30, 2019 and 2018

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

	Six Months Ended June 30,			
	2019	% of Net Revenues	2018	% of Net Revenues
Revenues, net	$ 186,652	100.0%	$ 136,528	100.0%
Cost of revenues	109,800	58.8	78,891	57.8
Gross profit	76,852	41.2	57,637	42.2
Operating expenses:				
Marketing and sales	59,984	32.1	52,768	38.6
General and administrative	12,498	6.7	12,066	8.8
Research and development	1,934	1.0	1,066	0.8
Total operating expenses	74,416	39.9	65,900	48.3
Operating income (loss)	2,436	1.3	(8,263)	(6.1)
Interest expense	2,445	1.3	1,673	1.2
Other (income) expense, net	(235)	(0.1)	(101)	(0.1)
Loss on extinguishment of debt	6,299	3.4	—	—
Change in fair value – warrant liabilities	1,988	1.1	—	—
Net loss	(8,061)	(4.3)	(9,835)	(7.2)
Net loss attributable to noncontrolling interest	(6,593)	(3.5)	(7,281)	(5.3)
Net loss attributable to Purple Innovation, Inc.	$ (1,468)	(0.8)	$ (2,554)	(1.9)

Revenue

Total net revenue increased $50.1 million, or 36.7%, to $186.7 million for the six months ended June 30, 2019 from $136.5 million for the six months ended June 30, 2018 due mainly to a $47.6 million increase in bedding sales. The increase in bedding sales was primarily attributable to an increase in wholesale revenue driven by an increase of over 1,500 stores as compared to the same period last year.

Cost of Revenues

The cost of revenues increased $30.9 million, or 39.2%, to $109.8 million for the six months ended June 30, 2019 from $78.9 million for the six months ended June 30, 2018. The increase is primarily due to a proportionate increase in direct materials, labor and overhead related to the increased mattress sales, a $1.0 million increase in freight costs due to third party "white-glove" delivery service and a $0.5 million increase in non-cash stock compensation. The gross profit percentage decreased by 1.0% of net revenues to 41.2% for the six months ended June 30, 2019 from 42.2% for the six months ended June 30, 2018. The decrease was primarily driven by a shift in sales mix to more sales with wholesale pricing which was partially offset by efficiencies in operations and logistics.

Marketing and Sales

Marketing and sales expenses increased $7.2 million, or 13.7%, to $60.0 million for the six months ended June 30, 2019 from $52.8 million for the six months ended June 30, 2018. The increase is primarily due to added resources and infrastructure to drive increased sales and $2.9 million in non-cash stock compensation. The overall marketing and sales expense as a percentage of net revenue decreased to 32.1% for the six months ended June 30, 2019 from 38.6% for the six months ended June 30, 2018 due to efforts to improve the efficiency of marketing spend for the revenue generated.

General and Administrative

General and administrative expenses increased $0.4 million, or 3.6%, to $12.5 million for the six months ended June 30, 2019 from $12.1 million for the six months ended June 30, 2018. The increase was primarily due to non-cash stock compensation expense of $2.6 million partially offset by lower costs in 2019 as compared to the high costs incurred in 2018 related to the Business Combination in February 2018.

Research and Development

Research and development costs increased $0.9 million, or 81.4%, to $1.9 million for the six months ended June 30, 2019 from $1.1 million for the six months ended June 30, 2018. The increase is primarily due to increases in salaries and wages as we added resources for new product innovation and $0.5 million in non-cash stock compensation.

Operating income (loss)

Operating income was $2.4 million for the six months ended June 30, 2019, an increase of $10.7 million from an operating loss of $8.3 million for the six months ended June 30, 2018. The change was primarily due to higher revenues than the prior year at a consistent margin rate and lower marketing spend and administrative costs as a percentage of net revenue in 2019 partially offset by a $6.5 million increase in non-cash stock compensation.

Interest Expense

Interest expense increased $0.8 million, or 46.1%, to $2.4 million for the six months ended June 30, 2019 from $1.7 million for the six months ended June 30, 2018. The increase is due primarily to the additional $10.0 million funds borrowed pursuant to the Amended and Restated Credit Agreement as well as $1.2 million in interest added to the outstanding loan balance as allowed in the Amended and Restated Credit Agreement. The outstanding loan balance was $37.8 million as of June 30, 2019 and $26.6 million as of December 31, 2018.

Loss on Extinguishment of Debt

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

Change in Fair Value – Warrant Liabilities

The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement are classified as liabilities and recorded at fair value on the date of the transaction and subsequently re-measured to fair value at each reporting date with changes in the fair value included in earnings. The change in fair value from the date of the transaction resulted in a non-cash loss in the amount of $2.0 million recorded in earnings for the six months ended June 30, 2019.

Noncontrolling Interest

As a result of the Business Combination in 2018, we attribute net income or loss to the Class B units in Purple LLC, owned by InnoHold and other Class B unit holders, as a noncontrolling interest at their ownership percentage. At June 30, 2019, this noncontrolling ownership percentage was approximately 82%.

Liquidity and Capital Resources

Our primary cash needs have historically consisted of working capital, capital expenditures, member distributions prior to the Business Combination and debt service. Our working capital needs depend upon the timing of cash receipts from sales, payments to vendors and others, changes in inventories, and capital and operating lease payment obligations. We had working capital of $17.7 million as of June 30, 2019, and we had negative working capital of $(0.9) million as of December 31, 2018. During the six months ended June 30, 2019, our accounts receivable increased by $14.6 million mainly due to an increase in our wholesale revenue and timing of promotions. In addition, our customer prepayments decreased $2.4 million as we recognized revenue due to the reduction of our direct-to-consumer shipment backlog at December 31, 2018 because of increased production. Our capital expenditures primarily relate to acquiring and maintaining manufacturing equipment. Our cash used for capital expenditures was $3.1 million for the six months ended June 30, 2019. We financed these capital expenditures through cash provided by operating activities and proceeds from the Amended and Restated Credit Agreement. We expect our capital expenditures for our facilities and equipment to be approximately $12 million in total during 2019. We believe that our cash flow from operations, together with other available sources of liquidity, including the additional cash we received and have access to under the Amended and Restated Credit Agreement, will be sufficient to fund anticipated operating expenses, growth initiatives and our other anticipated liquidity needs for the next twelve months, based on our current operating conditions. Actual amounts for capital expenditures or capital needed to fund operations could differ significantly from current expectations because of operating needs, growth needs, regulatory changes, other expenses, or other factors.

On January 28, 2019, Purple LLC entered into the First Amendment, which amended the Credit Agreement. In the First Amendment, Purple LLC agreed to enter into the Amended and Restated Credit Agreement. A stockholder meeting was held on February 25, 2019 at which time a majority of non-interested stockholders voted in favor of this transaction. Accordingly, the Amended and Restated Credit Agreement, and each related document, was closed and an incremental loan of $10.0 million was funded. On February 26, 2019, we received approximately $9.2 million in proceeds after debt issuance costs and fees. For additional information regarding our credit agreement with Coliseum, refer to Note 8 — *Long-Term Debt, Related Party* of our condensed consolidated financial statements.

Debt service for the six months ended June 30, 2019 totaled $2.4 million and consisted of interest paid-in-kind and with cash on the Amended and Restated Credit Agreement as well as principal and interest payments on certain capital leases.

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

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

We are required to make certain payments to InnoHold under the Tax Receivable Agreement, which payments may have a material adverse effect on our liquidity and capital resources. We are currently unable to anticipate the amount of these payments due to the unpredictable nature of several factors, including when we will have taxable income, the timing of exchanges, the market price of shares of Class A Stock at the time of the exchange, the extent to which such exchanges are taxable and the amount and timing of income.

Cash Flows for the Six Months Ended June 30, 2019 and 2018

The following summarizes our cash flows for the three months ended June 30, 2019 and 2018 as reported in our condensed consolidated statements of cash flows (in thousands):

	Six Months Ended June 30,	
	2019	**2018**
Net cash provided by (used in) operating activities	$ 2,149	$ (27,608)
Net cash used in investing activities	(3,257)	(7,085)
Net cash provided by financing activities	9,131	41,531
Net increase in cash	8,023	6,838
Cash, beginning of the period	12,232	3,593
Cash, end of the period	$ 20,255	$ 10,431

Six months ended June 30, 2019 compared to the six months ended June 30, 2018

Cash provided by operating activities was $2.1 million for the six months ended June 30, 2019, as compared to cash used in operating activities of $27.6 million during the six months ended June 30, 2018. This $29.8 million increase in cash provided by operations was primarily due to decreased operating costs, as evidenced by an increase of $17.6 million in cash operating income, and a decrease of $15.9 million of cash used to purchase inventories. In 2018 we were increasing inventory due to an expanded product line, growing demand for our product and the stocking of new models at third-party distribution centers for "white glove" delivery service. During the six months ended June 30, 2019, we achieved greater efficiencies with respect to our inventory planning and finished goods levels, compared to the same period in 2018. These increases in cash were partially offset by a $11.5 million decrease in cash provided as our accounts receivable balance increased due to the increase in wholesale revenue and timing of promotions and a $5.9 million decrease in cash provided from our customer prepayments as we were able to reduce our shipment backlog because of increased production.

Cash used in investing activities was $3.3 million for the six months ended June 30, 2019, a decrease of $3.8 million from cash used in investing activities of $7.1 million during the six months ended June 30, 2018 primarily due to large expenditures incurred in 2018 for a power upgrade and warehouse infrastructure, whole no such expenditures were made in 2019, in addition to an increased efficiency and utilization of existing equipment as well as the timing of investment in new equipment during the six months ended June 30, 2019.

Cash provided by financing activities was $9.1 million in the six months ended June 30, 2019, a decrease of $32.4 million from cash provided by financing of $41.5 million during the six months ended June 30, 2018. The decrease was primarily due to $49.9 million in funds provided to the Company as a result of the Business Combination in February 2018 partially offset by the $10.0 million in funds received in February 2019 pursuant to the Amended and Restated Credit Agreement and $8.0 million payment in 2018 to pay off and terminate our line of credit.

Critical Accounting Policies

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

Contractual Obligations

On June 10, 2019, the Company signed a Lease (the "Lease") with North Slope One, LLC for approximately 42,837 rentable square feet located at 4100 North Chapel Ridge Road in Lehi, Utah (the "Building"). The Company anticipates moving its corporate headquarters into the Building before the end of the first quarter 2020. The term of the Lease is from approximately December 2019 through November 2029, with the Company having an option to early terminate after the eighty-fourth calendar month. Under the Lease, the Company will pay a reduced basic monthly rent of $24,988 for the first seven months, followed by basic monthly rent of $96,383 for the next five months. Thereafter the basic monthly rent increases 2.5% per year to a maximum basic monthly rent of $120,372 for the final twelve months of the Lease in 2028-2029. The Lease provides for a tenant improvement allowance of $52 per usable square foot. The Lease also provides the Company with crown signage rights, a right of first refusal on other space, and an option to extend for two additional five-year periods.

Seasonality and Cyclicality

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

Available Information

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

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

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not Applicable.

ITEM 4. CONTROLS AND PROCEDURES

Prior to the completion of the Business Combination, Purple LLC was a private company with accounting personnel and other supervisory resources sufficient for its reporting requirements as a private company. Upon the Closing, the sole business conducted by the Company is the business conducted by Purple LLC. As a result of the Business Combination, the internal control over financial reporting utilized by Purple LLC prior to the Business Combination became the internal control over financial reporting of the Company. As an emerging growth company, we are exempt from the auditor attestation requirements with respect to internal control over financial reporting under Section 404(b) of the Sarbanes Oxley Act of 2002.

(a) Evaluation of Disclosure Controls and Procedures

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

Based on that evaluation, our CEO and our CFO concluded that our disclosure controls and procedures were not effective as of June 30, 2019 as a result of material weaknesses in our internal control over financial reporting disclosed below and as previously disclosed in our Current Report on Form 10-K filed March 14, 2019 and Form 10-Q filed May 7, 2019.

We have begun taking numerous steps and plans to remediate the underlying causes of the material weakness. The measures include the hiring and contracting of additional personnel and other supervisory resources to strengthen internal control over financial reporting, specifically in the areas of technical accounting and our month-end close processes. To date, certain personnel have been added in each of these specific areas and additional training of existing resources has taken place. In addition, we have also engaged third-party consultants to assist the company in enhancing risk assessment and monitoring controls to ensure that control activities are appropriately designed, implemented and operating effectively. We believe that the combination of these remediation activities will enable us to broaden the scope and quality of our controls relating to the oversight and review of our financial statements. However, these remediation efforts are still in process and have not yet been completed. A material weakness in internal control over financial reporting is a matter that may require an extended period to correct. We will continue to evaluate, design and implement policies and procedures to address these material weaknesses, including the enhancement of accounting personnel to adequately execute our accounting processes and address our internal control over financial reporting as a public company.

If our remedial measures are insufficient to address the material weaknesses, or if additional material weaknesses or significant deficiencies in our internal control are discovered or occur in the future, our financial statements may contain material misstatements and we could be required to restate our financial result which could lead to substantial additional costs for accounting and legal fees.

Previously Reported Material Weakness

In connection with the preparation of our annual financial statements for prior fiscal years, and continuing into the June 30, 2019 quarterly period, we identified material weaknesses in our internal control over financial reporting. While accounting for complex transactions, including the Incremental Loan transaction during the previous quarterly period, material weaknesses have been identified resulting in accounting adjustments. Other material weaknesses identified in prior fiscal periods have also resulted in adjustments in those periods to prepaid inventory and net inventory on the balance sheet, and cost of revenues within the statement of operations. The material weaknesses were primarily caused by the deficient design and operation of internal control processes, including appropriate management review of complex transactions.

As of December 31, 2018, we had not designed and implemented sufficient controls and processes around our accounting related analyses and reconciliations. As a result, we determined that we did not have adequate procedures and controls, to ensure that accurate financial statements could be prepared timely.

(b) Changes in Internal Controls Over Financial Reporting.

Other than the changes described above, there have been no changes in our internal control over financial reporting that occurred during the six months ended June 30, 2019 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The Company is from time to time involved in various claims, legal proceedings and complaints arising in the ordinary course of business. Please refer to Note 12 — *Commitments and Contingencies* to the condensed consolidated financial statements contained in this report and to Part I, Item 3 of our Annual Report on Form 10-K filed on March 14, 2019 for certain information regarding our legal proceedings. No additional legal proceedings have occurred following the date of our financial statements.

ITEM 1A. RISK FACTORS

Except as described below, there have been no material changes from the risk factors previously disclosed in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 14, 2019.

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

Our revenue growth may not be sustainable, and our percentage growth rates may decrease. Our revenue and operating profit growth depend on the continued growth of demand for our products, and our business is affected by general economic and business conditions worldwide. A softening of demand, whether caused by changes in customer confidence or preferences or a weakening of the U.S. or global economies, may result in decreased revenue or growth.

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

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

- our ability to attract new customers and the cost of acquiring new customers;
- our ability and the time required to develop new Mattress Max machines, develop new production lines, scale production capacity and appropriately train staff;
- the success of our wholesale and our Company showroom expansion efforts;
- our ability to have enough production capacity to meet customer demand;
- our ability to effectively manage increasing sales and marketing expenses;
- our access to sufficient capital resources and liquidity to fund the growth of our business;
- competition from the sublicensees of intellectual property licensed back to EdiZONE;
- our ability to offer products on favorable terms, manage inventory, fulfill orders and manage product returns;
- the introduction of competitive products, services, price decreases, or improvements;

- timing, effectiveness, and costs of expansion and upgrades of our systems and infrastructure;
- the success of our geographic and product line expansions, including but not limited to power requirements, labor needs, and ease of product distribution;
- the success of hiring, expeditiously training, and retaining engaged labor locally and worldwide;
- our ability to secure and retain superior global partners for specialized delivery services;
- the extent to which we use debt or equity financing, and the terms of any such financing for, our current operations and future growth;
- the outcomes of legal proceedings, claims, or governmental investigations or rulings, which may include significant monetary damages or injunctive relief and could have a material adverse impact on our operating results;
- the enforceability and validity of our intellectual property rights;
- our ability to accommodate variations in the mix of products we sell;
- variations in our level of product returns, as well as our methods of collecting product returns or exchanges;
- the extent to which we offer free shipping;
- the extent to which we invest in technology and content, manufacturing, fulfillment, and other expense categories;
- increases in the prices of materials used in the manufacturing of our products or the costs to produce our products, including but not limited to new or unanticipated tariffs;
- our ability to anticipate and prepare for disruptions to manufacturing;
- the extent to which operators of the networks between our customers and our websites successfully charge fees to grant our customers unimpaired and unconstrained access to our online services;
- our ability to collect amounts owed to us when they become due;
- the extent to which our internal network or website is affected by denial of service attacks, malicious unauthorized access, outages, and similar events;
- the extent to which our internal network is affected by spyware, viruses, phishing and other spam emails, intrusions, data theft, downtime, and similar events;
- our ability to manage the expenses associated with multiple facilities;
- our ability to secure attractive real estate locations for expansion with sustainable cost structures; and
- our ability to protect inventory assets from internal and external theft or damage.

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

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

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

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

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

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

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

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

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

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

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

The majority of our sales are made directly to consumers through our website or certain other e-commerce platforms. We have been expanding our business into the wholesale distribution channel through relationships with our wholesale partners but there can be no assurance that we will continue to experience success with our wholesale partners or that anticipated new locations will be successful.

We may be unsuccessful in generating sales through wholesale channels. We may extend credit terms in connection with such relationships and such relationships may expose us to the risk of unpaid or late paid invoices. In addition, we may provide fixtures to such partners that may be difficult to recover. We have limited experience in the wholesale channel, and our wholesale customers may not purchase our products in the volume we expect.

Profitability, if any, from sales to wholesale customers and new product offerings may be lower than from our direct-to-consumer model and current products, and we may not be successful enough in these newer activities to recoup our investments in them. If any of these issues were to arise, they could damage our reputation, limit our growth, and negatively affect our operating results.

We may be unsuccessful in opening any of our Company showrooms beyond the store we currently have at our headquarters in Alpine, Utah. and newly opened outlet store in Salt Lake City, Utah. We have limited experience in opening and operating our Company showrooms. Operating our Company showrooms includes additional risks. For example, we will incur expenses and accept obligations related to additional leases, insurance, distribution and delivery challenges, increased employee management, and new marketing challenges. If we are not successful in our efforts to profitably operate these new stores, our reputation and brand could be damaged, growth could be limited, and our business may be harmed.

In addition, offerings of new products through our direct-to-consumer platform, wholesale distribution channel and our Company showrooms may present new and difficult challenges, and we may be subject to claims if customers of these offerings experience service disruptions or failures or other quality issues. Expansion of sales channels may require the development of additional, differentiated products to avoid price and distribution conflicts between and within sales channels. Wholesale expansion increases our risk as our wholesale partners will require delaying payments to us on net terms ranging from a few days to 60 or more days. Our Company showroom expansion increases our risk for inventory shrinkage from destruction, theft, obsolescence and factors that render such inventory unusable or unsellable.

New products may come with the same warranty and return risks as mentioned above. New product offerings or expansion into new market channels or geographic regions may subject us to new or additional regulation, which would impose potentially significant compliance and distribution costs.

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

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

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

We have engaged in numerous related-party transactions involving controlling persons and officers of the Company, as well as with other entities affiliated with controlling persons. Several of these transactions were entered into prior to the Business Combination. For example, since 2010, we have leased our facilities in Alpine, Utah from TNT Holdings, which is owned by Tony Pearce and Terry Pearce. As we grow, and its needs change, we may need to negotiate a termination or modification of this lease. We have leased a new facility in Lehi, Utah and will be moving its headquarters into that building before the end of the first quarter 2020. We currently intend to continue to lease from TNT Holdings the building in Alpine, Utah and use it as its facility for research and development and video productions. Tony and Terry Pearce, either personally or through one or more of their other entities, also have tangible property located in this Alpine facility that has not been clearly identified and separated from our property, although we expect this tangible property to be either removed or identified and separated in 2019. Tony and Terry Pearce pay no rent or other compensation to us to store such property in our leased facility. While there is currently no dispute over the lease, and we do not anticipate a dispute, there could arise in the future a dispute between us and Tony and Terry Pearce over this lease for reasons not currently foreseeable.

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

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

Prior to the Business Combination, InnoHold, an entity owned by Terry and Tony Pearce and our controlling stockholder, also granted equity incentive awards in Purple LLC to certain key employees at that time. As a result of the structure of those awards being granted through a separate entity, the equity incentives were required, because of the structure of the Business Combination, to be exchanged for ownership units in InnoHold, to avoid those equity interests becoming of no value to the participants. Those participant's ownership interests had certain restrictions, including vesting requirements. These equity incentives granted to key employees prior to the Business Combination are forfeited to the extent the grant to an employee is not yet fully vested at the time that employee's employment is terminated. Before and since the Business Combination, all forfeitures occurring from departing employees have inured to the benefit of only the owners of InnoHold, and not all of our stockholders. This means that the forfeited equity did not increase our currently approved equity incentive pool. This pertains to but is not limited to the forfeitures resulting from the departures occurring after the Business Combination in 2018, including that of the former Chief Executive Officer, Chief Marketing Officer and Chief Brand Officer. Because the forfeited equity resulting from these departures prior to this distribution was held at InnoHold, that forfeited equity did not replenish our equity incentive pool and could not be used for current and future equity grants to those who have replaced and will replace these employees or for other purposes essential to the business. To avoid future forfeitures from inuring only to the benefit of InnoHold's owners, InnoHold distributed to the incentive participants their pro rata share of InnoHold's ownership of Class B Common Stock in Purple Inc. and Class B Units in Purple LLC, after which any forfeitures would inure to the benefit of all of our stockholders InnoHold has agreed to allow Purple LLC to distribute a limited number of additional paired shares of Class B Common Stock in Purple Inc. and Class B Units in Purple LLC up through May 25, 2020 which also will be subject to the same vesting requirements and, following the distribution, result in forfeitures inuring to the benefit of all shareholders. Our current equity incentive pool, as approved by the stockholders prior to the Business Combination in the 2017 Equity Incentive Plan, did not account for the departure, before this distribution by InnoHold, of such key employees who had existing equity grants through InnoHold, and there is a risk that we will have to seek approval from the Board and stockholders to refresh the equity incentive pool earlier than anticipated at the time of the Business Combination because of the unanticipated need to use shares from the existing pool to hire and retain replacements for the prior CEO, CMO and CBO and others. If the equity pool is not refreshed, there is a risk that we may not be able to hire and retain key employees. If the equity pool is refreshed with authorized shares of the Company that are issued in accordance with our 2017 Equity Incentive Plan, our stockholders will be diluted. Also, this distribution by InnoHold to the equity incentive participants has caused, and all future distributions InnoHold has allowed Purple LLC to complete will cause, us to incur administration expenses related to the distributions, management of the differing vesting schedules and compliance with their rights under the distribution agreements. In addition, the calculations of the distributive share and related income tax withholdings with respect to holders of InnoHold's Class B units, as well as the processes by which such distributions and withholdings are made, are highly complex. As a result, there is a risk that the recipients of such distributions or other third parties may claim that we have miscalculated the distribution or income tax withholding amounts. The cost of responding to such claims, including but not limited to the diversion of management's attention from our operations and defense or settlement costs, could negatively impact our operations and financial results.

In connection with the Business Combination, Purple LLC also entered into a Credit Agreement with the Lenders which was guaranteed by Purple Inc. The Lenders also are stockholders and warrant holders of the Company and appointed one director to serve on our Board, Adam Gray. Further, on February 26, 2019, the Amended and Restated Credit Agreement between Purple LLC and the Lenders thereto, and each of the related documents, including the issuance of additional warrants to the Lenders, was closed and an incremental loan was funded. The exercise of rights under this Amended and Restated Credit Agreement by the Lenders may create conflicts of interest between us and Mr. Gray.

See "Item 13. Certain Relationships and Related Transactions, and Director Independence" in our Annual Report on Form 10-K for the year ended December 31, 2018 for a further discussion of all related-party transactions between the Company and insiders.

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

We have two main manufacturing plants, which are located in Alpine, Utah and Grantsville, Utah. Although we could produce some of our products at both sites, we have consolidated production of certain products at one site. Therefore, the disruption of operations of our manufacturing facilities, particularly the facility where manufacturing has been consolidated, for a significant period of time, or even permanently, such as through the loss of the lease, may increase our costs of doing business and lead to delays in shipping our products to customers. Such delays could adversely affect our sales, customer satisfaction, profitability, cash flows and financial condition. Because both of our manufacturing plants are located within the same geographic region, regional economic downturns, natural disasters or other issues could potentially disrupt all of our manufacturing and other operating activities, which could adversely affect our business.

Failure to achieve and maintain a high level of product quality could negatively impact our sales, profitability, cash flows and financial condition.

Our products are highly differentiated from traditional mattresses, sheets, protectors, pillows and cushions. As a result, our products may be susceptible to failures that do not exist with traditional products. We also source some products from third parties whose products may have design or manufacturing defects of which we are not aware. Some of our suppliers of finished goods are in China and it may not be possible to obtain recourse for defects in products from those suppliers. We strive to ensure the quality of all finished goods we purchase, and we have discovered instances where quality of supplied products did not meet our high standards. Failure to discover defects or achieve and maintain acceptable quality standards could impact consumer acceptance of our products or could result in negative media and Internet reports or owner dissatisfaction that could negatively impact our brand image and sales levels.

In addition, a decline in product quality could result in an increase in return rates and a corresponding decrease in sales, or an increase in product warranty claims in excess of our warranty reserves. An unexpected increase in return rates or warranty claims could harm our sales, profitability, cash flows and financial condition.

We currently maintain FDA registrations on a select group of our cushions that are sold through third parties. We are subject to FDA registrations with respect to such products and there is a risk that an FDA inspection could lead to product recall of the FDA registered cushions. While the number of such products is small, a recall could result, among other things, in lost sales, diverted resources, potential harm to our reputation and increased customer service costs, which may have a material adverse effect on our financial condition.

As a consumer innovation company with differentiated products, we face an inherent risk of exposure to product liability claims if the use of our products is alleged to have resulted in personal injury or property damage. If any of our products proves to be defective, we may be required to recall or redesign such products. Such recalls of products can result in, among other things, lost sales, diverted resources, potential harm to our reputation and increased customer service costs, which could have a material adverse effect on our financial condition.

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

We are subject to warranty claims for our products, which could result in unexpected expense.

Our products carry warranties for defects in quality and workmanship. Historically, the amount for return of products, discounts provided to affected customers and cost for returns or warrant claims has been immaterial. However, we may experience significant expense as the result of future product quality issues, product recalls or product liability claims which may have a material adverse effect on our business. The actual costs of servicing future warranty claims may exceed our expectations and have a material adverse effect on our results of operations, financial condition and cash flows. Further, we may modify our warranties from time to time, and limitations to warranties intended to reduce the number of claims may result in customer dissatisfaction. The occurrence of any of the foregoing could have a material adverse effect on our business.

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

To successfully operate our business, we rely on commercial agreements and strategic relationships with suppliers, service providers and certain wholesale partners and customers. These arrangements can be complex and require substantial infrastructure capacity, personnel, and other resource commitments. Further, our business partners may have disruptions in their businesses or choose to no longer do business with us. We may not be able to implement, maintain, or develop the components of these commercial relationships. Moreover, we may not be able to enter into additional commercial relationships and strategic alliances on favorable terms or at all.

As our agreements terminate or relationships unwind, we may be unable to renew or replace these agreements on comparable terms, or at all. We may in the future enter into amendments on less favorable terms or encounter parties that have difficulty meeting their contractual obligations to us, which could adversely affect our operating results.

Our present and future services agreements, other commercial agreements, and strategic relationships create additional risks such as:

- disruption of our ongoing business, including loss of management focus on existing businesses;
- impairment of other relationships;
- variability in revenue and income from entering into, amending, or terminating such agreements or relationships; and
- difficulty integrating under the commercial agreements.

During 2018 we entered into arrangements with several new wholesale partners through which we sell certain of our products in their retail stores. We anticipate increasing the number of these partnerships. Also, we have agreed to exclusivity of certain products with some of our wholesale partners. Our relationships with our wholesale partners may not be profitable to us or may impose additional costs that we would not otherwise incur under our prior DTC-only operations. Our wholesale partners may experience their own business disruptions, including for example bankruptcy, that could affect their ability to continue to do business with us. Our wholesale partners may engage in conduct that could breach the exclusivity rights of other wholesale partners. Further, maintaining these relationships may require the commitment of significant amounts of time, financial resources and management attention, and may result in prohibitions on certain sales channels through exclusivity requirements, which may adversely affect other aspects of our business.

We have opened a Company outlet store and our business is expanding into our Company showrooms which, like our online e-commerce retail store, will compete with our wholesale partners for customers. Our relationships with our wholesale partners may be adversely affected by this competition. In our effort to make our products available to consumers in multiple retail channels, there is the risk that sales may diminish in other channels, costs may be incurred without an increase in overall sales and our wholesale partners may no longer carry our products. Managing an omni-channel distribution strategy, including the relationships with business partners in each channel, may require significant amounts of time, resources and attention which may adversely affect other aspects of our business.

We operate in the highly competitive mattress, pillow and cushion industries, and if we are unable to compete successfully, we may lose customers and our sales may decline.

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

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

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

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

A consolidation of the domestic market for foam may increase the prices for foam in the geographical market in which we purchase foam which could adversely affect our business.

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

Moreover, the U.S. Department of Commerce opened an antidumping investigation into whether mattresses imported from China are being sold into the United States at below fair market value. The investigation results from a petition filed by U.S. mattress manufacturers claiming that in recent years Chinese exporters have unfairly made large gains in market share by undercutting prices. On May 29, 2019 the U.S. Department of Commerce made a preliminary determination to impose import duties on Chinese exporters. If the antidumping duties do not result in the prevention of dumping of underpriced Chinese mattresses into the U.S. market, we could continue to experience a negative impact on our planned growth and the future results of operations.

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

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

Substantial and increasingly intense competition worldwide in e-commerce may harm our business.

Consumers who might purchase our products from us online have a wide variety of alternatives for purchasing competing mattresses, pillows and cushions, including traditional brick and mortar retailers (as well as the online and mobile operations of these traditional retailers), other online direct-to-consumer retailers and their related mobile offerings, online and offline classified services, online retailer platforms, such as Amazon.com, and other shopping channels, such as offline and online home shopping networks.

The Internet and mobile networks provide new, rapidly evolving and intensely competitive channels for the sale of all types of goods and services, including products that compete directly with our products. Consumers who purchase mattresses, pillows and cushions through us have more and more alternatives, and merchants have more online channels to reach consumers. We expect competition to continue to intensify. Online and offline businesses increasingly are competing with each other and our competitors include a number of online and offline retailers with significant resources, large user communities and well-established brands. Moreover, the barriers to entry into these channels can be low, and businesses easily can launch online sites or mobile platforms and applications at nominal cost by using commercially available software or partnering with any of a number of successful e-commerce companies. As we respond to changes in the competitive environment, we may, from time to time, make pricing, service or marketing decisions or acquisitions that may be controversial with and lead to dissatisfaction among our customers, which could reduce activity on our platform and harm our profitability.

In addition, sellers in our industry are increasingly utilizing multiple sales channels, including the acquisition of new customers by paying for search-related advertisements on horizontal search engine sites, such as Google, Yahoo!, Naver and Baidu. We use product search engines and paid search advertising to help users find our sites, but these services also have the potential to divert users to other online shopping destinations. Consumers may choose to search for products with a horizontal search engine or shopping comparison website, and such sites may also send users to other shopping destinations. Consumers may not be familiar with or confused by our current web address: purple.com.

We also face increased competitive pressure as the competitive norm for, and the expected level of service from, e-commerce has significantly increased, due to, among other factors, improved user experience, greater ease of buying goods, lower (or no) shipping costs, faster delivery times and more favorable return policies. Also, certain platform businesses, many of whom are larger than us or have greater capitalization, have a dominant and secure position in other industries or certain significant markets, and offer a broader variety of mattress, pillow and cushion products to consumers and retailers that we do not offer. If we are unable to change our product offerings in ways that reflect the changing demands of e-commerce and mobile commerce marketplaces, particularly the higher growth of sales of fixed-price items and higher expected service levels, or compete effectively with and adapt to changes in larger platform businesses, our business will suffer.

Some of our e-commerce competitors offer a significantly broader range of products and services than we do. Competitors with other revenue sources may be able to devote more resources to marketing and promotional campaigns, adopt more aggressive pricing policies and devote more resources to website, mobile platforms and applications and systems development than we can. Other direct-to-consumer retailers and e-commerce competitors may offer or continue to offer faster shipping, free shipping, delivery on Sunday, same-day delivery, favorable return policies or other transaction-related services which improve the user experience on their sites and which could be impractical or inefficient for us to match. Competitors may be able to innovate faster and more efficiently, and new technologies may increase competitive pressure by enabling competitors to offer more efficient or lower-cost services.

We have experienced substantial difficulties with timely and accurate delivery of products which has taken more time than anticipated to correct. We believe this is a result of internal deficiencies as well as deficiencies of our third-party white glove delivery service providers, and our efforts to correct these deficiencies is ongoing. If we are unable to correct these deficiencies, we may suffer lost sales, damage to our reputation and liabilities to customers that could have a material adverse impact on our business.

We attempt to maintain only the necessary amounts of raw material inventory, which could leave us vulnerable to shortages in supply of components that may harm our ability to satisfy consumer demand and may adversely impact our sales and profitability.

We attempt to maintain only the necessary amounts of raw material inventory on hand, which could leave us vulnerable to shortages in supply of components that may harm our ability to satisfy consumer demand and may adversely impact our sales and profitability. Lead times for ordered components may vary significantly, especially as we source some of our materials from China. Moreover, we may experience increased costs in sourcing Chinese materials as a result of the current status of the U.S.-China trade relationship or may experience related disruption if we seek to replace Chinese suppliers with suppliers in other countries. In addition, some components used to manufacture our products are provided on a sole source basis. Any unexpected shortage of materials caused by any disruption of supply or an unexpected increase in the demand for our products, could lead to delays in shipping our beds to customers. Any such delays could adversely affect our sales, customer satisfaction, profitability, cash flows and financial condition.

We rely upon several key suppliers that are, in some instances, the only source of supply currently used by us for particular materials, components or services. A disruption in the supply or substantial increase in cost of any of these products or services could harm our sales, profitability, cash flows and financial condition.

We currently obtain all of the raw materials and components used to produce our mattresses, pillows and cushions from outside sources. In some cases, we have chosen to obtain these materials and components from suppliers who serve as the only source of supply, or who supply the vast majority of our needs of the particular material or component. While we believe that these materials and components, or suitable replacements, could be obtained from other sources, in the event of a disruption or loss of supply of relevant materials or components for any reason, we may not be able to find alternative sources of supply, or if found, may not be found on comparable terms. In addition, a change in the financial condition of some of our suppliers could impede their ability to provide products to us in a timely manner. Further, we maintain relatively small supplies of our raw materials and outsourced goods at our manufacturing facilities, and any disruption in the on-going shipment of supplies to us could interrupt production of our products, which could result in a decrease of our sales or could cause an increase in our cost of sales, either of which could decrease our liquidity and profitability.

If our relationship with the primary supplier of our mineral oil is terminated, we could have short-term difficulty in replacing these sources since there are relatively few other suppliers presently capable of supplying the local volume that we would need in a short period of time.

Our business and our reputation could be adversely affected by the failure to protect sensitive employee, customer and consumer data, or to comply with evolving regulations relating to our obligation to protect such data.

In the ordinary course of our business, we collect and store certain personal information from individuals, such as our customers and suppliers, and we process customer payment card and check information for purchases via our website. In addition, we may share with third-parties personal information we have collected. Cyber-attacks designed to gain access to sensitive information by breaching security systems of large organizations leading to unauthorized release of confidential information have occurred recently at a number of major U.S. companies despite widespread recognition of the cyber-attack threat and improved data protection methods. Computer hackers may attempt to penetrate our computer system or the systems of third-parties with which we have shared personal information and, if successful, misappropriate personal information, payment card or check information or confidential Company business information. In addition, a Company employee, contractor or other third party with whom we do business may attempt to circumvent our security measures in order to obtain such information and may purposefully or inadvertently cause a breach involving such information.

We and third-parties with which we have shared personal information will likely be subject to attempts to breach the security of networks, IT infrastructure, and controls through cyber-attack, malware, computer viruses, social engineering attacks, and other means of unauthorized access. To the best of our knowledge, attempts to breach our networks and IT infrastructure have not been successful to date. A breach of systems that resulted in the unauthorized release of sensitive data could adversely affect our reputation and lead to financial losses from remedial actions or potential liability, possibly including punitive damages. An electronic security breach resulting in the unauthorized release of sensitive data from information systems could also materially increase the costs we already incur to protect against these risks. We continue to balance the additional risk with the cost to protect us against a breach. Additionally, while losses arising from a breach may be covered in part by insurance that we carry, such coverage may not be adequate for liabilities actually incurred.

We may be subject to data privacy and data breach laws in the states in which we do business, and as we expand into other countries, we may be subject to additional data privacy laws and regulations. State data privacy laws (such as the California Consumer Privacy Act), including application and interpretation, are rapidly evolving. While we attempt to comply with such laws, we may not be in compliance at all times in all respects. Failure to comply with such laws may subject us to fines, administrative actions, and reputational harm.

We are subject to payments-related risks.

We accept payments using a variety of methods, including credit card, debit card, credit accounts (including promotional financing), gift cards, direct debit from a customer's bank account, electronic payments (e.g., PayPal and Venmo), consumer invoicing and physical bank check. For existing and future payment options we offer to our customers, we may become subject to additional regulations and compliance requirements (including obligations to implement enhanced authentication processes that could result in significant costs and reduce the ease of use of our payment methods). For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time and raise our operating costs and negatively impact our profitability. We rely on third parties to provide certain payment methods and payment processing services, including the processing of credit cards, debit cards, electronic checks, electronic fund transfers, and promotional financing. In each case, it could disrupt our business if these companies become unwilling or unable to provide these services to us.

Our customers primarily use credit cards to buy from us. We are subject to the policies, procedures and rules of credit card issuers and payment card processors. We are completely dependent upon our payment card processors to process the sales transactions and remit the proceeds to us. The payment card processors have the right to withhold funds otherwise payable to us to establish or increase reserves based on their assessment of the inherent risks of payment card processing and their assessment of the risks of processing our customers' payment cards at any time, and have done so from time to time in the past. We are also subject to payment card association operating rules, including data security rules, certification requirements, and rules governing electronic funds transfers, which could change or be reinterpreted in ways that make it difficult or impossible for us to comply. If we fail to comply with any of these policies, procedures, rules or requirements, or if our data security systems are breached or compromised, we may be liable for card issuing banks' costs, subject to fines and higher transaction fees, and lose our ability to accept credit and debit card payments from our customers, process electronic funds transfers, or facilitate other types of online payments, and our business and operating results could be adversely affected. In addition, events affecting our payment card processors, including cyber-attacks, Internet or other infrastructure or communications impairment or other events that could interrupt the normal operation of the payment card processors, could have a material adverse effect on our business.

We depend on a few key employees, and if we lose the services of certain of our principal executive officers, we may not be able to run our business effectively.

Our future success depends in part on our ability to attract and retain key executive, merchandising, marketing, sales, finance, operations and engineering personnel. If any of our executive officers cease to be employed by us, we would have to hire additional qualified personnel. Our ability to successfully attract and hire other experienced and qualified executive officers cannot be assured and may be difficult because we face competition for these professionals from our competitors, our suppliers and other companies operating in our industry. Since the Business Combination, we have hired a new Chief Executive Officer, Chief Operating Officer, an interim Chief Financial Officer, and a Chief Retail Officer. We have also experienced the departure of the Chief Marketing Officer, Chief Branding Officer and the Chief Financial Officer. These departures and any delay in replacing these executives could significantly disrupt our ability to grow and pursue its strategic plans. We are currently in the process of searching for qualified replacements. While we believe our new executive officers have benefitted and will continue to benefit us, finding qualified replacements is time-consuming, takes Company resources, and can disrupt our growth and achievement of strategic plans.

Further, the involvement of Tony and Terry Pearce has been crucial to the success of our company because of their extensive experience with and technical knowledge of our products. Pursuant to the employment agreements that have been entered into with them in connection with the consummation of the Business Combination, they are not required to work a particular number of hours for us or to be based at any particular location. While still providing services to us under their employment agreements, both Tony and Terry Pearce have reduced their time spent in the office. If we are unsuccessful in our efforts to build out our research and development capabilities around the many technologies conceived by Tony and Terry Pearce, our ability to develop new technologies and innovative products may be adversely affected.

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

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

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

We have complied with CPSC regulations to voluntarily report our discovery of a potential defect in an accessory product supplied to us and some of our competitors by third parties which has resulted in some failures of the product to perform as intended and which could be determined to be a substantial product hazard for our customers. A handful of minor injuries have been reported, although no serious injuries have been substantiated as a result of such failures. We are working with the CPSC to investigate and make sure appropriate action is taken. We have stopped selling this product while we investigate and work with the CPSC. We are also working on developing improvements to ensure that this product functions properly for the intended useful life. However, there can be no assurance that we will be successful in developing such improvements or that any proposed improvements will remove all defects from this product or be approved by the CPSC. If it is determined this product is not safe and cannot be made safe, we may choose or be required to undertake a different corrective action, such as replacing the product or providing a refund to all of our customers who have purchased it. The CPSC could make a finding that the product is defective and dangerous and/or exert pressure on us to issue a joint voluntary recall, involving a replacement of the product, which could harm our brand and reputation and inhibit our ability to attract customers for any of our products. At this stage we are unable to determine the likely cost to us to resolve this issue. However, if we are required to recall all of the affected products, the cost of doing so could materially adversely impact our operations and financial results, as well as our use of cash to achieve our growth plans. In addition, we may be unable to obtain recourse from the supplier for any liability incurred with respect to such product failures and related remediation actions. If we determine that improvement of the products is possible, and if approved by the CPSC, we will incur the expense of such improvement. If a customer is harmed by a product failure there also could be litigation and expenses related to a claim of personal injury, which could harm our brand and reputation and negatively affect our operating results.

We have received notice from the CPSC of several other purported consumer complaints regarding some of our products. While we believe such complaints to be baseless, in terms of the alleged harms and, in some cases, the individual's actual use of our product, we are required to devote significant amounts of time, attention and other resources, including financial resources, to investigating and responding to such complaints. Further, because the complaints are available to the public, such complaints could result in adverse publicity or damage to our reputation and brand value and result in lower sales.

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

Regulatory requirements, including, but not limited to, trade, customs, environmental, health and safety requirements, may require costly expenditures and expose us to liability.

Our products and our marketing and advertising programs are subject to regulation in the U.S. by various federal, state and local regulatory authorities, including the Federal Trade Commission and U.S. Customs and Border Protection. In addition, our operations are subject to federal, state and local consumer protection regulations and other laws relating specifically to the bedding industry. These rules and regulations may change from time to time or may conflict. There may be continuing costs of regulatory compliance including continuous testing, additional quality control processes and appropriate auditing of design and process compliance. For example, the CPSC and other jurisdictions have adopted rules relating to fire retardancy standards for the mattress industry. Some states and the U.S. Congress continue to consider fire retardancy regulations that may be different from or more stringent than the current standard. Additionally, California, Rhode Island and Connecticut have all enacted laws requiring the recycling of mattresses discarded in their states. State and local bedding industry regulations vary among the states in which we operate but generally impose requirements as to the proper labeling of bedding merchandise, restrictions regarding the identification of merchandise as "new" or otherwise, controls as to hygiene and other aspects of product handling, disposal, sales, resales and penalties for violations. We or our suppliers may be required to incur significant expense to the extent that these regulations change and require new and different compliance measures. For example, new legislation aimed at improving the fire retardancy of mattresses, regulating the handling of mattresses in connection with preventing or controlling the spread of bed bugs could be passed, or requiring the recycling of discarded mattresses, could result in product recalls or in a significant increase in the cost of operating our business. In addition, failure to comply with these various regulations may result in penalties, the inability to conduct business as previously conducted or at all, or adverse publicity, among other things. Adoption of multi-layered regulatory regimes, particularly if they conflict with each other, could increase our costs, alter our manufacturing processes and impair the performance of our products which may have an adverse effect on our business. We are also subject to various health and environmental provisions, such as California Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986) and 16 CFR Part 1633 (Standard for the Flammability (Open Flame) of Mattress Sets).

Our marketing and advertising practices could also become the subject of proceedings before regulatory authorities or the subject of civil claims by competitors and other parties, which could result in civil litigation or regulatory penalties and require us to alter or end these practices or adopt new practices that are not as effective or are more expensive. Despite our efforts to comply with all marketing laws and regulations, we may not be in complete compliance at all times. Some competitors engage in the practice of regularly sending notices of non-compliance with certain of these regulations, and demand proof of compliance, and while we may believe we comply this practice consumes our resources, could lead to litigation and may have a negative impact on our financial condition.

In addition, we are subject to federal, state and local laws and regulations relating to pollution, environmental protection and occupational health and safety. We may not be in complete compliance with all such requirements at all times, and we have been required in the past to make changes to our facilities in order to comply with these requirements. We have made and will continue to make capital and other expenditures to comply with environmental and health and safety requirements. If a release of harmful or hazardous substances occurs on or from our properties or any associated offsite disposal location, or if contamination from prior activities is discovered at any of our properties, we may be held liable and the amount of such liability could be material. As a manufacturer of mattresses, pillows, cushions and related products, we use and dispose of a number of substances, such as glue, oil, solvents and other petroleum products, as well as certain foam ingredients, that may subject us to regulation under numerous foreign, federal and state laws and regulations governing the environment. Among other laws and regulations, we are subject in the U.S. to the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Air Act and related state and local statutes and regulations.

We are also subject to federal laws and regulations relating to international shipments, customs, and import controls. We may not be in complete compliance with all such requirements at all times, and if we are not in compliance with such requirements, we may be subject to penalties or fines, which could have an adverse impact on our financial condition and results of operations.

Our operations could also be impacted by a number of pending legislative and regulatory proposals to address greenhouse gas emissions in the U.S. and other countries. Certain countries have adopted the Kyoto Protocol. New greenhouse gas reduction targets have been established under the Kyoto Protocol, as amended. This and other initiatives under consideration could affect our operations. These actions could increase costs associated with our manufacturing operations, including costs for raw materials, pollution control equipment and transportation. Because it is uncertain what laws will be enacted, we cannot predict the potential impact of such laws on our future consolidated financial condition, results of operations, or cash flows.

We are also subject to regulations and laws specifically governing the Internet, e-commerce, electronic devices, and other services. These regulations and laws may cover taxation, privacy, data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, electronic contracts and other communications, competition, consumer protection, trade and protectionist measures, web services, the provision of online payment services, information reporting requirements, unencumbered Internet access to our services or access to our facilities, the design and operation of websites and the characteristics and quality of products and services. It is not clear how existing laws governing issues such as property ownership, libel, and personal privacy apply to the Internet, e-commerce, digital content, and web services. Unfavorable regulations and laws could diminish the demand for, or availability of, our products and services and increase our cost of doing business.

Claims have been made against us for alleged violations of the Americans with Disability Act ("ADA") related to accessibility to our website by the blind. The law is unsettled as to whether the ADA covers websites and what standards are applicable, but courts in certain jurisdictions have recognized these types of ADA claims. While we comply with industry standards for making our website accessible to the blind, and regularly test our site for this purpose, we may be subject to such claims and, as a result, we may be required to expend resources in defense of these claims that could increase our cost of doing business.

Provisions in our Second Amended and Restated Certificate of Incorporation 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 derivative action or proceeding brought on our behalf; 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; any action asserting a claim against us or any current or former director, officer or employee of ours arising pursuant to any provision of the Delaware General Corporation Law or our certificate of incorporation or bylaws; or 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 suits brought to enforce any liability or duty created by the Securities Act or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. To the extent that any such claims may be based upon federal law claims, Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Furthermore, Section 22 of 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 it 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 and prospects.

If we fail to establish and maintain an effective system of internal controls, we may not be able to report our financial results accurately or may experience a financial loss. Any inability to report and file our financial results accurately and timely could harm our business and adversely affect the value of our business.

As a public company, we are required to establish and maintain internal controls over financial reporting and disclosure controls and procedures and to comply with other requirements of the Sarbanes-Oxley Act and the rules promulgated by the SEC. Even when such controls are implemented, management, including our Chief Executive Officer and Interim Chief Financial Officer, cannot guarantee that our internal controls and disclosure controls and procedures will prevent all possible errors or loss. Because of the inherent limitations in all control systems, no system of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company or perpetrated against us will be prevented or have been detected. These inherent limitations include the possibility that judgments in decision-making can be faulty and subject to simple error or mistake. Furthermore, controls can be circumvented by individual acts of some persons, by collusion of two or more persons, or by management override of the controls. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, measures of control may become inadequate because of changes in conditions, new fraudulent schemes, or the deterioration of compliance with policies or procedures. Because of inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and/or may not be detected.

We have been the victim of a spear-phishing attack that resulted in the diversion of a payroll payment to a bank account that did not belong to the employee, resulting in the loss of those funds. Though we have implemented additional controls to address spear-phishing and phishing attacks, such controls may not be effective to protect us against such attacks in the future and we may incur financial losses that alone or together could adversely impact the business.

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

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

In connection with the Closing of the Business Combination, the founders, Tony and Terry Pearce, through InnoHold, LLC control the majority of the shares of Class B Common Stock of the Company which constitutes over 80% of all ownership interests in the Company. The lock-up period following the Business Combination has expired, and the founders are now able to exchange their Class B shares for Class A shares and sell them. Also, at this time, CCP, Blackwell and CDF own a majority of the shares of Class A Common Stock of the Company. Any of these shareholders may choose to sell shares of Common Stock, and the founders particularly may decide to liquidate a substantial portion of their interest in view of their age and for other personal reasons. The amount of shares they are able to sell, if sold in large blocks or relatively close to each other in time, could result in downward pressure on the price of our Class A Stock.

In connection with the Closing of the Business Combination, some of our current and former employees were granted incentive units as members of InnoHold, which together with Tony and Terry Pearce holds all of the outstanding shares of Class B Common Stock of the Company. On February 8, 2019, InnoHold initiated a tender offer to each of these incentive unit holders to distribute to each a pro rata number of the Paired Securities held by InnoHold in exchange for the cancellation of their ownership interests in InnoHold. All InnoHold incentive unit holders accepted the offer, and the terms and distribution of each transaction were finalized and closed on June 25, 2019. As of the closing, those incentive unit holders were potentially entitled to receive, based on their pro rata holdings of InnoHold Class B Units, a portion of 2.5 million shares of Paired Securities held by InnoHold, of which a total of 1.7 million Paired Securities were distributed at the closing and the remaining 0.8 million may be distributed in the future. The distribution of certain Paired Securities is a taxable event for the recipients of those Paired Securities, and such recipients, or us on their behalf, will need to exchange, subject to the Exchange Agreement and certain other conditions and restrictions, all or some of their securities into shares of Class A Common Stock and then liquidate those shares of Class A Common Stock in order to pay taxes assessed. Some of the participants receiving these equity incentives, including those who no longer work for us, may want to liquidate some or all of the equity distributed to them by InnoHold. Sales of such shares of Class A Common Stock may occur relatively close to each other in time, including during short windows of time when such current employees are able to trade in our securities without violating our insider trading policy, and such consolidated trading in such short windows of time could result in downward pressure on the price of our Class A Common Stock.

This risk of downward pressure on the price of our Class A Common Stock is particularly acute at this time inasmuch as the average trading volume of our Class A Common Stock is very low, making it more difficult to sell a substantial number of shares at any point in time. This risk related to the lack of an active trading market also may make it more difficult for any shareholder to sell their shares, and until an active trading market develops and becomes sustainable, it is likely to make our stock less desirable to investors. InnoHold, CCP, Blackwell and CDF, who hold most of our Common Stock, may not sell shares, or sell enough shares, to increase the float to a point where a sustainable market develops.

A market for our securities may not develop, which would adversely affect the liquidity and price of our securities.

The price of our securities may vary significantly due to our operating performance and general market or economic conditions. Furthermore, an active trading market for our securities may never develop or, if developed, it may not be sustained for many reasons, including that InnoHold, CCP, Blackwell and CDF, who hold most of our Common Stock, may not sell shares, or sell enough shares, to increase the float to a point where a sustainable market develops. You may be unable to sell your securities unless a market can be established and sustained.

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

As of June 30, 2019, Purple LLC had total debt of $38.2 million outstanding, comprised of $37.8 million outstanding under the Amended and Restated Credit Agreement and $0.4 million in capital lease obligations. Our level of indebtedness could have important consequences to stockholders. For example, it could:

- make it more difficult to satisfy our obligations with respect to our indebtedness, resulting in possible defaults on, and acceleration of, such indebtedness;
- increase our vulnerability to general adverse economic and industry conditions;
- require us to dedicate a substantial portion of our cash flows from operations to payments on indebtedness, thereby reducing the availability of such cash flows to fund working capital, capital expenditures and other general corporate requirements or to carry out other aspects of its business;
- limit our ability to obtain additional financing to fund future working capital, capital expenditures and other general corporate requirements or to carry out other aspects of its business;
- limit our ability to make material acquisitions or take advantage of business opportunities that may arise; and

- place us at a potential competitive disadvantage compared to its competitors that have less debt.

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

We could issue additional preferred stock without stockholder approval with the effect of diluting then current stockholder interests, impairing their voting rights and potentially discouraging a takeover that stockholders may consider favorable.

Pursuant to our Amended and Restated Certificate of Incorporation, the Board has the ability to authorize the issuance of up to five million shares of preferred stock at any time and from time to time, with such terms and preferences as the Board determines and without any stockholder approval other than as may be required by NASDAQ rules. The issuance of such shares of preferred stock could dilute the interest of, or impair the voting power of, our common stockholders. The issuance of such preferred stock could also be used as a method of discouraging, delaying or preventing a change of control.

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

InnoHold and other owners may, subject to certain conditions and transfer restrictions, exchange their Class B Units and shares of Class B Common Stock for shares of Class A Common Stock pursuant to the Exchange Agreement. The deemed exchanges in the Business Combination and any exchanges pursuant to the Exchange Agreement, are expected to result in increases in our allocable share of the tax basis of the tangible and intangible assets of Purple LLC. These increases in tax basis may increase (for tax purposes) depreciation and amortization deductions and therefore reduce the amount of income or franchise tax that we would otherwise be required to pay in the future, although the Internal Revenue Service ("IRS") or any applicable foreign, state or local tax authority may challenge all or part of that tax basis increase, and a court could sustain such a challenge. As of August 13, 2019, there have been 0.1 million exchanges of Class B Units and shares of Class B Common Stock for shares of Class A Common Stock by some of those incentive recipients who received these Paired Securities in the distribution from InnoHold.

In connection with the Business Combination, we entered into the Tax Receivable Agreement, which generally provides for the payment by us to exchanging holders of Class B Units and shares of Class B Common Stock of 80% of certain tax benefits, if any, that we realize as a result of these increases in tax basis and of certain other tax benefits related to entering into the Tax Receivable Agreement, including income or franchise tax benefits attributable to payments under the Tax Receivable Agreement. These payment obligations pursuant to the Tax Receivable Agreement are the obligation of the Company and not of Purple LLC. The actual increase in our allocable share of the Company's tax basis in its assets, as well as the amount and timing of any payments under the Tax Receivable Agreement, will vary depending upon a number of factors, including the timing of exchanges, the market price of shares of our Common Stock at the time of the exchange, the extent to which such exchanges are taxable and the amount and timing of our income. Because not all of the foregoing factors are known at this time as to the exchanges that have occurred, and none are known for future exchanges this year or in subsequent years, we cannot determine the amounts (if any) that would be payable under the Tax Receivable Agreement. However, we expect that as a result of the possible size and frequency of the exchanges and the resulting increases in the tax basis of the tangible and intangible assets of Purple LLC, the payments that we expect to make under the Tax Receivable Agreement will be substantial and could have a material adverse effect on our financial condition. The payments under the Tax Receivable Agreement are not conditioned upon continued ownership of the Company by the holders of units.

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

ITEM 6. EXHIBITS

Number	Description
10.1*	Lease Agreement dated June 10, 2019 between Purple Innovation, LLC and North Slope One, LLC
10.2+	Purple Innovation, Inc. 2019 Long-Term Equity Incentive Plan (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on May 14, 2019)
10.3+	Purple Innovation, Inc. 2019 Short-Term Cash Incentive Plan (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on May 14, 2019)
10.4+*	Settlement and General Release of Claims Agreement dated May 28, 2019 between Purple Innovation, Inc and Mark Watkins.
31.1*	Certification by Joseph B. Megibow, Chief Executive Officer, pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification by Craig L. Phillips, Interim Chief Financial Officer, pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification by Joseph B. Megibow, Chief Executive Officer, pursuant to Section 1350, Chapter 63 of Title 18, United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification by Craig L. Phillips, Interim Chief Financial Officer, pursuant to Section 1350, Chapter 63 of Title 18, United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

* Filed herewith.
\+ Indicates management contract or compensatory plan.

SIGNATURE

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

PURPLE INNOVATION, INC.

Date: August 13, 2019

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

Date: August 13, 2019

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

Exhibit 10.1

LEASE
North Slope—Building One

between

NORTH SLOPE ONE, LLC ,
a Utah limited liability company,
as Landlord,

and

PURPLE INNOVATION, LLC ,
a Delaware limited liability company,
as Tenant

Dated June 7, 2019

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LEASE

North Slope—Building One

THIS LEASE (this " ***Lease*** ") is entered into as of the 7 th day of June, 2019, between **NORTH SLOPE ONE, LLC** , a Utah limited liability company (" ***Landlord*** "), and **PURPLE INNOVATION, LLC** , a Delaware limited liability company (" ***Tenant*** "). (Landlord and Tenant are referred to in this Lease collectively as the " ***Parties*** " and individually as a " ***Party*** .")

FOR GOOD AND VALUABLE CONSIDERATION , the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definitions . As used in this Lease, each of the following terms shall have the meaning indicated:

" ***ADA*** " means the Americans with Disabilities Act of 1990, as amended and with its associated regulations.

" ***affiliate*** " means an entity that directly or indirectly controls (including a direct or indirect parent), is controlled by (including a direct or indirect subsidiary), or is under common control with, the entity concerned, where " ***control*** " is the holding of fifty percent (50%) or more of the outstanding voting interests, or the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

" ***Alteration*** " means any alteration, change, addition, improvement or repair to the Premises made by or at the direction of Tenant, including, without limitation, the attachment of any fixture (including any so-called "trade fixture"), equipment or signage, or the addition of any pipe, line, wire, cable, conduit or related facility for water, electricity, natural gas, telecommunication (including Tenant's voice and data lines, wiring, cabling and facilities), sewer or other utility, but excluding (i) the moving of Tenant's furniture (including cubicles), phones, computers and other personal property, provided that each of the foregoing is readily movable and unattached to the Premises, and (ii) the hanging of typical pictures / artwork, diplomas and similar items.

" ***applicable municipality*** " means the City of Lehi, Utah. " ***Base Year*** " means calendar year 2019.

" ***Base Year Operating Expenses*** " means Operating Expenses that are actually incurred in the Base Year, as adjusted in accordance with this Lease.

" ***Basic Monthly Rent*** " means the following amounts per calendar month for the periods indicated based on 42,837 rentable square feet, which amounts are subject to adjustment as set forth in the definition of "Premises"; *provided, however,* that if the Commencement Date occurs on a date other than the Projected Commencement Date, then the periods set forth below shall begin on such other date that is the Commencement Date (as memorialized in a certificate entered into between the Parties) and shall shift accordingly in a manner consistent with the definition of "Expiration Date" (with the Expiration Date being on the last day of the relevant month), but in all events, Tenant shall have a seven (7)-month period of Basic Monthly Rent at an annual cost of $7.00 per rentable square foot:

Periods	Basic Monthly Rent	Annual Cost Per Rentable Square Foot
December 1, 2019 through June 30, 2020, inclusive	$24,988.25 per month	$ 7.00
July 1, 2020 through November 30, 2020, inclusive	$96,383.25 per month	$ 27.00
December 1, 2020 through November 30, 2021, inclusive	$98,810.68 per month	$ 27.68
December 1, 2021 through November 30, 2022, inclusive	$101,273.81 per month	$ 28.37
December 1, 2022 through November 30, 2023, inclusive	$103,808.33 per month	$ 29.08
December 1, 2023 through November 30, 2024, inclusive	$106,378.55 per month	$ 29.80
December 1, 2024 through November 30, 2025, inclusive	$109,055.86 per month	$ 30.55
December 1, 2025 through November 30, 2026, inclusive	$111,768.87 per month	$ 31.31
December 1, 2026 through November 30, 2027, inclusive	$114,553.28 per month	$ 32.09
December 1, 2027 through November 30, 2028, inclusive	$117,444.78 per month	$ 32.90
December 1, 2028 through November 30, 2029, inclusive	$120,371.97 per month	$ 33.72

" ***best efforts*** " means best, commercially reasonable efforts, exercised in good faith and with due diligence. " ***Building*** " means the building with the street address of 4100 North Chapel Ridge Road, in Lehi, Utah,
which contains approximately 149,506 rentable square feet, subject to final measurement and verification as set forth in the definition of "Premises".

" ***Building Hours*** " means Monday through Friday (excluding any legal holiday on which banks in Utah are authorized by Laws to close) from 7:00 a.m. to 7:00 p.m., and Saturday from 9:00 a.m. to 1:00 p.m.

" ***business day*** " means any day other than a Saturday, Sunday or legal holiday on which banks in Utah are authorized by Laws to close.

" ***Commencement Date*** " means the earlier of the following, with either of such dates to be certified by Landlord's architect to Tenant:

(i) the date on which Substantial Completion occurs; or

(ii) the date on which Substantial Completion would have occurred, but for Tenant Delay.

" ***Common Areas*** " means all areas and facilities on the Property that are provided for the general, nonexclusive use and convenience of more than one tenant of the Building, including, without limitation, driveways, parking areas, walkways, delivery areas, trash removal areas, landscaped areas, entryways, lobbies, hallways, stairways, elevators and restrooms, subject to Paragraph 9.4 .

" ***Comparable Buildings*** " means other comparable Class "A" suburban office buildings in the southern Salt Lake County and northern Utah County areas.

" ***Condemnation Proceeding*** " means any action or proceeding in which any interest in the Property is taken for any public or quasi-public purpose by any lawful authority through the exercise of the power of eminent domain or by purchase or other means in lieu of such exercise.

" ***Default Rate*** " means the greater of (i) the Prime Rate plus four percent (4%) per annum, or (ii) twelve percent (12%) per annum, but in no event greater than the maximum rate allowed by Laws.

" ***Environmental Laws*** " means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act and the Resource Conservation and Recovery Act, each as amended and with its associated regulations, and all other Laws relating to Hazardous Materials existing on or after the date of this Lease.

" ***Estimated Operating Expenses*** " means the projected amount of Operating Expenses for any given Operating Year as reasonably estimated by Landlord in a manner consistent with Comparable Buildings.

" ***Expiration Date*** " means the date that is the last day of the month, ten (10) years after the later of the following, as applicable:

(i) the Commencement Date, if the Commencement Date occurs on the first day of a calendar month; or

(ii) the first day of the first full calendar month following the Commencement Date, if the Commencement Date does not occur on the first day of a calendar month,

as such date may be extended or sooner terminated in accordance with this Lease.

" ***force majeure*** " has the meaning set forth in Paragraph 22.2 .

" ***GAAP*** " means generally accepted accounting principles consistently applied.

" ***Hazardous Materials*** " means substances defined as "hazardous materials," "hazardous wastes", "hazardous substances" or "toxic substances" or similarly defined in any Environmental Laws, as well as so-called industrial and biomedical wastes, asbestos and mold, whether or not specifically classified as "hazardous materials" under Environmental Laws.

" ***HVAC*** " means heating, ventilating and air conditioning.

" ***Improvements*** " means the Building, any parking structure and the related improvements owned by Landlord.

" ***Interest Rate*** " means the Prime Rate plus two percent (2%) per annum.

" ***Landlord Default*** " has the meaning set forth in Paragraph 16.4 .

" ***Landlord's Work*** " means Landlord's obligation to construct and complete the Initial Improvements, as set forth on the attached Exhibit A .

" ***Laws*** " means any or all applicable federal, state and local laws, statutes, codes, ordinances, rules, regulations requirements, judgments, decrees, writs, orders, licenses, guidelines and policies, including, without limitation, the ADA and Environmental Laws, together with future enactments and amendments, insurance regulations and requirements, utility company requirements, administrative promulgations and governmental orders, and any requirements or conditions on or with respect to the issuance, maintenance or renewal of any legally required permits, consents, decisions, qualifications, licenses, certifications or exemptions from, and all filings with, and any notice to, any government or quasi- governmental authority.

" ***Lease end*** " means the expiration of the Term or the sooner termination of this Lease.

" ***Non-Consent Transfer*** " means any assignment or sublease permitted without Landlord's consent, as described in Paragraph 10.2 .

" ***Operating Expenses*** " means, without duplication, all reasonable, customary and actual costs, expenses, fees and other charges incurred or payable by Landlord in connection with this Lease (including, without limitation, those incurred or payable under Paragraphs 8.1, 9.1 and 12.2) and the ownership, operation, management, maintenance and repair of the Property (which operation, management, maintenance and repair shall be performed by Landlord in a first-class manner consistent with Comparable Buildings), determined in accordance with GAAP, including, without limitation, the reasonable, customary and actual costs, expenses, fees and other charges of the following, subject to the OpEx Adjustments and excluding the OpEx Exclusions:

(i) real property taxes and assessments and, if applicable (e.g., lobby furniture, movable generators and other personal property directly and reasonably related to the operation of the Property), personal property taxes and assessments (and any tax levied in whole or in part in lieu of or in addition to such taxes and assessments);

(ii) rent and gross receipts taxes, except to the extent imposed in lieu of income taxes;

(iii) assessments for the Project levied under a common maintenance regime and allocated to the Building; *provided,* that such assessments shall not exceed assessments generally charged under common maintenance regimes for projects comparable to the Project, and the cost of common area maintenance allocated to the Building shall be determined by reference to the floor area of the Building compared to the floor area of all buildings included within such common maintenance regime;

(iv) removal of snow, ice, trash and other refuse;

(v) landscaping, cleaning, sweeping, janitorial, parking and security services;

(vi) resurfacing, re-striping and resealing of parking areas, and replacing damaged or worn-out Improvements (including lighting) located in the Common Areas;

(vii) fire protection, including alarm and sprinkler systems;

(viii) utilities (including, without limitation, the utilities used in the Premises, but excluding the cost of separately metered utilities provided to the Premises and paid directly by Tenant or provided to other premises and paid directly by other tenants);

(ix) supplies and materials used in connection with the operation, management, maintenance and repair of the Property;

(x) premiums for insurance carried by Landlord pursuant to Paragraph 12.2 (except for any increase in insurance premiums caused by the acts or omissions of other tenants of the Building);

(xi) licenses, permits and inspections directly and reasonably related to the operation of the Property;

(xii) administrative services, including, without limitation, clerical and accounting services, directly and reasonably related to the operation, management, maintenance and repair of the Property;

(xiii) labor and personnel directly and reasonably related to the operation, management, maintenance and repair of the Property (but excluding costs, expenses, fees, salaries, benefits, compensation and other charges for employees of Landlord when acting in capacities above the senior building manager level);

(xiv) reasonable reserves for Operating Expenses; *provided, however,* that the portion of such reserves payable by Tenant shall not be less than $.10 per rentable square foot of the Premises on an annual basis for the Base Year, or exceed $.25 per rentable square foot of the Premises on an annual basis for any Operating Year thereafter;

(xv) rental or a reasonable allowance for depreciation of personal property used for normal maintenance, repair and janitorial services in connection with the Property;

(xvi) improvements to and maintenance and repair of the Building and all equipment used in the Building, so long as such equipment is maintained as required by the manufacturer's specifications;

(xvii) management services attributable to the Property; *provided,* that:

(a) the cost of such management services shall not exceed management fees generally charged by property management companies for Comparable Buildings, and in any event shall not exceed four percent (4%) of the gross receipts from the Building, disregarding any free rent, base-free rent and the like; and

(b) the cost of such management services comprising a part of Base Year Operating Expenses shall not be at a discounted cost;

(xviii) that part of office rent or the rental value of space in the Building or another building used by Landlord to operate, manage, maintain and repair the Property; *provided, however,* that the office rent or the rental value of such space shall not exceed the fair market rent for such space and the amount of such space shall be reasonable under the circumstances; and

(xix) compliance with Laws.

" ***Operating Year*** " means each calendar year, all or a portion of which falls within the Term.

" ***OpEx Adjustments*** " means the following adjustments to Operating Expenses:

(i) All Operating Expenses shall be computed on an annual basis, and shall be reduced by all cash, trade or quantity discounts, reductions, reimbursements, refunds or credits received by Landlord (net of reasonable expenses incurred in obtaining the same, if any) in the purchase of any goods, utilities, insurance or services in connection with the operation, management, maintenance and repair of the Property.

(ii) All Operating Expenses (including, without limitation, replacement of existing equipment, parking areas and other improvements) incurred for improvements with a useful life greater than one year and costing in excess of $5,000, together with interest thereon at the Interest Rate, shall be amortized by Landlord over a period equal to the useful life of the improvement concerned (such useful life to be determined in accordance with federal income tax law), such amortized cost and related interest shall only be included in Operating Expenses for that portion of the useful life of such improvement that falls within the Term, and only the amortized portion of such cost and related interest applicable to a given Operating Year shall be included in the Operating Expenses for such Operating Year.

(iii) When Landlord, acting reasonably, deems it reasonable to do so, Landlord shall contest any real property taxes or assessments applicable to the Property, and any reduction in, or refund of, such taxes or assessments, less any reasonable expenses incurred by Landlord in achieving such reduction, shall inure to the benefit of Tenant and the other tenants of the Building.

(iv) If any Operating Expenses relate to the Building as well as other buildings, Landlord shall equitably and in good faith allocate the same among the buildings concerned based on the floor area of the Building as compared with the floor area of the other buildings involved in the Operating Expense concerned.

(v) If the Building is in operation for less than all of the Base Year, Base Year Operating Expenses shall reasonably be adjusted by Landlord to the amount that Operating Expenses would have been if the Building had been in operation for all of the Base Year.

(vi) If all or any portion of the Property is subject to any tax abatement program or otherwise not fully assessed for the purpose of real property taxes for the Base Year, Base Year Operating Expenses shall be grossed up to reflect what the real property taxes would have been for the Base Year if the Property had been fully assessed. After the retirement of any special assessments included in Base Year Operating Expenses, Base Year Operating Expenses shall be reduced to eliminate such special assessments to the extent that such special assessments are included in Base Year Operating Expenses but not included in Operating Expenses in the Operating Year concerned. Operating Expenses in any Operating Year following the Base Year shall not include the portion of any increases in real property taxes resulting solely from a new addition to the Building or other portions of the Property, such as the new addition of a Building floor or a parking structure.

(vii) Operating Expenses (including, without limitation, Base Year Operating Expenses) that vary with occupancy (including, without limitation, utilities, janitorial expenses, trash removal costs, management fees and, to the extent assessed based on occupancy, real property taxes) and are attributable to any part of the Term in which less than ninety-five percent (95%) of the rentable area of the Building is occupied by tenants shall be adjusted by Landlord to the amount that such Operating Expenses that were actually incurred or payable would have been if ninety-five percent (95%) of the rentable area of the Building had been occupied by tenants for the period concerned.

(viii) If Landlord furnishes a service to tenants in the Building, the cost of which constitutes an Operating Expense that varies with occupancy, and a tenant other than Tenant has undertaken to perform such service itself, Operating Expenses shall be increased by the amount that Landlord would have incurred if Landlord had furnished such service to such tenant. For example, if Landlord does not furnish premises janitorial services to a tenant other than Tenant who has undertaken to perform such janitorial services itself, Operating Expenses shall be increased by the amount that Landlord would have incurred if Landlord had furnished such janitorial services to such tenant, so that when Tenant's Share of Operating Expenses is calculated, Tenant will continue to pay its fair share of the cost of its janitorial services.

(ix) Base Year Operating Expenses shall not include any atypical, non-repetitive costs, expenses, fees or other charges incurred or payable by Landlord in the Base Year that would artificially inflate Base Year Operating Expenses, such as (without limiting the generality of the foregoing) costs comprising Landlord's reasonable insurance deductible related to a casualty occurring in the Base Year or a one-time governmental or quasi-governmental assessment made in the Base Year.

(x) To the extent that Landlord receives so-called tax increment financing (as described in Utah Code Annotated, §§17C-3-101 to 17C-3-404) or other tax incentives related to infrastructure or other capital improvements, whether through the rebate of real property taxes or by some other method, such financing or incentives will not serve to reduce Operating Expenses or produce any refund, reimbursement, credit or benefit of any kind to Tenant under this Lease, and in all cases Operating Expenses shall be calculated without reference to such financing or incentives. The costs of any such infrastructure or other capital improvements to which such tax increment financing or other tax incentives relate will not be included in Operating Expenses.

" ***OpEx Commencement Date*** " means January 1 st of the Operating Year following the Base Year.

" ***OpEx Exclusions*** " means the following, which shall be excluded from Operating Expenses:

(i) costs incurred in connection with the initial development and improvement of the Property, including, without limitation, impact fees;

(ii) any expenditure required to be capitalized for federal income tax purposes that is in the nature of a new addition to the Building or other portions of the Property, such as the new addition of a Building floor or a parking structure, as distinguished from such an expenditure (the amortized cost of which *shall* be included in Operating Expenses in accordance with subparagraph (ii) of OpEx Adjustments) that is in the nature of a replacement of an existing improvement, such as a replacement HVAC unit or the replacement of parking area surfaces;

(iii) non-cash items, such as but not limited to depreciation and amortization (except as expressly set forth in subparagraph (xv) in the definition of "Operating Expenses" with respect to certain personal property);

(iv) debt service (including, without limitation, payments of principal and interest) on indebtedness secured by any mortgage, deed of trust or similar instrument encumbering the Property, and points, prepayment penalties and financing and refinancing costs for such indebtedness, including, without limitation, the cost of appraisals, title insurance and environmental, geotechnical, zoning and other reports;

(v) expenses of procuring tenants and marketing, negotiating and enforcing Building leases, including, without limitation, brokerage commissions, attorneys' fees, advertising and promotional expenses, rent concessions and costs incurred in removing and storing the property of former tenants and other occupants of the Building;

(vi) expenses of (a) any tenant improvement work that Landlord performs for any tenant or prospective tenant of the Building, including, without limitation, (1) tenant improvement work to the Premises that Landlord performs for Tenant, and (2) alteration or renovation of vacant or vacated space in the Building, and (b) relocating and moving any tenant in the Building;

(vii) items for which Landlord is otherwise reimbursed or entitled to be reimbursed, including, without limitation, by insurance or condemnation proceeds or under any warranties;

(viii) expenses (including, without limitation, penalties and interest) resulting from the violation of Laws or any contract by Landlord, Landlord's employees, agents or contractors or other tenants of the Building;

(ix) penalties, charges and interest for late payment by Landlord;

(x) (a) Landlord's income, franchise, capital stock, inheritance, estate, succession, gift, sales, capital levy, excess profits, transfer, mortgage recording and revenue taxes; (b) other taxes, assessments and charges imposed on or measured by gross income; (c) Landlord's general corporate overhead; (d) leasehold taxes on other tenants' personal property; (e) stadium, sports complex or arena tax (including, without limitation, any ballpark/stadium tax); and (f) any tax, assessment, fee, levy or charge that is absolutely discretionary, non-payment of which will not result in any economic or other consequence to Landlord, and which is not required by the applicable taxing authority or by applicable Laws;

(xi) to the extent of such excess, any expense paid to Landlord or an affiliate of Landlord for goods and services that is in excess of the amount that would be paid in the absence of such relationship for comparable goods and services delivered or rendered by unaffiliated third parties on a competitive basis;

(xii) expenses for repairs and other work caused by (a) construction or design defects, (b) subsurface or soil conditions, (c) the failure of the Improvements to comply as of the Commencement Date with any then- existing Laws, (d) the exercise of the right of eminent domain, or (e) fire, windstorm and other insured casualty (excluding costs comprising Landlord's reasonable insurance deductible), and any uninsured or under-insured casualty; *provided, however,* that with respect to payment by Tenant of any costs comprising Landlord's reasonable insurance deductible, if the insured item to which such deductible relates is an improvement with a useful life greater than one year and costing in excess of $5,000, such deductible shall be amortized without interest on a straight-line basis by Landlord over a period equal to the useful life of the improvement concerned (such useful life to be determined in accordance with federal income tax law), such amortized cost shall only be included in Operating Expenses for that portion of the useful life of such improvement that falls within the Term, and only the amortized portion of such cost applicable to a given Operating Year shall be included in the Operating Expenses for such Operating Year;

(xiii) expenses as a result of the presence of Hazardous Materials in the Building or on the Property;

(xiv) expenses in connection with services or other benefits provided on an ongoing basis to other Building tenants that are not available to Tenant;

(xv) costs as a result of (a) the negligence or willful misconduct of Landlord or Landlord's employees, agents or contractors, (b) the breach by Landlord of any lease in the Building, and (c) the negligence or willful misconduct of other identified tenants of the Building;

(xvi) costs for which Landlord bills other tenants directly (other than as a part of Operating Expenses) under the provisions of such tenants' leases, including, without limitation, any increased insurance costs reimbursed directly to Landlord by a tenant, including Tenant, and the cost of any item or service for which Tenant separately reimburses Landlord or pays third parties;

(xvii) rental under any ground or underlying lease and under any lease or sublease assumed, directly or indirectly, by Landlord (e.g., a take-back sublease);

(xviii) charitable, civic and political contributions and professional dues;

(xix) costs for the acquisition, leasing, maintenance and insurance of paintings, sculptures and other objects of art located in the Building;

(xx) costs arising from actual and potential claims, litigation and arbitration pertaining to Landlord and the Property (including in connection therewith all attorneys' fees and costs of settlement and judgments and payments in lieu thereof);

(xxi) expenses for the use of the Building to accommodate events including, without limitation, shows, promotions, kiosks, displays, filming, photography, temporary exhibits, private events and parties and ceremonies;

(xxii) entertainment, dining and travel expenses;

(xxiii) costs of flowers (excluding flowers used to decorate the lobbies and other common areas in the Building), gifts, balloons, etc. provided to any person, including, without limitation, Tenant, other tenants, employees, vendors, contractors, prospective tenants and agents;

(xxiv) costs of selling, syndicating and otherwise transferring the Property and Landlord's interest in the Property, including, without limitation, brokerage commissions, attorneys' and accountants' fees, closing costs, title insurance premiums and transfer and other similar taxes and charges;

(xxv) costs of installing, operating, repairing and maintaining any specialty service such as an observatory, broadcast facility, luncheon, athletic or recreational club, child care, restaurant, cafeteria, delicatessen or other dining facility, hair salon or other retail use or commercial concession operated by Landlord, but Operating Expenses may include the costs of operating and maintaining any gym or fitness center for the general use of tenants in the Building (including Tenant), so long as Tenant and its employees are not charged a separate fee for the use of such gym or fitness center;

(xxvi) costs of magazine, newspaper, trade and other subscriptions;

(xxvii) costs of "tenant relations" parties, events and promotions inconsistent with other Comparable Buildings;

(xxviii) costs of "tap fees" and sewer and water connection fees for the benefit of any particular tenant in the Building;

(xxix) costs of traffic studies, environmental impact reports, transportation system management plans and reports, traffic mitigation measures and other similar matters;

(xxx) auditing fees other than those incurred by Landlord in connection with the performance of its obligations under this Lease and other leases in the Building;

(xxxi) bad debt and rent loss reserves; and

(xxxii) costs to comply with Landlord's obligations under Paragraph 20 and to complete Landlord's Work.

"Permitted Use " means only the following, and no other purpose: general office purposes, including normal and reasonable uses customarily incidental thereto, such as executive, administrative, technical support, customer service and data functions, and a show room for Tenant's products, which may include non-cash sales. In no event may the Premises be used as a call center or as an executive office suite operation without Landlord's prior consent; *provided, however,* that the prohibition of a call center shall not prohibit or limit any typical business or customer service telephone communication of the type currently or reasonably anticipated to be conducted by Purple Innovation, LLC.

" ***person*** " means any individual (male or female), corporation, limited liability company, partnership, joint venture, estate, trust, association or other entity.

" ***Premises*** " means:

(i) Suite 100 on the first floor of the Building, consisting of approximately 2,065 usable square feet and approximately 2,430 rentable square feet;

(ii) Suite 150 on the first floor of the Building, consisting of approximately 8,613 usable square feet and approximately 10,133 rentable square feet; and

(iii) Suite 200 on the second floor of the Building, consisting of approximately 25,733 usable square feet and approximately 30,274 rentable square feet,

comprising in the aggregate a total of approximately 36,411 usable square feet and approximately 42,837 rentable square feet, shown on Appendix 1 to the attached Exhibit A , subject to final measurement and verification as set forth below in this definition. The Premises do not include, and Landlord reserves, the land and other area beneath the floor of the Premises, the pipes, ducts, conduits, wires, fixtures and equipment above the suspended ceiling of the Premises and the structural elements that serve the Premises or comprise the Building; *provided, however,* that, subject to Paragraphs 9.2 and 17.1 , Tenant may, at Tenant's sole cost and expense, install Tenant's voice and data lines, wiring, cabling and facilities above the suspended ceiling of the Premises and in the walls of the Premises for the conduct by Tenant of business in the Premises for the Permitted Use. Landlord's reservation includes the right to install, use, inspect, maintain, repair, alter and replace those areas and items and to enter the Premises in order to do so in accordance with and subject to Paragraph 9.3 . For all purposes of this Lease, the calculation of usable square feet contained within the Premises and the Building shall be subject to final measurement and verification by Landlord's licensed architect, at Landlord's sole cost and expense, according to ANSI/BOMA Standard Z65.1-2017 (or any successor standard), and the rentable square feet contained within the Premises and the Building shall be the quotient of the usable square feet so calculated divided by 0.85, which measurement and verification may, at Tenant's option and at Tenant's sole cost and expense, be confirmed by Tenant's licensed architect. (The preceding sentence shall be the sole and exclusive method used for the measurement and calculation of usable and rentable square feet under this Lease for the Premises and the Building.) Landlord shall provide Tenant with a copy of Landlord's architect's verification and certification as to the actual usable and rentable square feet of the Premises prior to the Commencement Date. In the event of a variation between the square footage set forth above in this definition and the square footage set forth in such verification and certification, the Parties shall amend this Lease accordingly to conform to the square footage set forth in such verification and certification, amending each provision that is based on usable or rentable square feet, including, without limitation, Basic Monthly Rent, the Security Deposit, Tenant's Parking Stall Allocation, Tenant's Percentage of Operating Expenses and the TI Allowance, and shall appropriately reconcile any payments already made pursuant to those provisions; *provided,* that if Landlord's architect and Tenant's architect disagree on the amount of usable or rentable square feet within the Premises and the Building, and such disagreement is not resolved within ten (10) business days after such measurement and verification is completed by Landlord's architect, such disagreement shall be resolved by an independent, licensed architect mutually selected by the Parties, acting reasonably, the cost of which architect shall be shared equally by the Parties.

" ***Prime Rate*** " means a variable interest rate per annum equal to the highest rate quoted in the "Money Rates" section (or replacement section) of the *Wall Street Journal* as the "Prime Rate" for such day (or the previous day of publication for days on which the *Wall Street Journal* is not published). The Prime Rate shall be adjusted on and as of the effective date of any change in the Prime Rate. If the *Wall Street Journal* ceases to publish the Prime Rate, the Prime Rate shall be the highest prevailing base or reference rate on corporate loans at U.S. money center commercial banks.

" ***Project*** " means North Slope, located in Lehi, Utah, as it may exist from time to time.

" ***Projected Commencement Date*** " means the date on which the Commencement Date is projected to occur, which is December 1, 2019.

" ***Property*** " means the Improvements and the related land owned by Landlord.

" ***Punch List Items*** " means, with respect to Landlord's Work, any punch list items that do not materially interfere with the reasonable use and enjoyment of the Premises or the conduct of business in the Premises for the Permitted Use.

" ***reasonable*** " means "good faith and commercially reasonable" and " ***reasonably*** " means "in good faith and in a commercially reasonable manner."

" ***Rent*** " means Basic Monthly Rent and Tenant's Share of Operating Expenses.

" ***Security Deposit*** " means an amount equal to Basic Monthly Rent for the final calendar month of the initial period constituting the Term ($120,371.97), which amount is subject to adjustment as set forth in the definition of "Premises".

" ***structural*** " means footings, foundations, floor slabs, load-bearing walls, structural columns and beams, exterior walls, roofs (including roof deck and membrane) and beams that support the roof joists.

" ***Substantial Completion*** " means the date on which all of the following have occurred:

(i) Landlord's Work has been completed in accordance with the attached Exhibit A , as evidenced by an approval to occupy, or a temporary certificate of occupancy for, the Premises issued by the applicable municipality that will permit the conduct of business in the Premises for the Permitted Use, subject only to the completion by Landlord of any Punch List Items, with all Building systems, including HVAC, in good working order, condition and repair; and

(ii) Landlord has delivered vacant, "broom clean" and exclusive possession of the Premises to Tenant for conducting Tenant's business.

" ***Tenant Default*** " has the meaning set forth in Paragraph 16.1 , and includes any applicable notice and cure period given therein to Tenant.

" ***Tenant Delay*** " has the meaning set forth in Paragraph 4 of the attached Exhibit A .

" ***Tenant Improvements*** " has the meaning set forth in Paragraph 1 of the attached Exhibit A .

" ***Tenant's Estimated Share of Operating Expenses*** " means the result obtained by subtracting Base Year Operating Expenses from the Estimated Operating Expenses for any given Operating Year, and then multiplying the difference by Tenant's Percentage of Operating Expenses. Tenant's Estimated Share of Operating Expenses for any fractional Operating Year shall be calculated by determining Tenant's Estimated Share of Operating Expenses for the relevant Operating Year and then prorating such amount over such fractional Operating Year.

" ***Tenant's Occupants*** " means any assignee, subtenant, employee, agent, contractor, licensee, franchisee or invitee of Tenant.

" ***Tenant's Parking Stall Allocation*** " means one hundred eighty-two (182) parking stalls, based on five (5) parking stalls per 1,000 usable square feet of the Premises having 36,411 usable square feet, which number of parking stalls is subject to adjustment as set forth in the definition of "Premises", and is inclusive of the reserved parking stalls described in Paragraph 19.1(a) .

" ***Tenant's Percentage of Operating Expenses*** " means 28.652 percent, which is the percentage determined by dividing the rentable square feet of the Premises (42,837 rentable square feet) by the rentable square feet of the Building (149,506 rentable square feet) (whether or not leased), multiplying the quotient by 100 and rounding to the third (3 rd) decimal place, which percentage is subject to adjustment as set forth in the definition of "Premises".

" ***Tenant's Property*** " means only the following if, but only if, installed in or made to the Premises by Tenant at Tenant's sole cost and expense, and not paid for in whole or in part from the TI Allowance or otherwise paid for in whole or in part, directly or indirectly, by Landlord (which shall remain the property of Tenant, subject to Paragraph 17.1):

(i) Tenant's furniture, phones, computers, equipment and other personal property, provided that each of the foregoing is readily movable and unattached to the Premises; *provided, however,* that typical pictures, diplomas and other similar items, and movable cubicles with electrical connections, shall not be considered to be "attached" to the Premises for purposes of this definition;

(ii) Tenant's signage;

(iii) Tenant's voice and data lines, wiring, cabling and facilities, security systems and telecommunication equipment; and

(iv) any Alteration made by Tenant with Landlord's prior consent if such consent if conditioned on such Alteration being owned by Tenant and removed by Tenant at Lease end.

" ***Tenant's Share of Operating Expenses*** " means the result obtained by subtracting Base Year Operating Expenses from Operating Expenses actually incurred in any given Operating Year, and then multiplying the difference by Tenant's Percentage of Operating Expenses. Tenant's Share of Operating Expenses for any fractional Operating Year shall be calculated by determining Tenant's Share of Operating Expenses for the relevant Operating Year and then prorating such amount over such fractional Operating Year. By way of explanation only, Tenant's Share of Operating Expenses in any given calendar year is, in essence, Tenant's pro rata share of the increase (only) of Operating Expenses for such calendar year over Operating Expenses for the Base Year. And, since Tenant's Share of Operating Expenses is calculated in reference to an increase of Operating Expenses over Base Year Operating Expenses, Tenant's Share of Operating Expenses during the Base Year shall be zero, and Tenant will not commence paying Tenant's Share of Operating Expenses until the OpEx Commencement Date.

" ***Term*** " means the period commencing at 12:01 a.m. on the Commencement Date and expiring at midnight on the Expiration Date, as such period may be extended or sooner terminated in accordance with this Lease.

" ***TI Allowance*** " has the meaning set forth in Paragraph 3(a) of the attached Exhibit A .

" ***untenantable*** " means that the Premises or a material portion of the Premises is not reasonably capable of use and occupancy, and is not, in fact, used or occupied, by Tenant for the Permitted Use.

2. Agreement of Lease; Work of Improvement; Certain References .

2.1. Agreement of Lease . Subject to and in accordance with the provisions set forth in this Lease, Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord for the Term, together with the nonexclusive right to use the Common Areas in common with other tenants of the Building (subject to Paragraph 9.4), subject to any recorded covenants, conditions and restrictions affecting the Property, provided that any such covenants, conditions and restrictions entered into after the date of this Lease do not materially and adversely affect Tenant's rights or obligations under this Lease. Landlord shall not have the right to relocate Tenant to premises other than the Premises during the Term.

2.2. Work of Improvement .

(a) Landlord shall perform Landlord's Work promptly, diligently, in a first-class and workmanlike manner and in accordance with Laws, and shall use its best efforts to complete Landlord's Work on or before the Projected Commencement Date. All improvements made to the Premises pursuant to the attached Exhibit A , whether made by or at the expense of either Party, shall on installation be and remain the property of Landlord, excluding only Tenant's Property.

(b) On or about the date of Substantial Completion, the Parties, Landlord's architect and contractor and, if desired by Tenant, Tenant's architect shall perform a walk-through of the Premises, confirming that Landlord's Work has been completed, and identifying the Punch List Items. The Punch List Items shall be completed by Landlord within thirty (30) days after such walk-through (but shall not include any damage resulting from the delivery or installation of Tenant's furniture, fixtures or equipment, which damage shall be repaired promptly by Tenant, at Tenant's sole cost and expense, in accordance with all applicable provisions of this Lease). In addition to Landlord's obligation to complete the Punch List Items, Landlord shall, at Landlord's sole cost and expense, promptly remedy any defects in Landlord's Work of which Tenant gives Landlord notice within the one (1)-year period following the Commencement Date. Landlord shall also use its best efforts to obtain and enforce all warranties customarily provided by all contractors, subcontractors and material suppliers in connection with the Improvements.

2.3. Certain References . Whenever in this Lease (including in the Exhibits attached to this Lease):

(a) the consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless expressly provided to the contrary;

(b) there is a reference to costs, expenses, fees or other charges (including, without limitation, attorneys' fees and costs), such reference shall be deemed to be to reasonable, reasonably necessary and actual costs, expenses, fees and other charges, of which the Party incurring such costs, expenses, fees or other charges has some reasonable documentation, record or evidence, a copy of which shall be provided to the other Party, and when one Party is obligated to pay or reimburse the other Party under this Lease on presentation of an invoice, such invoice shall include reasonable supporting documentation for the amount to be paid or reimbursed;

(c) either Party is given the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, such Party shall act reasonably;

(d) there is a reference to "days", such reference shall be deemed to be to "calendar days" unless the phrase "business days" is expressly set forth;

(e) the date on which any payment or performance is due under this Lease is not a business day, such payment or performance shall be due on the immediately following business day; and

(f) there is a reference to a consent, approval, description, designation, estimate, notice, request, response, statement, correspondence, agreement, schedule or other communication between the Parties, such reference shall be deemed to require the same to be in writing, unless otherwise expressly set forth.

3. Term; Commencement Date; Tenant Rights .

3.1. Term; Commencement Date . Tenant's obligation to pay Basic Monthly Rent and other amounts due under this Lease shall commence on the Commencement Date, and shall be for the Term, subject to the express terms and conditions of this Lease. Within ten (10) business days after the Commencement Date, the Parties shall execute an acknowledgement of the Commencement Date, the Expiration Date and the Basic Monthly Rent schedule, which acknowledgement shall be deemed to be a part of this Lease and, to the extent applicable, shall serve to amend this Lease.

3.2. Extension .

(a) Tenant shall have the option to extend the initial period constituting the Term under this Lease for two (2) additional periods of five (5) years each (only), provided that Tenant gives Landlord notice of the exercise of each such option on or before the date that is six (6) months prior to the expiration of the then-existing period constituting the Term, and that at the time each such notice is given and on the commencement of the extension term concerned:

(i) this Lease is in full force and effect;

(ii) no monetary or material non-monetary Tenant Default then exists; and

(iii) Tenant has not assigned this Lease or subleased all or any portion of the Premises under any then-existing sublease (excluding any Non-Consent Transfer), and such extension is not being made in connection with or for the purpose of facilitating any such assignment or sublease.

Each such extension term shall commence at 12:01 a.m. on the first day following the expiration of the immediately preceding period constituting the Term.

(b) During each such extension term, all provisions of this Lease shall apply (but as to this Paragraph 3.2 , only with respect to any remaining options to extend, if any), except for any provision relating to the improvement of the Premises by Landlord or at Landlord's expense, and except that the amount of Basic Monthly Rent for each such extension term shall be negotiated and determined by mutual agreement between the Parties, with the Basic Monthly Rent for the first year of such extension period being the *lesser* of (i) the then-market rent for premises in Comparable Buildings, based on comparable lease transactions, or (ii) the amount that would result if Basic Monthly Rent payable in the month preceding each such extension term increased in the first year of each such extension term by two and five-tenths percent (2.5%). The term " ***then-market rent*** " as used in the preceding sentence shall mean the annual amount, projected during each such extension term, that a willing, comparable, non-equity tenant (excluding assignment and sublease transactions) would pay, and a willing, comparable landlord of a Comparable Building located in the same market as the Building would accept, at arm's length (without compulsion to agree) for lease extensions or renewals (including what Landlord is and its affiliates are accepting for current lease extension or renewal transactions for the Project), for general office space of similar rentable square footage, location and quality, but excluding consideration of tenant improvement allowances and lease concessions, if any, then being given by Landlord and its affiliates or the landlords of such similar projects, unless such tenant improvement allowances and lease concessions are then being given by such persons in connection with lease extensions or renewals. If the Parties are able to agree on the amount of Basic Monthly Rent for either such extension term within thirty (30) days after receipt by Landlord of Tenant's notice of extension, the Parties shall promptly enter into an amendment to this Lease reflecting the new Basic Monthly Rent and the new Expiration Date. If the Parties, after using their best efforts, are unable to agree on the amount of Basic Monthly Rent for either such extension term within such thirty (30)-day period (as evidenced by the execution and delivery of an amendment to this Lease), then such option to extend (and any subsequent option to extend) shall automatically terminate and be of no further force or effect.

3.3. Right of First Refusal .

(a) During the Term, and provided that (i) this Lease is in full force and effect, (ii) no monetary or material non-monetary Tenant Default then exists, (iii) Tenant has not assigned this Lease or subleased all or any portion of the Premises under any then-existing sublease (excluding any Non-Consent Transfer), and (iv) the right of first refusal described in this Paragraph 3.3 is not being exercised in connection with or for the purpose of facilitating any such assignment or sublease, if any space (a " ***ROFR Space*** ") located in the Building is or becomes available for lease, and Landlord receives a request for proposal from a tenant that Landlord desires to accept to lease such ROFR Space, or sends out (or has decided to send out) a *bona fide* proposal to a specific, *bona fide* prospective tenant to lease such ROFR Space, then Landlord shall give to Tenant notice (the " ***ROFR Notice*** ") that Landlord is willing to enter into a lease with Tenant of such ROFR Space. (For purposes of this Paragraph, any space covered by a renewal, extension or expansion option existing in any tenant's lease as of the date of this Lease, any renewal or extension option given by Landlord to any then-existing tenant for its then-existing space, or any right of first offer or right of first refusal existing as of the date of this Lease, shall not be "available for lease" until after each such option or right has expired.)

(b) If Tenant gives Landlord notice of Tenant's interest in leasing the ROFR Space within five (5) business days after receipt of the ROFR Notice, the Parties shall enter into an amendment to this Lease covering such ROFR Space, which, unless otherwise agreed by the Parties, shall:

(i) have a term that is coterminous with this Lease;

(ii) provide for Basic Monthly Rent for the ROFR Space at a rate to be negotiated reasonably by the Parties, which shall not be less than the same rate, on a per rentable square foot basis, as is payable for the Premises during the period concerned; *provided, however,* that the Basic Monthly Rent initially shall be $7.00 per rentable square foot for the number of full calendar months equal to the product of seven (7) months multiplied by a fraction, the numerator of which is the number of full calendar months left in the remaining Term as of the commencement date for the ROFR Space, and the denominator of which is the number of full calendar months in the original Term (one hundred twenty (120)); and

(iii) provide for a tenant improvement allowance for the ROFR Space on a per usable square foot basis, determined by multiplying the TI Allowance per usable square foot by a fraction, the numerator of which is the number of full calendar months left in the remaining Term as of the commencement date for the ROFR Space, and the denominator of which is the number of full calendar months in the original Term in which non-discounted Basic Monthly Rent is payable (one hundred thirteen (113)), assuming that the ROFR Space is in shell condition. If the ROFR Space is not in shell condition, then the total tenant improvement allowance for the ROFR Space shall be reduced by the actual costs previously incurred by Landlord in improving the ROFR Space from a shell condition.

(c) If either of the following occurs: (i) within such five (5)-day period, Tenant either delivers notice to Landlord that Tenant elects not to lease such ROFR Space, or fails to deliver any response to Landlord; or (ii) Tenant fails to enter into an amendment to this Lease within ten (10) business days after Tenant delivers notice to Landlord that Tenant elects to lease such ROFR Space, adding such ROFR Space to this Lease in a manner consistent with this Paragraph 3.3 , then such right of first refusal with respect to such ROFR Space shall terminate and be of no further force or effect, unless such ROFR Space is first leased and then subsequently becomes available for lease, but shall continue to apply to other ROFR Space.

3.4. Option to Terminate . Tenant shall have the one-time option to terminate this Lease, effective as of the date (the " ***Termination Date*** ") that is the last day of the eighty-fourth (84 th) full calendar month during the Term, if, but only if, each of the following conditions is satisfied in a timely manner:

(a) Tenant shall have given Landlord notice (the " ***Termination Notice*** ") of Tenant's exercise of its option to terminate this Lease on or before the date that is twelve (12) months prior to the Termination Date, which Termination Notice shall be irrevocable;

(b) at the time the Termination Notice is given and as of the Termination Date, this Lease shall be in full force and effect and no Tenant Default shall then exist;

(c) on or before the Termination Date, Tenant shall have surrendered to Landlord possession of the Premises in accordance with the provisions of this Lease, as if the Termination Date was the Expiration Date, and shall have satisfied all obligations of payment and performance by Tenant under this Lease for the period ending on the Termination Date; *provided, however,* that (i) the obligations of the Parties under Paragraph 5 for the period ending on the Termination Date shall survive the termination of this Lease under this Paragraph 3.4 , but only for the purpose of final reconciliation of Tenant's Share of Operating Expenses, and (ii) the obligations of the Parties under the provisions of this Lease that survive Lease end shall survive the Termination Date; and

(d) within ten (10) business days after receipt by Tenant of an invoice therefor, accompanied by reasonable supporting documentation, Tenant shall have paid to Landlord a sum comprised of Rent otherwise payable under this Lease for the three (3)-month period following the Termination Date *but for* such termination, together with the unamortized cost or amount as of the Termination Date of the following:

(i) the TI Allowance;

(ii) all reasonable and customary leasing commissions paid or incurred by Landlord in connection with this Lease; and

(iii) all Basic Monthly Rent abated during the Term in any "free rent" period (that is, $20.00 per rentable square foot of the Premises on an annual basis for the first seven (7) months of the Term),

with all such amortization based on a nine (9)-year and five (5)-month amortization schedule commencing on the first day of the first full calendar month during the Term in which full Basic Monthly Rent is payable under this Lease (that is, $27.00 per rentable square foot of the Premises on an annual basis) on or after the Commencement Date, with interest thereon at the Interest Rate.

3.5. Crown Signage .

(a) Subject to any prior signage rights currently documented in lease agreements with other tenants in the Building, and to the conditions set forth below in this Paragraph 3.5 , if and so long as Tenant or an assignee pursuant to a Non-Consent Transfer leases at least a Full Floor (defined below) of the Building and a Qualified Occupant (as defined below) occupies at least seventy-five percent (75%) of a Full Floor of the Building (meaning that any rights of Tenant under this Paragraph 3.5 shall not exist (or if previously existing, shall automatically terminate) as of the date on which Tenant or an assignee pursuant to a Non-Consent Transfer does not lease at least a Full Floor of the Building or a Qualified Occupant does not occupy at least seventy-five percent (75%) of a Full Floor of the Building), Tenant may, at Tenant's sole cost and expense, but under Landlord's supervision, install, maintain, repair and from time to time replace, on a nonexclusive basis, one (1) sign on the exterior crown of the West-facing side of the Building with the name "Purple" or such other name to which Landlord consents in advance. (Such sign, together with any lines, wires, conduits or related improvements installed by Tenant in connection therewith, are referred to in this Paragraph 3.5 collectively as the " ***Crown Signage*** .") As used in this Paragraph 3.5 , a " ***Qualified Occupant*** " means one or more of the following:

(i) Tenant; or

(ii) an assignee or subtenant pursuant to a Non-Consent Transfer.

(b) As used in this Paragraph 3.5 , a " ***Full Floor*** " of the Building means either:

(i) if the Premises are located on only one (1) floor of the Building, the entire usable area of such floor (including, unless such floor is the first floor of the Building, the common lobby on such floor); or

(ii) if the Premises do not qualify as a Full Floor under the foregoing subparagraph (i) , and are located on more than one (1) floor of the Building, an amount of usable square footage in the Building that is equal to or greater than the average usable square footage for each floor of the Building, which average shall be calculated by dividing the total above-ground usable square footage of the Building by the number of above-ground floors of the Building,

where the square footage concerned is either office space, or non-office space leased at full Building rental rates for office space. For example purposes only with respect to subparagraph (ii) above, if the average usable square footage for each floor of the Building is 25,000 usable square feet, to meet the Full Floor condition set forth in subparagraph (a) above using partial floors, Tenant must, on multiple floors of the Building, lease Premises in the aggregate equal to at least 25,000 usable square feet.

(c) As set forth in subparagraph (a) above, as a condition to having the Crown Signage, a Qualified Occupant must physically occupy at least seventy-five percent (75%) of the square footage used to meet the Full Floor condition. In addition, if a Tenant Default occurs, including, without limitation, Tenant's failure to properly maintain the Crown Signage in accordance with subparagraph (i) below, and, as a result of such Tenant Default, Landlord retakes possession of the Premises (with or without terminating this Lease), Tenant's rights to the Crown Signage under this Paragraph 3.5 shall automatically terminate and thereafter be of no further force or effect. Moreover, Tenant's rights to the Crown Signage under this Paragraph 3.5 shall automatically terminate ten (10) business days after:

(i) the assignment of this Lease by Tenant (excluding any Non-Consent Transfer); or

(ii) the sublease by Tenant as the sublandlord of more than twenty-five percent (25%) of the square footage used to meet the Full Floor condition (whether in one or more subleases) (excluding any Non-Consent Transfer),

and shall have no further force or effect. Tenant's rights to the Crown Signage under this Paragraph 3.5 shall be personal to Tenant and any person to which this Lease is assigned in a Non-Consent Transfer, and no other assignee or subtenant shall have any rights to the Crown Signage.

(d) Signage location is largely designated by the signage ordinances of the applicable municipality, but is allowed only on certain flat exterior wall surfaces of the crown of the Building. For purposes of the Project, the Building crown is defined as "the flat wall surface between the top of the window of the top floor of the Building to the bottom of the cornice of the parapet wall," and, unless otherwise directed by Landlord, the Crown Signage must be centered vertically between the two equally and left-justified horizontally. Any mechanical/storage penthouse is excluded from the Building crown, and the Crown Signage is not permitted on any curved surfaces of the Building.

(e) The Crown Signage shall be subject to the following design requirements:

(i) letters: reverse pan channel letters on 1" inch stand-offs with 3" returns;

(ii) dual lit: (A) type: rout out back up; (B) material: brushed aluminum; and (C) lighting: white LED (cabinet to be face lit and halo lit);

(iii) back up material: white polycarbonate;

(iv) stand-offs: (A) size: 1"; and (B) color: to match Building; and

(v) reverse pan: (A) materials: brushed aluminum; and (B) lighting: white LED.

Maximum letter height will vary depending on the Building, but cannot extend below the top of the window or above the cornice as specified in subparagraph (d) above. All Crown Signage letters must have clear Lexan backs to keep birds out (or other similar material subject to Landlord's approval), and an approved vapor barrier/sealer shall be installed on all Building penetrations.

(f) Tenant shall submit to Landlord for approval in advance of any work being done the name, address, proof of insurance, references and evidence of ability to perform of Tenant's proposed signage and installation companies for the Crown Signage. Landlord reserves the right to reject any signage or installation company that is not approved by Landlord. All necessary permits must be obtained prior to any work commencing. The installer shall work with Landlord's preferred electrical provider (who shall provide its services to Tenant at competitive market rates) for all electrical connections, time clocks and light sensors, and signage installation shall be coordinated and scheduled through Landlord.

(g) (i) Prior to the installation of the Crown Signage, Tenant shall deposit with Landlord a signage deposit (the " ***Signage Deposit*** ") as security for the faithful performance by Tenant of its obligations under this Paragraph 3.5 . The Signage Deposit shall be in an amount equal to the estimated cost of removing the Crown Signage and repairing and restoring all areas of the Building affected by the installation and operation of the Crown Signage, as reasonably agreed between the Parties prior to the installation of the Crown Signage. Landlord may intermingle the Signage Deposit with Landlord's own funds. The Signage Deposit is not a limitation on Landlord's damages or other rights under this Lease, a payment of liquidated damages or prepaid Rent and shall not be applied by Tenant to Rent for the last (or any) month of the Term, or to any other amount due under this Lease.

(ii) If Tenant fails to pay or perform in a timely manner any of its obligations under this Paragraph 3.5 , then following the expiration of any applicable notice and cure period given to Tenant in this Lease, Landlord may, prior to, concurrently with or subsequent to, exercising any other right or remedy, use, apply or retain all or any part of the Signage Deposit for the payment of any monetary obligation due under this Paragraph 3.5 , or to compensate Landlord for any other expense, loss or damage that Landlord may reasonably incur by reason of Tenant's failure. If all or any portion of the Signage Deposit is so used, applied or retained, Landlord shall promptly notify Tenant of such use, application or retention, and Tenant shall, within ten (10) business days following such notification, deposit with Landlord cash in an amount sufficient to restore the Signage Deposit to the original amount.

(iii) The Signage Deposit shall be returned to Tenant (without interest), together with an itemization of any deductions therefrom, within thirty (30) days after Tenant has, in accordance with subparagraph (i) below, removed the Crown Signage and repaired and restored all areas of the Building concerned to their condition prior to the installation of the Crown Signage.

(iv) If Landlord's interest in this Lease is conveyed, transferred or assigned, Landlord shall transfer or credit the Signage Deposit to Landlord's successor in interest, and provided that the transferee assumes in writing Landlord's obligations under this Lease, Landlord shall be released from any liability for the return of the Signage Deposit.

(h) In connection with the Crown Signage, Tenant shall, at Tenant's sole cost and expense, comply with Laws, the conditions of any warranty or insurance maintained by Landlord on the Building and any applicable requirements of any covenants, conditions and restrictions affecting the Property. The size, location, design and all other aspects and specifications of the Crown Signage must be submitted to, and approved in advance by, Landlord and the applicable municipality prior to the manufacture and installation of the Crown Signage. All designs and specifications for the Crown Signage must be in full compliance with the signage ordinance of the applicable municipality. Tenant shall be solely responsible for any cleanup, damage or other mishaps that may occur during the installation or removal of the Crown Signage by Tenant, and shall fully indemnify Landlord for all injuries to persons or damage to property related thereto. Final, executed releases of lien by all signage and installation companies must be provided by Tenant to Landlord prior to Tenant making final payment to the signage and installation companies.

(i) Tenant shall maintain the Crown Signage at all times in a good, safe and clean condition. Tenant shall repair any damage to the Building caused by Tenant's installation, maintenance, repair, replacement, use or removal of the Crown Signage. The Crown Signage shall remain the property of Tenant, and Tenant may, at Tenant's sole cost and expense, remove the Crown Signage at any time during the Term. Tenant shall, at Tenant's sole cost and expense, remove the Crown Signage prior to Lease end or the sooner termination of Tenant's rights to the Crown Signage under this Paragraph 3.5 , including, without limitation, if Tenant or an assignee pursuant to a Non-Consent Transfer ceases to lease at least a Full Floor of the Building or a Qualified Occupant ceases to occupy at least seventy-five percent (75%) of a Full Floor of the Building. On removal of the Crown Signage, Tenant shall repair and restore all areas of the Building concerned to their condition prior to the installation of the Crown Signage, including, without limitation, any discoloration of the exterior of the Building.

(j) If a Tenant Default occurs and, as a result of such Tenant Default, Landlord retakes possession of the Premises (with or without terminating this Lease), or if Tenant fails to remove the Crown Signage prior to Lease end or the sooner termination of Tenant's rights to the Crown Signage under this Paragraph 3.5 , Landlord may, at Tenant's sole cost and expense, remove the Crown Signage and repair and restore all areas of the Building concerned to their condition prior to the installation of the Crown Signage, and Tenant shall promptly reimburse Landlord for all costs and expenses incurred by Landlord in connection with such removal, repair and restoration and any storage of the Crown Signage in excess of the Signage Deposit.

4. Basic Monthly Rent .

(a) Tenant covenants to pay to Landlord, without (except as expressly provided in this Lease) abatement, deduction, offset, prior notice or demand, Basic Monthly Rent in lawful money of the United States at the address for Landlord set forth in Paragraph 22.3, or at such other such place as Landlord may designate to Tenant not less than thirty (30) days prior to the next payment due date, in advance on or before the first day of each calendar month during the Term, commencing on the Commencement Date unless otherwise set forth in the definition of "Basic Monthly Rent". Tenant may make payments to Landlord under this Lease by electronic transfer, wire transfer or similar means, but each payment of Basic Monthly Rent shall be made pursuant to an automatic payment procedure set up by Tenant that ensures that each such payment will be received by Landlord on or before the first day of each calendar month.

(b) If the first day on which Basic Monthly Rent is due under this Lease is not the first day of a calendar month, on or before such due date Basic Monthly Rent shall be paid for the initial fractional calendar month prorated on a *per diem* basis. If the Term expires or this Lease terminates on a day other than the last day of a calendar month, Basic Monthly Rent for such fractional month shall be prorated on a *per diem* basis.

(c) In addition to the foregoing, concurrently with its execution and delivery of this Lease, Tenant shall pay to Landlord in advance Basic Monthly Rent for the first full calendar month following the Commencement Date in which full Basic Monthly Rent is payable (that is, $27.00 per rentable square foot on an annual basis), which shall be applied by Landlord to pay Basic Monthly Rent for such month on the date due.

5. Operating Expenses .

5.1. Payment of Operating Expenses .

(a) In addition to Basic Monthly Rent, Tenant covenants to pay to Landlord, without (except as expressly provided in this Lease) abatement, deduction, offset, prior notice or demand, Tenant's Share of Operating Expenses (to the extent that Operating Expenses in the Operating Year concerned are greater than Base Year Operating Expenses) in lawful money of the United States at the address for Landlord set forth in Paragraph 22.3 , or at such other such place as Landlord may designate to Tenant not less than thirty (30) days prior to the next payment due date, in advance (as Tenant's Estimated Share of Operating Expenses) on or before the first day of each calendar month during the Term, commencing on the OpEx Commencement Date, in accordance with the provisions of this Paragraph 5 ; *provided, however,* that Tenant's Share of Operating Expenses for the Base Year and any prior year shall be zero.

(b) On or prior to the OpEx Commencement Date, and prior to each Operating Year after the Operating Year commencing on the OpEx Commencement Date, or as soon thereafter as is reasonably practicable (but not later than May 1 st of the Operating Year concerned), Landlord shall furnish Tenant with a statement (the " ***Estimated OpEx Statement*** ") showing in reasonable detail, reasonably sufficient for Tenant verification, the component breakdown of the Estimated Operating Expenses for the Operating Year concerned and the computation of Tenant's Estimated Share of Operating Expenses for such Operating Year. Each such estimate of Operating Expenses shall be based on the actual Operating Expenses for the immediately prior year and Landlord's reasonable estimate of Operating Expenses for the coming year.

(c) Subject to the proviso in the last sentence of this subparagraph (c) , on or prior to the OpEx Commencement Date, and on the first day of each month following the OpEx Commencement Date, Tenant shall pay to Landlord one-twelfth (1/12th) of Tenant's Estimated Share of Operating Expenses as specified in the Estimated OpEx Statement for such Operating Year. If Landlord fails to give Tenant an Estimated OpEx Statement prior to any applicable Operating Year, Tenant shall continue to pay on the basis of the Estimated OpEx Statement for the prior Operating Year until the Estimated OpEx Statement for the current Operating Year is received. If at any time it appears to Landlord that Operating Expenses for a particular Operating Year will vary from Landlord's original estimate, Landlord may (but if the variation is a material reduction in such Operating Expenses from Landlord's original estimate, Landlord shall) deliver to Tenant (but not more than once in any Operating Year) a revised Estimated OpEx Statement for such Operating Year, and subsequent payments by Tenant for such Operating Year shall be based on such revised Estimated OpEx Statement; *provided, however,* that in all events, Tenant shall be given at least thirty (30) days after the delivery of any original or revised Estimated OpEx Statement to make any payment required to be made pursuant to the statement concerned.

(d) As soon as reasonably practicable after the expiration of any applicable Operating Year (but not later than May 1 st following the Operating Year concerned), Landlord shall furnish Tenant with a statement (the " ***Actual OpEx Statement*** ") showing in reasonable detail, reasonably sufficient for Tenant verification, the component breakdown of Operating Expenses for the Operating Year concerned, the computation of Tenant's Share of Operating Expenses for such Operating Year and the amount by which Tenant's Share of Operating Expenses exceeds or is less than the amounts paid by Tenant during such Operating Year, which shall be deemed to be certified by Landlord to be true and accurate when furnished. If the Actual OpEx Statement indicates that the amount actually paid by Tenant for the relevant Operating Year is less than Tenant's Share of Operating Expenses for such Operating Year, Tenant shall pay to Landlord such deficit within thirty (30) days after delivery of the Actual OpEx Statement. Such payments by Tenant shall be made even though the Actual OpEx Statement is furnished to Tenant after Lease end, provided that Tenant receives the Actual OpEx Statement within ninety (90) days after Lease end. If the Actual OpEx Statement indicates that the amount actually paid by Tenant for the relevant Operating Year exceeds Tenant's Share of Operating Expenses for such Operating Year, such excess shall be credited in full against Rent thereafter coming due under this Lease until such credit is exhausted or, if no Rent is thereafter coming due under this Lease, such excess shall be paid by Landlord to Tenant within thirty (30) days after the Actual OpEx Statement is furnished to Tenant. The Parties' obligations set forth in this subparagraph (d) shall survive Lease end.

(e) No failure by Landlord to require the payment of Tenant's Share of Operating Expenses for any period shall constitute a waiver of Landlord's right to collect Tenant's Share of Operating Expenses for such period or for any subsequent period; *provided, however,* that, except for Operating Expenses that are being amortized over a term of years in accordance with the terms of this Lease, Landlord shall not be entitled to collect from Tenant any Operating Expenses that are billed to Tenant for the first time more than eighteen (18) months after the Operating Year in which such Operating Expenses arise. If Base Year Operating Expenses exceed Operating Expenses that were actually incurred or payable for any full or (on a pro rata basis) partial Operating Year after the Base Year, Tenant shall not be entitled to any refund, credit or adjustment of Basic Monthly Rent. Tenant shall, however, be entitled to receive a refund of, or credit for, any Estimated Operating Expenses paid by Tenant during such full or partial Operating Year in accordance with the foregoing subparagraph (d) .

(f) Landlord shall use its best efforts to control Operating Expenses to the extent reasonably practicable, and shall pay all Operating Expenses in a timely manner prior to delinquency, subject to payment of Rent by Tenant in a timely manner. For any particular Operating Year, Landlord may not collect Operating Expenses from tenants in the Building in an amount (as grossed up to account for any base year or expense stop provided to such tenants) that is in excess of one hundred percent (100%) of Operating Expenses actually paid or incurred by Landlord for such Operating Year.

(g) If the Term expires or this Lease terminates on a day other than the last day of a calendar month, Tenant's Share of Operating Expenses for such fractional month shall be prorated on a *per diem* basis.

(h) Notwithstanding the other provisions of this Paragraph 5 , Tenant shall have sole responsibility for, and shall pay when due, all taxes, assessments, charges and fees levied by any governmental or quasi- governmental authority on Tenant's business operations in the Premises or Tenant's Property.

5.2. Resolution of Disagreement .

(a) Every statement given by Landlord to Tenant under Paragraph 5.1 at the address for notices to Tenant set forth in Paragraph 22.3 shall be conclusive and binding on Tenant unless within ninety (90) days after the receipt of such statement, Tenant:

(i) notifies Landlord that Tenant disputes the correctness of such statement, specifying the particular respects in which the statement is claimed to be incorrect;

(ii) requests reasonable clarification of Landlord's information and computations, including reasonable detail as to any questioned expense item; or

(iii) initiates an audit of such statement.

Pending the determination of such dispute by agreement between the Parties, Tenant shall, within thirty (30) days after receipt of such statement, pay the amounts set forth in such statement in accordance with such statement, and such payment shall be without prejudice to Tenant's position. Tenant shall have the right to audit Base Year Operating Expenses in connection with its first audit of Operating Expenses conducted under this subparagraph (a) , but may not audit Base Year Operating Expenses following the first audit of Operating Expenses for any Operating Year after the Base Year, except with respect to material errors and subsequent adjustment to Base Year Operating Expenses under the terms of Paragraph 5 .

(b) If such dispute exists and it is subsequently determined that Tenant has paid amounts in excess of those then due and payable under this Lease, Landlord shall credit such excess against Rent thereafter coming due under this Lease until such credit is exhausted, or if this Lease has ended, shall pay such excess to Tenant within thirty (30) days after such determination. If such dispute is not resolved between the Parties within sixty (60) days, then at the request of either Party, such dispute shall be resolved by an independent certified public accountant, whose decision shall be binding. The Parties, acting reasonably, shall mutually select, and equally share the cost of, such accountant.

5.3. Tenant Audit Right .

(a) Landlord shall maintain its books and records relating to Operating Expenses for a period of at least three (3) years following the year in which such Operating Expenses were incurred, in a manner that is consistent with GAAP. Such books and records shall be available after at least ten (10) business days' request by Tenant at Landlord's office during normal business hours for audit, examination and copying by Tenant and Tenant's employees, agents or external auditors during such period, at Tenant's sole cost and expense (including Landlord's out-of-pocket costs incurred as a result of such audit); *provided,* that the right to initiate such audit shall expire within sixty (60) days after receipt of an Actual OpEx Statement with respect to the Operating Expenses covered thereby, and that:

(i) neither Tenant nor Tenant's employees, agents or external auditors may divulge the contents of such books and records or the results of such examination to any third party, except to Tenant's attorneys, accountants or consultants or as may reasonably be necessary in Tenant's business operations (so long as the person to whom such contents or results are divulged also agrees to maintain their confidentiality) or as may otherwise be required by Laws or a court of competent jurisdiction;

(ii) Tenant has not previously examined or audited such books and records with respect to the same Operating Year; and

(iii) Tenant provides to Landlord, at no cost, a copy of the report of such examination within ten (10) business days after receipt by Tenant.

(b) Notwithstanding the foregoing to the contrary, if such verification reveals that Tenant's Share of Operating Expenses set forth in any Actual OpEx Statement exceeded by more than five percent (5%) the amount that actually was due, Landlord shall, in addition to the amounts owed to Tenant under Paragraphs 5.1(d) and 5.2(b) , reimburse Tenant for any costs reimbursed to Landlord under the foregoing subparagraph (a) , plus the lesser of the actual cost of such examination or the reasonable charges of such examination based on a reasonable hourly charge (even if such accountant is actually paid on some other basis), together with other reasonable expenses incurred by such accountant. Tenant may not hire an accountant or other person to perform such examination on a contingency, percentage, bonus or similar basis, unless such accountant or other person is nationally recognized, reputable and reasonable in its approach. Any overcharge or underpayment revealed thereby shall be reconciled between the Parties, acting reasonably and in good faith, within thirty (30) days after the completion of such verification and examination.

5.4. Limitation on Certain Operating Expenses .

5.4.1. Definitions . As used in this Paragraph 5.4 , each of the following terms shall have the indicated meaning:

" ***Base Year Controllable Operating Expenses*** " means Controllable Operating Expenses that are actually incurred in the Base Year, subject to the other provisions of this Paragraph 5.4 .

" ***Controllable Operating Expenses*** " means all Operating Expenses other than those not within the control of Landlord, determined reasonably, consistent with Comparable Buildings. Without limiting the generality of the preceding sentence, those Operating Expenses not within the control of Landlord include, without limitation, (i) utilities, (ii) insurance premiums and deductibles, (iii) real and personal property taxes and assessments, (iv) snow removal costs, (v) expenditures for necessary capital repairs and replacements, (vi) market-wide cost increases resulting from extraordinary circumstances, including force majeure, boycotts, strikes, conservation surcharges, embargoes or shortages, and (vii) costs related to union contracts; *however,* Landlord shall make every reasonable effort to manage and minimize such non-controllable Operating Expenses.

" ***Tenant's Share of Base Year Controllable Operating Expenses*** " means the result obtained by multiplying Base Year Controllable Operating Expenses by Tenant's Percentage of Operating Expenses.

" ***Tenant's Share of Controllable Operating Expenses*** " for any given Operating Year other than the Base Year means the result obtained by subtracting Base Year Controllable Operating Expenses from Controllable Operating Expenses actually incurred in the Operating Year concerned, and then multiplying the difference by Tenant's Percentage of Operating Expenses, subject to the limitations set forth below. Tenant's Share of Controllable Operating Expenses for any fractional Operating Year shall be calculated by determining what Tenant's Share of Controllable Operating Expenses would have been for the entire Operating Year concerned, and then prorating such amount over such fractional Operating Year, subject to the limitations set forth below. When comparing any prior Operating Year that is a fractional calendar year, Tenant's Share of Controllable Operating Expenses for such prior Operating Year shall be proportionally increased to an amount that would have existed had such prior Operating Year been an entire calendar year.

5.4.2. Limitations .

(a) Notwithstanding the provisions of Paragraph 5.1 to the contrary, Tenant's obligation to pay Tenant's Share of Operating Expenses shall be limited as set forth in this Paragraph 5.4 with respect to Controllable Operating Expenses (only). This Paragraph 5.4 shall not limit Tenant's obligation to pay Tenant's Share of Operating Expenses except as expressly set forth as to Controllable Operating Expenses.

(b) Tenant's Share of Controllable Operating Expenses for the Operating Year immediately following the Base Year shall be the lesser of (i) Tenant's Share of Controllable Operating Expenses for such Operating Year, or (ii) the sum of Tenant's Share of Base Year Controllable Operating Expenses, plus five percent (5%), less Tenant's Share of Base Year Controllable Operating Expenses.

(c) Tenant's Share of Controllable Operating Expenses for each Operating Year thereafter shall be the lesser of (i) Tenant's Share of Controllable Operating Expenses for such Operating Year, or (ii) the sum of Tenant's Share of Controllable Operating Expenses for the immediately preceding Operating Year, plus five percent (5%).

(d) The intent of this Paragraph 5.4 is to create a non-compounding, five percent (5%) per year cap on Tenant's Share of Controllable Operating Expenses over each immediately preceding Operating Year.

(e) Notwithstanding the foregoing to the contrary, for purposes of the calculations set forth in this Paragraph 5.4 , (i) Controllable Operating Expenses (including, without limitation, Base Year Controllable Operating Expenses) that vary with occupancy and are attributable to any part of the Term in which less than ninety-five percent (95%) of the rentable area of the Building is occupied by tenants, will be adjusted by Landlord to the amount that Controllable Operating Expenses would have been if ninety-five percent (95%) of the rentable area of the Building had been occupied by tenants for the period concerned, and (ii) if Landlord furnishes a service to tenants in the Building, the cost of which constitutes a Controllable Operating Expense, and a tenant other than Tenant has undertaken to perform such service itself, Controllable Operating Expenses shall be increased by the amount that Landlord would have incurred if Landlord had furnished such service to such tenant.

5.4.3. Adjustments . Notwithstanding anything contained in the foregoing portion of this Paragraph 5.4 to the contrary:

(a) if Tenant's Share of Controllable Operating Expenses in any Operating Year exceeds the cap amount in such Operating Year and, as a result, Tenant pays less than the otherwise applicable Tenant's Share of Controllable Operating Expenses in such Operating Year, Landlord may accrue and carry forward the amount not paid by Tenant to one or more future Operating Years in which Tenant's Share of Controllable Operating Expenses is less than the cap amount in such Operating Year(s), and collect from Tenant such amount in such Operating Year(s) up to the cap amount in such Operating Year(s), until the full accrued amount previously not paid by Tenant has been collected; and

(b) if Tenant's Share of Controllable Operating Expenses in any Operating Year exceeds the cap amount in such Operating Year, but Tenant's Share of Operating Expenses in such Operating Year does not exceed the cap amount that would result if the limitation described in this Paragraph 5.4 was applied to Tenant's Share of Operating Expenses generally (that is, a non-compounding, five percent (5%) per year cap on Tenant's Share of Operating Expenses), then Tenant's Share of Controllable Operating Expenses shall *not* be reduced under this Paragraph 5.4 in such Operating Year.

6. Security Deposit .

(a) Concurrently with its execution and delivery of this Lease, Tenant shall deposit with Landlord the Security Deposit as security for the faithful performance by Tenant of its obligations under this Lease. Landlord may intermingle the Security Deposit with Landlord's own funds. The Security Deposit is not a limitation on Landlord's damages or other rights under this Lease, a payment of liquidated damages or prepaid Rent and shall not be applied by Tenant to Rent for the last (or any) month of the Term, or to any other amount due under this Lease.

(b) If a Tenant Default occurs under this Lease, then Landlord may, prior to, concurrently with, or subsequent to, exercising any other right or remedy, use, apply or retain all or any part of the Security Deposit for the payment of any monetary obligation past due under this Lease (after the expiration of any applicable notice and cure period given to Tenant in this Lease), or to compensate Landlord for any other expense, loss or damage that Landlord reasonably incurs by reason of such Tenant Default, including any damage or deficiency in the reletting of the Premises. If all or any portion of the Security Deposit is so used, applied or retained, Landlord shall promptly notify Tenant of such use, application or retention, and Tenant shall, within ten (10) business days following such notification, deposit with Landlord cash in an amount sufficient to restore the Security Deposit to its original amount.

(c) The Security Deposit shall be returned (without interest) to Tenant within thirty (30) days after Lease end and surrender of possession of the Premises to Landlord in accordance with Paragraph 17.1 ; *provided* , that if at such time, Tenant has not paid to Landlord all amounts payable under this Lease or if any Tenant Default then exists, said thirty (30)-day period shall be extended until such matters are resolved; *provided further, however,* that if such Tenant Default is a monetary default, and the Security Deposit is equal to or greater than the amount concerned, then Landlord shall apply the Security Deposit in full payment of such amount and remit to Tenant any remaining portion of the Security Deposit within such thirty (30)-day period, together with an itemization of any deductions therefrom, provided that Tenant has paid all other amounts payable under this Lease. Notwithstanding the foregoing, Landlord may withhold the Security Deposit after Lease end until Tenant has paid in full Tenant's Share of Operating Expenses for the Operating Year in which Lease end occurs, provided that Landlord provides to Tenant an Actual OpEx Statement for such Operating Year (or portion thereof) within thirty (30) days after Lease end, and concurrently returns to Tenant any remaining Security Deposit balance, together with an itemization of any deductions therefrom.

(d) If Landlord's interest in this Lease is conveyed, transferred or assigned, Landlord shall transfer or credit the Security Deposit to Landlord's successor in interest, and provided that the transferee assumes in writing Landlord's obligations under this Lease, Landlord shall be released from any liability for the return of the Security Deposit.

7. Use and Operation .

7.1. Prohibitions . The Premises shall not be used or occupied for any purpose other than for the Permitted Use, and neither Tenant nor Tenant's Occupants shall do anything that will:

(a) increase the existing rate or violate the provisions of any insurance carried with respect to the Property (and Landlord represents that the Permitted Use, *per se* , does not do so);

(b) create a public or private nuisance, constitute a disreputable business or purpose, commit waste or unreasonably interfere with or disturb any other tenant or occupant of the Building or Landlord in the operation of the Building;

(c) overload the floors or otherwise damage the structure of the Building;

(d) increase the cost of any utility service beyond the level permitted by Paragraph 8 unless Tenant pays such increased cost in accordance therewith;

(e) in its use of, operations in, and improvements to, the Premises, violate Laws; or

(f) increase the number of occupants in the Premises beyond the number of parking stalls allocated to Tenant in Tenant's Parking Stall Allocation.

7.2. Covenants . Tenant shall, at Tenant's sole cost and expense:

(a) use the Premises in a careful and safe manner that is consistent with normal business practices for general office use;

(b) in its use of, operations in, and improvements to, the Premises, comply with Laws;

provided, that:

(i) subject to reimbursement as part of Operating Expenses to the extent permitted by Paragraph 5 , Landlord shall be solely responsible for compliance with the ADA and other Laws in connection with the Common Areas (except to the extent of any additional costs incurred by Landlord solely as a result of Tenant's particular use (as distinguished from the Permitted Use) of the Premises, which additional costs shall be payable solely by Tenant within thirty (30) days after receipt of an invoice therefor) and any improvements made by Landlord to the Premises;

(ii) Tenant shall, at its sole cost and expense, be solely responsible for compliance with the ADA and other Laws in connection with Alterations made or caused to be made by Tenant, and Tenant's use or improvement of the Premises, except:

(A) to the extent that noncompliance with the ADA and other Laws in the Premises (1) is the responsibility of Landlord under subparagraph (b)(i) above, (2) is caused by Landlord, or (3) is caused by or relates to matters outside the Premises; and

(B) that such compliance obligation shall exclude the requirement of Tenant to make structural improvements or repairs, unless and to the extent that (1) such requirements are triggered by Tenant's making Alterations involving or affecting the structural elements of the Building, *and* (2) such structural improvements or repairs a) are not the responsibility of Landlord under subparagraph (b)(i) above, b) are not caused by Landlord, and c) are not caused by and do not relate to matters outside the Premises; and

(iii) Tenant shall have no obligation to Landlord with respect to:

(A) any Hazardous Materials on the Property not stored, used or disposed of by Tenant or Tenant's Occupants; or

(B) any failure of the Improvements to comply as of the Commencement Date with any then-existing Laws, except to the extent of improvements made by Tenant, but subject to subparagraph (b)(ii) above;

(c) keep the Premises free of reasonably objectionable noises and odors that emanate from the Premises and materially interfere with or disturb other tenants of the Building or Landlord in the operation of the Building; and

(d) not store, use or dispose of any Hazardous Materials on the Property, except for customary *de minimis* quantities of typical consumer, cleaning and office supplies, all of which shall be stored, used and disposed of in accordance with Laws.

7.3. Qualifications . Nothing contained in this Paragraph 7 shall be deemed to impose any obligation on Tenant to make any structural changes, repairs or improvements unless necessitated solely by reason of a particular use (as distinguished from the Permitted Use) by Tenant of the Premises or resulting from an Alteration made by or at the request or direction of Tenant (in which case, any such changes, repairs or improvements shall be performed by Landlord at Tenant's sole cost and expense, for which Tenant shall reimburse Landlord within thirty (30) days after receipt by Tenant of an invoice therefor), or shall be deemed to impose any obligation on Tenant with respect to actions or omissions of persons other than Tenant and Tenant's Occupants. Tenant's Occupants will be required to smoke outside the Building in compliance with the Utah Indoor Clean Air Act.

7.4. No Continuous Operation . Systematic and continuous occupancy or operation, such as regularly scheduled shifts, in all or any portion of the Premises before or after Building Hours is not permitted. This includes, but is not limited to, any systematic and continuous twenty-four (24) hour, seven (7) day a week operation or use of the Premises. However, the foregoing portion of this Paragraph 7.4 shall not:

(a) prohibit or limit the continuous operation of data servers or other similar equipment in the Premises; or

(b) prevent late or early hour or all-night work that would be typical in the offices of a company similar to Purple Innovation, LLC, including, without limitation, a customer service center occupying a reasonable portion of the Premises that provides customer support during commercially reasonable hours, and a limited number of employees working all day and all night for a limited number of days when necessary to complete a particular project, and Tenant may have a limited number of technical and customer service employees regularly working after Building Hours in the Premises. To the extent set forth in the preceding sentence, Landlord acknowledges that Tenant's employees may, from time to time, work in the Premises before and after Building Hours; *however,* in all events Tenant shall pay to Landlord the cost of any increased security, maintenance, repair (including repair as a result of any after-hours damage), janitorial and similar items resulting from such work within thirty (30) days after receipt by Tenant of an invoice therefor.

8. Utilities and Services .

8.1. Services Provided .

(a) Landlord shall, as part of Operating Expenses, cause to be furnished to the Premises and, where applicable, to the Common Areas:

(i) electricity for normal lighting and office computers, servers, copiers and other typical office equipment used by Tenant for the Permitted Use;

(ii) HVAC in sufficient quantities for the reasonably comfortable use and occupancy of the Premises and, where applicable, for the reasonably comfortable use of the Common Areas;

(iii) janitorial services (five (5) days per week except holidays) and window washing consistent with Comparable Buildings, with the janitorial service provider being bonded, insured and licensed, and its employees having passed appropriate criminal background checks;

(iv) cleaning and stocking services for restrooms;

(v) replacement bulbs and ballasts for Building standard ceiling lighting;

(vi) hot and cold water in the restrooms and, if any, in Tenant's kitchen/break room area, and water for drinking in the water fountains;

(vii) functioning toilets;

(viii) snow removal (provided as soon as reasonably practicable), landscaping, grounds keeping and elevator service; and

(ix) security to the Building consistent with the security provided to other buildings in the Project, all in a manner consistent with Comparable Buildings.

Tenant shall, at Tenant's sole cost and expense, contract for its own telecommunication service to the Premises, and Tenant shall, subject to Landlord's approval, have the right to contract with a service provider not currently providing such service in the Building.

(b) Subject to the provisions of this Lease, Tenant shall have reasonable access over the Common Areas to the Premises at all times during the Term, twenty-four (24) hours a day, seven (7) days a week, including (if the Premises are located above the first floor) passenger elevators without operators serving the floor on which the Premises are located in common with other tenants of the Building.

(c) Tenant may not install its own backup generator. If Tenant elects to connect to the Building backup generator prior to Landlord's commencement of the construction of the Tenant Improvements, such connection shall be made by Landlord for Tenant, at Tenant's sole cost and expense, and an additional $0.50 per rentable square foot of the Premises on an annual basis shall be added to any Basic Monthly Rent payable on the Commencement Date.

8.2. Excess Services .

(a) If Landlord provides:

(i) electric current to the Premises for Tenant load (that is, excluding HVAC and lighting) in excess of two (2) watts per usable square foot to enable Tenant to operate any office computers, servers, copiers or other equipment requiring extra electric current; or

(ii) electric current for non-Tenant load (HVAC and lighting) or any other utility or service (including, without limitation, any service listed in Paragraph 8.1(a)) that is in excess of that typically required for routine office purposes, including, without limitation, additional cooling necessitated by Tenant's equipment and additional services, such as increased security, maintenance, repair (including repair as a result of any after-hours damage), janitorial and similar items, reasonably related to such excess usage or after-hours usage of the Property as contemplated by Paragraph 7.4 , all as determined by reference to general Building tenant usage and Comparable Buildings,

Landlord shall reasonably determine or calculate the actual, reasonable cost of such additional electric current, utility or service usage, and Tenant shall pay such cost, together with a reasonable charge for administrative costs related to such determination, calculation and billing, on a monthly basis to Landlord within thirty (30) days after receipt by Tenant of an invoice therefor; *provided, however,* that prior to commencing regular, periodic billing for such additional electric current, utility or service, Landlord shall give Tenant notice and an opportunity to cease using such additional electric current, utility or service.

(b) If Landlord reasonably believes that Tenant is using excess electricity or water, Landlord may cause an electric or water meter to be installed in the Premises in order to measure the amount of electricity or water consumed for any excess use described in the foregoing subparagraph (a), and if such meter actually evidences excess use, the reasonable cost of such meter and of any related wiring or plumbing and their installation, together with the cost of such excess electricity or water, shall be paid by Tenant within thirty (30) days after receipt by Tenant of an invoice therefor. (The Building will have one meter for electricity and one meter for water, with respect to each of which Landlord will receive a single bill; therefore, any meter installed in order to measure the amount of electricity or water consumed for any such excess use by Tenant will, in fact, be a sub-meter, and the actual cost of any excess electricity or water sub-metered to the Premises will be determined by Landlord by extrapolating from the Building cost concerned.) Any such excess utility expense that is separately billed to and paid for by Tenant pursuant to this Paragraph 8.2 shall not be part of Operating Expenses.

8.3. Certain After-Hours Services. Subject to the provisions of this Lease, and as part of Operating Expenses, Landlord shall furnish lighting and HVAC to the Premises during Building Hours. Tenant may require (and Landlord shall provide) such services after Building Hours on demand, and may be separately billed, and if billed shall pay within thirty (30) days after receipt by Tenant of an invoice therefor Landlord's standard charges (set forth below), for any lighting and HVAC used in the Premises during any period other than during Building Hours, provided that such after-hours services are requested or activated by Tenant or Tenant's Occupants. Currently, Landlord's standard charges (which approximate actual costs) for such after-hours services are approximately $3.50 per hour per zone for lighting and approximately $21.00 per hour per floor for HVAC. Landlord may, from time to time, increase the charge for providing such after-hours services to reflect any increase in Landlord's approximate actual costs, which increased charge shall be consistently applied to all Building tenants. Landlord shall use its best efforts to charge Tenant and other Building tenants for after-hours services in a consistent, non-discriminatory manner. Any such charges for after-hours services that are separately billed to and paid for by Tenant pursuant to this Paragraph 8.3 shall not be part of Operating Expenses.

8.4. Service Interruption. Tenant shall immediately notify Landlord of the interruption (a " ***Service Interruption*** ") of any service furnished by Landlord under this Lease, and following the receipt of such notice (which notice may be via email to or telephone conference with Landlord's property manager), Landlord shall use its best efforts to restore such service to the Premises as soon as reasonably practicable. Subject to force majeure, and except in cases covered by Paragraphs 13 or 14, with respect to any Service Interruption or any repair, maintenance or alteration performed by Landlord, any failure by Landlord to provide Tenant with access to the Premises or the Building, or Landlord's default under this Lease (each, a " ***Tenantability Restriction*** ") that renders all or any portion of the Premises untenantable and is not caused by Tenant or Tenant's Occupants:

(a) commencing on the fifth (5 th) consecutive business day of such Service Interruption or Tenantability Restriction, Tenant shall be entitled to an equitable diminution of Rent to the extent that the Premises are untenantable as a result of such Service Interruption or Tenantability Restriction; and

(b) if the entire Premises will be or are untenantable (or at least fifty percent (50%) of the Premises is untenantable such that use by Tenant of the remaining usable portion of the Premises for Tenant's business operations is not reasonably practicable) for a period of more than sixty (60) consecutive days as a result of such Service Interruption or Tenantability Restriction, Tenant shall be entitled to terminate this Lease on notice given to Landlord within ten (10) business days after the later of:

(i) the date on which Landlord provides to Tenant an estimate of the time required to cure such Service Interruption or Tenantability Restriction (which notice shall be given by Landlord to Tenant as soon as reasonably practicable, but Landlord shall use its best efforts to provide such notice to Tenant no later than ten (10) days after the occurrence of such Service Interruption or Tenantability Restriction); or

(ii) the expiration of such sixty (60)-day period, and on such notice, Tenant shall vacate and surrender the Premises to Landlord in accordance with the applicable provisions of this Lease.

On such termination, Landlord shall promptly return to Tenant all deposits and prepayments held by Landlord, and Tenant shall have no further obligation under this Lease, except for any obligation relating to the period prior to the date of such termination, and any obligation surviving Lease end.

9. Maintenance and Repairs; Alterations; Access to Premises; Reserved Rights in Common Areas .

9.1. Maintenance and Repairs .

(a) Landlord shall, as part of Operating Expenses, maintain the Property (excepting the interior, non-structural portions of the Premises and other leased premises in the Building) in good order, condition and repair, in a clean and sanitary condition and in compliance with Laws, in a manner consistent with those procedures and practices generally employed by owners or managers of Comparable Buildings; *provided, however,* that, subject to reimbursement of Landlord to the extent provided by Paragraph 5 , and, subject to Paragraph 12.3 , excluding damage caused by Tenant or Tenant's Occupants, Landlord shall be solely responsible for maintenance, repair and replacement of the exterior doors and windows and structural components of the Building, the electrical, gas, plumbing, mechanical, fire, life safety, HVAC and other base systems and facilities of the Building (excepting any installed by Tenant) and the restrooms, elevators, lobbies and other Common Areas, in such manner. Any costs, expenses and fees incurred or payable by Landlord in connection with the maintenance, repair or replacement of any supplemental or other HVAC equipment (beyond the standard Building HVAC) for any data room of Tenant shall not be part of Operating Expenses and shall be directly reimbursed by Tenant to Landlord within thirty (30) days after receipt by Tenant of an invoice therefor. In addition, Tenant shall pay to Landlord the cost of any increased maintenance and repair (including repair as a result of any after-hours damage) resulting from Tenant's employees' work in the Premises before and after Building Hours, as set forth in Paragraph 7.4 , all as determined by reference to general office usage and Comparable Buildings; *provided, however,* that prior to commencing regular, periodic billing for such increased maintenance and repair, Landlord shall give Tenant notice and an opportunity to cease the employees' work in the Premises before and after Building Hours giving rise thereto.

(b) Except as expressly set forth in the foregoing subparagraph (a) or elsewhere in this Lease, and excluding damage caused by Landlord or Landlord's employees, agents or contractors, Tenant shall, at Tenant's sole cost and expense, maintain the interior, nonstructural elements of the Premises (including, without limitation, all floor and wall coverings, doors and locks) and Tenant's Property in good order, condition and repair and in a clean and sanitary condition, subject to normal and reasonable wear and tear and the other provisions of this Lease regarding casualty, condemnation, insurance and indemnification.

(c) All work to be performed by either Party under this Paragraph 9.1 shall be completed promptly (and such work shall be performed by Landlord in a manner that is reasonably calculated to minimize disruption to Tenant's business to the extent reasonably practicable), but in any event each Party shall use its best efforts to complete such work within twenty-four (24) hours in any emergency and within ten (10) business days for all other repairs. If any work cannot reasonably be completed within twenty-four (24) hours or ten (10) business days, as the case may be, such work shall be commenced within the applicable period and thereafter prosecuted continuously and diligently until completed.

9.2. Alterations .

(a) Tenant shall not make or cause or permit to be made any Alteration, unless such Alteration:

(i) equals or exceeds the then-current standard for the Building, and utilizes only new and first-grade materials;

(ii) is in conformity with Laws, and is made after obtaining any required permits and licenses;

(iii) is made with the prior consent of Landlord, which consent, in the case of nonstructural, cosmetic Alterations such as carpeting or painting that have absolutely no impact or effect on the structure or the roof, exterior, mechanical, water, electrical, gas, plumbing, fire, life safety, HVAC, telephone, sewer or other systems or facilities of the Building, shall be given or denied within ten (10) business days after receipt by Landlord of Tenant's request therefor, accompanied by a reasonably detailed description of the change, addition or improvement to be made;

(iv) is made pursuant to plans and specifications approved in advance by Landlord or, if such Alteration does not require a building permit, is made pursuant to a description of such proposed work; *provided,* that Landlord may not charge Tenant a fee for the review of such plans and specifications or description;

(v) is carried out by persons approved by Landlord (which approval shall be given or denied within ten (10) business days after written request from Tenant), who, if required by Landlord, deliver to Landlord before commencement of their work a certificate of insurance evidencing that they maintain commercial general liability insurance with limits of $1,000,000 per occurrence and $1,000,000 aggregate and workers' compensation and employer's liability insurance coverage consistent with Tenant's insurance coverage as described in Paragraph 12.1(c) ; and

(vi) is done only at such time and in such manner as Landlord may reasonably specify.

Notwithstanding the foregoing to the contrary, Paragraphs 9.2(a)(iii), (iv) and (v) (only) shall not apply if (1) the cost of such Alteration does not exceed, in the aggregate, $25,000 in any twelve (12)-month period, (2) such Alteration is purely cosmetic and nonstructural in nature and does not affect or involve the roof, exterior or electrical, gas, plumbing, fire, life safety, HVAC or other systems or facilities of the Building (that is, painting, wall covering and carpet only), and (3) Tenant gives Landlord at least ten (10)-business days' notice prior to making such Alteration; *provided, however,* that such Alteration shall be subject to removal in accordance with Paragraph 17.1(c) .

(b) Landlord shall use its best efforts to respond to any request for consent or approval as soon as reasonably practicable. On receipt of such request and all relevant information from Tenant, Landlord shall have ten (10) business days either to grant or reject such request. If Landlord fails to respond within such ten (10)-business day period, then Tenant may send a second request for a response, and if such second request contains, in **BOLD FACE** type, the statement " **PURSUANT TO PARAGRAPH 9.2(a) OF THE LEASE, LANDLORD'S FAILURE TO RESPOND HERETO WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT SHALL BE DEEMED TO HAVE GRANTED THE REQUEST,** " then Landlord's failure to respond to such second request within five (5) business days after receipt thereof shall be deemed to have granted such request as to, but only as to, the specific matter for which consent or approval was requested in the original request received by Landlord from Tenant.

(c) Subject to Paragraph 17.1 , any such Alteration (excluding only Tenant's Property) shall immediately become and remain the property of Landlord unless agreed by the Parties in writing prior to the installation of such Alteration that such Alteration will be owned by Tenant and removed by Tenant at Lease end. Tenant shall pay when due the entire cost of any such Alteration. Within thirty (30) days following the imposition of any lien resulting from any such Alteration, Tenant shall cause such lien to be released of record by payment of money or posting of a proper bond.

(d) Landlord shall not charge any construction management, oversight, supervisory or plan review fee in connection with Tenant's construction of any Alterations.

(e) In connection with Alterations or Tenant's operations in the Premises for the Permitted Use, Tenant shall, following coordination with Landlord, be provided by Landlord with reasonable access to all pipes, ducts, conduits, wires and telephone and electrical closets available for the common use of tenants in the Building.

9.3. Access to Premises .

(a) Subject to Tenant's reasonable security procedures, Landlord and Landlord's employees, agents and contractors may enter the Premises at reasonable times (including during Building Hours) on at least twenty- four (24) hours' prior written or verbal notice to Tenant (except in the event of an emergency) for the purpose of:

(i) cleaning, inspecting, altering, improving and repairing the Premises or other parts of the Building;

(ii) at reasonable intervals, ascertaining compliance with the provisions of this Lease by Tenant; and

(iii) showing the Premises to prospective purchasers, tenants or mortgagees (but with respect to prospective tenants for the Premises, only during the last six (6) months of the Term, as the same may be extended, and at any time a Tenant Default exists under this Lease).

Landlord shall have free access to the Premises in an emergency, but Landlord shall use its best efforts to notify Tenant of such emergency as soon as possible. Landlord shall at all times have a key with which to unlock all of the doors in the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in advance); *provided, however,* that Tenant may designate a limited number of specified rooms, offices or closets within the Premises as off-limits to janitorial service providers, and such providers shall not be permitted to enter therein.

(b) In any entry into the Premises and in any work done by Landlord in the Building, Landlord and Landlord's employees, agents and contractors shall:

(i) use their best efforts to avoid and minimize any damage or injury to, interference with, and disturbance of, Tenant and the operation of Tenant's business in the Premises;

(ii) comply with all reasonable security regulations and procedures as may then be in effect with respect to Tenant's operations in the Premises; and

(iii) use their best efforts to maintain the confidentiality of any materials within the Premises.

Tenant may secure the Premises at all times and may require that any individual entering the Premises be accompanied by an employee of Tenant at all times (except in the case of an emergency).

9.4. Reserved Rights in Common Areas . Landlord reserves the right, at any time or from time to time, to:

(a) establish and enforce reasonable, non-discriminatory rules and regulations for the use of the Common Areas (including, without limitation, the delivery of goods and the disposal of trash), in accordance with and subject to Paragraph 21 ;

(b) use or permit the use of the Common Areas by persons to whom Landlord may grant or may have granted such rights in such manner as Landlord may from time to time reasonably designate;

(c) temporarily close all or any portion of the Common Areas to make repairs or changes to, to prevent a dedication of, to prevent the accrual of any rights of any person or the public in, or to discourage non-Tenant Occupant use of or parking on, the Common Areas;

(d) construct additional buildings in, or expand existing buildings into, the Common Areas and change the layout of the Common Areas, including, without limitation, enlarging or reducing the shape and size of the Common Areas, whether by the addition of buildings or other improvements or in any other manner;

(e) enter into operating agreements relating to the Common Areas with persons selected by Landlord; and

(f) do such other acts in and to the Common Areas as in Landlord's reasonable judgment may be desirable;

provided, however, that Landlord, in exercising its reserved rights under the foregoing portion of this sentence, shall exercise reasonable efforts to minimize any adverse impact on the Premises and the operation of Tenant's business in the Premises, and except during non-Building Hours, shall not materially impair the access to and from the Premises, or reduce the amount of Tenant's Parking Stall Allocation. If the Common Areas are diminished in accordance with and subject to the foregoing proviso, Landlord shall not be subject to any liability, Tenant shall not be entitled to any compensation or diminution of Rent and such diminishment shall not be deemed to be an actual or constructive eviction; *provided,* that if any Common Areas are converted into leasable premises, the rentable square footage of the Building and the Premises shall be adjusted appropriately in accordance with the definition of "Premises".

10. Assignment and Subleasing .

10.1. Prohibition .

(a) Except as expressly provided in Paragraph 10.2 , Tenant shall not do any of the following without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed:

(i) assign, transfer, mortgage, encumber, pledge or hypothecate this Lease or Tenant's interest in this Lease, in whole or in part, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise;

(ii) sublease the Premises or any part of the Premises; or

(iii) permit the use and occupancy of the Premises or any part of the Premises by any persons other than (A) employees of Tenant, (B) employees of Tenant's affiliates, or (C) persons occupying a portion of the Premises for the purpose of transacting business with Tenant.

Consent to any assignment or sublease shall not operate as a waiver of the necessity for consent to any subsequent assignment or sublease and the terms of such consent shall be binding on any person holding by, through or under Tenant. At Landlord's option, any assignment or sublease without Landlord's prior consent, when such consent is required by the terms of this Lease, shall be void *ab initio* (from the beginning).

(b) Without limiting the other instances in which it may be reasonable for Landlord to withhold its consent, Landlord may withhold its consent under subparagraph (a) unless:

(i) Tenant provides to Landlord (A) the name and address of the proposed assignee or subtenant, (B) the terms and conditions of (including all consideration for) the proposed assignment or sublease, (C) any information reasonably required by Landlord with respect to the nature and character of the proposed assignee or subtenant and its business, business history, activities and intended use of the Premises, (D) any references and current financial information reasonably required by Landlord with respect to the net worth, cash flow, credit and financial responsibility of the proposed assignee or subtenant, and (E) a copy of the proposed assignment or sublease;

(ii) the nature, character and reputation of the proposed assignee or subtenant and its business, activities and intended use of the Premises are suitable to and in keeping with the standards of the Building, and in compliance with this Lease (including, without limitation, the Permitted Use) and Laws, and the proposed assignee or subtenant is a reputable party whose net worth, cash flow, credit and financial strength are, considering the responsibilities involved, reasonably adequate to meet such responsibilities;

(iii) the proposed assignee or subtenant (and any affiliate of such assignee or subtenant) is not then an occupant of the Building or of any other building within the Project or a person who actively dealt with Landlord or any affiliate of Landlord or any employee, agent or representative of Landlord or any affiliate of Landlord (directly or through a broker) with respect to space in the Building or of any other building within the Project during the three (3) months preceding Tenant's request for Landlord's consent (with " ***actively dealt with*** " meaning, at least, correspondence and negotiation for the lease of space within the Project, reasonable evidence of which is provided to Tenant, but excluding, without more, the mere delivery of advertising, leasing or property information relating to the Project); *provided, however,* that Landlord shall not unreasonably withhold, condition or delay its consent to an assignment of this Lease or a sublease of the Premises to a proposed assignee or subtenant under the foregoing portion of this subparagraph (iii) if neither Landlord nor any affiliate of Landlord is able to accommodate the space needs of such assignee or subtenant within the Project, and Tenant is able to do so by such assignment or sublease;

(iv) the proposed assignee or subtenant is not a governmental entity or instrumentality thereof, unless otherwise approved by Landlord, which approval may be withheld by Landlord if Landlord reasonably determines that the use to be made of the Premises by such governmental entity would be undesirable (such as, for example purposes only, and without limiting the generality of the foregoing, use as a welfare or other social services office for indigent individuals, as a court to which handcuffed defendants may be brought, or as an office to which uniformed or armed individuals may come and go);

(v) the proposed assignment or sublease will not violate any enforceable exclusive use or similar clause in another lease in the Project or give a tenant in the Project a right to cancel its lease; *provided, however,* that if Tenant is contemplating an assignment or sublease, then on Tenant's request, Landlord shall promptly provide to Tenant a list or schedule of enforceable exclusive use or similar clauses affecting the Premises;

(vi) neither Landlord nor its affiliates have experienced previous material defaults by, and are not in litigation with, the proposed assignee or subtenant or its affiliates;

(vii) (A) the proposed assignee's or subtenant's anticipated use of the Premises does not involve the generation, storage, use, treatment or disposal of Hazardous Material, except for customary *de minimis* quantities of typical consumer, cleaning and office supplies, all of which shall be stored, used and disposed of in accordance with Laws; (B) the proposed assignee or subtenant has not been required by any other landlord, lender or governmental authority to take remedial action in connection with Hazardous Material contaminating a property if the contamination resulted from such assignee's or subtenant's actions or use of the property in question; or (C) the proposed assignee or subtenant is not subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material;

(viii) the use of the Premises by the proposed assignee or subtenant will not violate Law, and will not violate Paragraph 7 or any other provision of this Lease;

(ix) the assignment or sublease is not prohibited by Landlord's lender; *provided,* that if prohibited by Landlord's lender, Landlord shall provide to Tenant reasonable evidence thereof;

(x) the proposed assignment or sublease will not result in a number of occupants on a floor that exceeds the design capacity of the Building systems;

(xi) the proposed assignment or sublease will not trigger incremental ADA or other legal requirements in the Common Areas or by Landlord in the Premises, or result in a materially greater burden to the Common Areas or require increased services by Landlord; and

(xii) the proposed assignee or subtenant is not a controversial entity such as a terrorist organization, is not an entity traditionally thought or perceived to be sexist such as Playboy, Hustler and Penthouse magazines and the like, and is not an organization traditionally perceived to be racist such as the Ku Klux Klan, American Nazi Party and the like.

(c) If the rent to be charged by Tenant during the term of any assignment or sublease is less than the rent being quoted by Landlord at the time of such assignment or sublease for comparable space in the Building for a comparable term, calculated using a present-value analysis, Tenant shall not publicly advertise such rent and, further, shall require any such assignee or subtenant, in writing, to keep the amount of such rent confidential.

(d) (i) If Tenant requests Landlord's consent to an assignment of this Lease or to a subleasing of the whole or any part of the Premises where such consent is required, Tenant shall submit to Landlord the terms of such assignment or subleasing, the name and address of the proposed assignee or subtenant, such information relating to the nature of such assignee's or subtenant's business and finances as Landlord may reasonably require and the proposed effective date (the " ***Effective Date*** ") of the proposed assignment or subleasing (which Effective Date shall be neither less than fifteen (15) days nor more than six (6) months following the date of Tenant's submission of such information). On receipt of such request and all such information from Tenant, Landlord shall have ten (10) business days either to accept or reject such request. If Landlord fails to respond within such ten (10)-business day period, then Tenant may send a second request for a response, and if such second request contains, in **BOLD FACE** type, the statement " **PURSUANT TO PARAGRAPH 10.1(d)(i) OF THE LEASE, LANDLORD'S FAILURE TO RESPOND HERETO WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT SHALL BE DEEMED APPROVAL OF THE REQUEST,** " then Landlord's failure to respond to such second request within five (5) business days after receipt thereof shall be deemed approval of such request (excluding any requested release). In addition, Landlord may, by notice within ten (10) business days after such receipt of either such request, terminate this Lease if the request is to assign this Lease or to sublease all of the Premises or, if the request is to sublease more than twenty-five percent (25%) of the Premises for more than two (2) years, terminate this Lease with respect to such portion, in each case as of the Effective Date, *unless* within ten (10) business days after notice from Landlord to Tenant of such termination, Tenant withdraws such request. On such withdrawal by Tenant, Landlord's related prior termination of this Lease with respect to all or a portion of the Premises shall have no further force or effect (and Tenant shall not assign this Lease or sublease the Premises as proposed).

(ii) If Landlord exercises such termination right, Tenant shall surrender possession of the entire Premises or the portion that is the subject of the right, as the case may be, on the Effective Date in accordance with the provisions of Paragraph 17 , and Tenant shall be released from all obligations arising under this Lease for the period on and after (but not prior to) the date of such termination if this Lease is terminated as to the entire Premises or, if this Lease is terminated as to only a portion of the Premises, Tenant shall be released from all obligations arising under this Lease for the period on and after (but not prior to) the date of such termination to the extent, but only to the extent, that such obligations relate to the portion of the Premises as to which this Lease is terminated, excepting (in each case) any obligation that expressly survives Lease end. If this Lease is terminated as to a portion of the Premises only, the Premises shall be redefined to exclude such portion and the Rent payable by Tenant under this Lease shall be reduced proportionately commencing as of the Effective Date, based on the percentage of the Premises as to which this Lease has been terminated.

(iii) Alternatively, Tenant may give Landlord earlier notice (a " ***Notice of Intent*** ") that Tenant intends to assign this Lease or sublease the whole or any part of the Premises and the projected Effective Date of the intended assignment or subleasing (which projected Effective Date shall be not less than sixty (60) days nor more than six
(6) months following the date of Landlord's receipt of such Notice of Intent). Landlord may, by notice given within ten (10) business days after such receipt, terminate this Lease if the request is to assign this Lease or to sublease all of the Premises or, if the request is to sublease a portion of the Premises only, terminate this Lease with respect to such portion, in each case as of the projected Effective Date set forth in such Notice of Intent, *unless* within ten (10) business days after notice from Landlord to Tenant of such termination, Tenant withdraws such request. If Landlord fails so to terminate this Lease in accordance with the preceding sentence, then Landlord's right of termination under this subparagraph (d) shall not apply to an assignment of this Lease or to the sublease of the Premises described in such Notice of Intent, so long as such assignment or sublease actually occurs within six (6) months after Landlord's receipt of such Notice of Intent. If such assignment or sublease does not actually occur within six (6) months after Landlord's receipt of such Notice of Intent, then Tenant shall once again be subject to, and Landlord shall once again have the rights set forth in, this subparagraph (d) .

(iv) If Landlord exercises the termination right set forth in this subparagraph (d) , the Parties shall promptly enter into a termination agreement for this Lease or, if the termination is as to only a portion of the Premises, an amendment to this Lease, on Landlord's standard form reasonably acceptable to the Parties, memorializing such termination.

(v) Notwithstanding the foregoing to the contrary, although all other provisions of this Paragraph 10 shall apply, the termination right set forth in this subparagraph (d) shall not be triggered by a sublease of not more than one-half (½) of the Premises made by Tenant to an unaffiliated third party for the purpose of creating a synergistic business relationship in the Premises.

10.2. Affiliate and Certain Other Transfers . Notwithstanding anything contained in Paragraph 10.1 to the contrary, Tenant may, without the consent of Landlord, assign this Lease or sublease all or any portion of the Premises to:

(a) an affiliate, franchisor or franchisee of Tenant;

(b) a person that acquires all or substantially all of the assets or stock of Tenant; or

(c) an entity resulting from a merger, consolidation or reorganization with Tenant or an affiliate of Tenant,

provided that (i) such assignee or subtenant assumes the relevant obligations of Tenant under this Lease, and (ii) Tenant gives Landlord notice of such assignment or sublease no later than ten (10) business days thereafter, accompanied by an executed counterpart of any assignment or sublease agreement concerned (from which any financial terms may be redacted) if, in the case of an assignment, such assignment agreement exists given the structure of such assignment. In addition, the sale of stock or other equity interests in Tenant on a public stock exchange (e.g., NYSE or NASDAQ), whether in connection with an initial public offering or thereafter, shall not be deemed an assignment of this Lease and shall not require Landlord's consent. Notwithstanding the foregoing or anything else contained in this Lease to the contrary, any person that acquires all or substantially all of the assets of Tenant shall be required as a condition to such acquisition to enter into a guaranty of this Lease on Landlord's standard form reasonably acceptable to the Parties.

10.3. Landlord's Rights .

(a) If this Lease is assigned or if all or any portion of the Premises is subleased or occupied by any person without obtaining Landlord's prior consent when such consent is required, Landlord may collect Rent and other charges from such assignee or other person, and apply the amount collected to Rent and other charges payable under this Lease, but such collection and application shall not constitute consent or waiver of the necessity of consent to such assignment, sublease or occupancy, nor shall such collection and application constitute the recognition of such assignee, subtenant or occupant as Tenant under this Lease or a release of Tenant from the further payment and performance of all obligations of Tenant under this Lease.

(b) No consent by Landlord to any assignment or sublease by Tenant (and no assignment or sublease by Tenant, whether made with or without Landlord's consent) shall relieve Tenant of any obligation to be paid or performed by Tenant under this Lease, whether occurring before or after such consent, assignment or sublease, but rather Tenant and Tenant's assignee or (to the extent of its obligations under its sublease) subtenant, as the case may be, shall be jointly and severally primarily liable for such payment and performance (including, without limitation, the provisions of this Lease limiting the use of the Premises), which shall be confirmed to Landlord in writing on Landlord's standard form reasonably acceptable to the Parties and, as applicable, such assignee or subtenant.

(c) Tenant shall reimburse Landlord for Landlord's reasonable attorneys' and other fees and costs, not to exceed $2,000 per occurrence (assuming that Landlord is not asked to prepare the assignment or sublease agreement, or to negotiate or revise substantially Landlord's standard form consent documents) incurred in connection with both determining whether to give consent and giving consent when such consent is required.

(d) No assignment under this Lease requiring Landlord's consent shall be effective unless and until Tenant provides to Landlord an executed counterpart of the assignment agreement concerned in form and substance reasonably satisfactory to Landlord, in which the assignee has assumed and agreed to perform all of Tenant's obligations under this Lease on and after the effective date of such assignment, and Landlord has executed and delivered a consent thereto on Landlord's standard form reasonably acceptable to the Parties and such assignee. No subleasing under this Lease requiring Landlord's consent shall be effective unless and until Tenant provides to Landlord an executed counterpart of the sublease agreement concerned in form and substance reasonably satisfactory to Landlord and the Sublease Consent Agreement attached as Exhibit C (with such modifications thereto as shall be reasonably requested by Tenant's subtenant and reasonably agreed to by Landlord), and Landlord has executed and delivered such Sublease Consent Agreement.

(e) Without affecting any of its other obligations under this Lease, if this Lease is assigned or all or any portion of the Premises is subleased (excluding any Non-Consent Transfer), and the rent, additional rent, compensation and other economic consideration applicable to Tenant's leasehold interest in the Premises received or to be received by Tenant in connection with such assignment or sublease (including, without limitation, any payment in excess of fair market value for (i) services rendered by Tenant to the assignee or subtenant, or (ii) assets, fixtures, inventory, equipment or furniture transferred by Tenant to the assignee or subtenant) exceeds Rent payable by Tenant under this Lease for the period concerned (calculated on a per rentable square foot basis if less than all of the Premises is subleased), then Tenant shall pay fifty percent (50%) of such excess to Landlord when received, after deducting reasonable expenses in connection therewith, including, without limitation, advertising expenses, brokerage commissions, tenant improvement costs and attorneys' fees actually incurred by Tenant and payable to non-affiliated third parties in connection with such assignment or subleasing, all of which must be amortized over the applicable assignment or sublease term. Prior to Landlord consenting to any such assignment or sublease, Tenant shall provide to Landlord a detailed schedule of all rent, additional rent, compensation and other economic consideration applicable to Tenant's leasehold interest in the Premises received or to be received by Tenant in connection with such assignment or sublease, and all reasonable advertising expenses, brokerage commissions, tenant improvement costs and attorneys' fees actually incurred or to be incurred by Tenant and payable to non-affiliated third parties in connection with such assignment or subleasing, which schedule shall be certified by Tenant to Landlord as true, correct and complete in all respects (subject to modification of any amounts that are estimates), with such certification executed by Tenant. As used in this subparagraph (e), the term "Tenant" refers to the assignor in the event of an assignment, and to the sublandlord in the event of a sublease.

11. Indemnity.

11.1. Indemnity by Tenant. Subject to Paragraph 12.3, Tenant shall indemnify, defend and hold harmless Landlord from and against all demands, claims, causes of action, judgments, losses, damages, liabilities, fines, penalties, costs and expenses, including attorneys' fees, to the extent arising from either of the following:

(a) the occupancy or use of, or entry onto, any portion of the Property by Tenant or Tenant's Occupants (including, without limitation, any slip and fall or other accident on the Property involving Tenant or Tenant's Occupants), except to the extent directly and proximately caused by Landlord or Landlord's employees, agents or contractors; or

(b) any Hazardous Materials deposited, released or stored by Tenant or Tenant's Occupants on the Property.

If any action or proceeding is brought against Landlord by reason of any of the matters set forth in the preceding sentence that creates an obligation under the preceding sentence for Tenant to defend, Tenant, on notice from Landlord, shall defend Landlord at Tenant's sole cost and expense with competent and licensed legal counsel reasonably satisfactory to Landlord, but selected by Tenant (with reputable legal counsel provided by Tenant's insurer deemed to be reasonably satisfactory). The provisions of this Paragraph 11.1 shall survive Lease end.

11.2. Indemnity by Landlord. Subject to Paragraph 12.3, Landlord shall indemnify, defend and hold harmless Tenant from and against all demands, claims, causes of action, judgments, losses, damages, liabilities, fines, penalties, costs and expenses, including attorneys' fees, to the extent arising from either of the following:

(a) the occupancy or use of, or entry onto, any portion of the Property by Landlord or Landlord's employees, agents or contractors (including, without limitation, any slip and fall or other accident on the Property involving Landlord or Landlord's employees, agents or contractors), except to the extent directly and proximately caused by Tenant or Tenant's Occupants; or

(b) any Hazardous Materials deposited, released or stored by Landlord or Landlord's employees, agents or contractors on the Property.

If any action or proceeding is brought against Tenant by reason of any of the matters set forth in the preceding sentence that creates an obligation under the preceding sentence for Landlord to defend, Landlord, on notice from Tenant, shall defend Tenant at Landlord's sole cost and expense with competent and licensed legal counsel reasonably satisfactory to Tenant, but selected by Landlord (with reputable legal counsel provided by Landlord's insurer deemed to be reasonably satisfactory). The provisions of this Paragraph 11.2 shall survive Lease end.

11.3. Exception . Notwithstanding anything contained in this Paragraph 11 to the contrary, the indemnities set forth in this Paragraph 11 shall not cover employees of Federal Express, United Parcel Service, the United States Postal Service or other mail/package courier companies who enter onto the Property to service multiple tenants of the Building or the Building generally.

12. Insurance .

12.1. Tenant's Insurance . On or before the date of this Lease, Tenant shall, at Tenant's sole cost and expense, procure and continue in force the following insurance coverage:

(a) commercial general liability insurance with limits of liability of not less than $1,000,000 per occurrence and $2,000,000 general aggregate, and an umbrella or excess liability policy above the commercial general liability policy with limits of liability of not less than $5,000,000 per occurrence and $5,000,000 annual aggregate;

(b) property insurance under a policy form with peril coverage at least equivalent to an ISO 10 30 Causes of Loss–Special Form, and including equipment breakdown perils, covering Tenant's Property on a replacement cost valuation basis; and

(c) any insurance required by Laws for the protection of employees of Tenant working in the Premises (including, without limitation, worker's compensation insurance), and including employers liability coverage with limits of liability of at least $500,000 each accident / disease–each employee / disease policy limit,

and furnish Landlord with certificates of insurance evidencing such coverage. Such minimum limits shall in no event limit the liability of Tenant under this Lease. Such liability insurance shall name Landlord and Landlord's mortgage lender as additional insureds, and both such liability and property insurance shall be with companies authorized to do business in Utah and having a rating of not less than A-:VII in the most recent issue of Best's Key Rating Guide, Property-Casualty . All such policies shall be written as primary policies, not contributing with and not in excess of the coverage that Landlord may carry, and shall only be subject to reasonable deductibles. Tenant may maintain all or any part of the insurance required pursuant to this Lease in the form of a blanket policy covering other locations in addition to the Premises, and Tenant may satisfy its liability insurance obligations under this Lease with its umbrella policies. Tenant shall, at least ten (10) days prior to the expiration of such policies or as soon thereafter as the same are received by Tenant, furnish Landlord with renewed certificates of insurance. Landlord shall use its best efforts to impose the foregoing insurance requirements on all tenants of the Building.

12.2. Landlord's Insurance . Landlord shall, as part of Operating Expenses, procure and continue in force:

(a) commercial general liability insurance with limits of liability of not less than $1,000,000 per occurrence and $2,000,000 general aggregate, and an umbrella or excess liability policy above the commercial general liability policy with limits of liability of not less than $5,000,000 per occurrence and $5,000,000 annual aggregate;

(b) property insurance under a policy form with peril coverage at least equivalent to an ISO 10 30 Causes of Loss–Special Form, and including equipment breakdown perils, covering the Building on a replacement cost valuation basis, subject to such deductibles as Landlord may reasonably select, together with rental income insurance in a reasonable amount;

(c) any insurance required by Laws for the protection of employees of Landlord working on or around the Property (including, without limitation, worker's compensation insurance), and including employers liability coverage with limits of liability of at least $500,000 each accident / disease–each employee / disease policy limit; and

(d) such other insurance as may reasonably be (i) deemed commercially prudent by Landlord, or (ii) required by Landlord's mortgage lender.

Such minimum limits shall in no event limit the liability of Landlord under this Lease. All such insurance shall be with companies authorized to do business in Utah and having a rating of not less than A-:VII in the most recent issue of Best's Key Rating Guide, Property-Casualty .

12.3. Waiver of Subrogation . Tenant shall cause the property insurance policy required to be carried by Tenant pursuant to Paragraph 12.1(b) , and Landlord shall cause the property insurance policy required to be carried by Landlord pursuant to Paragraph 12.2(b) , to be written in a manner so as to provide that the insurance company waives all right of recovery by way of subrogation against the other Party in connection with any loss or damage covered by such policy. Regardless of whether such waivers are included in the applicable property insurance policies, and notwithstanding any other provision of this Lease to the contrary:

(a) Tenant waives (with the intent that the waiver be effective against Tenant itself and against any third party claiming by, through or under Tenant, including any insurance company claiming by way of subrogation) all rights that Tenant may have now or in the future against Landlord for compensation for any damage to or destruction of Tenant's Property caused by fire or other casualty to the extent that Tenant is or will be compensated by property insurance or would be but for a failure of Tenant to maintain property insurance for the full replacement cost of Tenant's Property (excluding a commercially reasonable deductible) that is required to be carried by Tenant pursuant to Paragraph 12.1(b) ; and

(b) Landlord waives (with the intent that the waiver be effective against Landlord itself and against any third party claiming by, through or under Landlord, including any insurance company claiming by way of subrogation) all rights that Landlord may have now or in the future against Tenant for compensation for any damage to or destruction of the Building caused by fire or other casualty to the extent that Landlord is or will be compensated by property insurance or would be but for a failure of Landlord to maintain property insurance for the full replacement cost of the Building (excluding a commercially reasonable deductible) that is required to be carried by Landlord pursuant to Paragraph 12.2(b) .

The foregoing provisions of this Paragraph 12.3 shall survive Lease end.

12.4. Self-Insurance .

(a) So long as Tenant (or Tenant's parent, if Tenant's parent undertakes to be responsible for Tenant's insurance obligations under this Lease and acknowledges such obligation in writing and in a form reasonably acceptable to Landlord) has a tangible net worth (determined in accordance with GAAP) of not less than $500,000,000, Tenant shall have the right to satisfy its insurance obligations under this Lease by means of self-insurance, alternative risk financing solutions or a combination of those options to the extent of all or part of the insurance required under this Lease, provided that Tenant provides advance notice to Landlord of its election to provide self-insurance and complies with this Paragraph 12.4 . The term " ***self-insurance*** " means that Tenant is itself acting as though it were the third-party insurer providing the insurance required under this Lease, and Tenant shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Lease.

(b) To the extent Tenant chooses to provide any insurance required by this Lease by self- insurance, then Tenant shall have all of the applicable obligations and liabilities of an insurer, and the protection afforded Landlord and the Property shall be the same as if provided by a third-party insurer under the coverages required under this Lease. Without limiting the generality of the foregoing, all amounts that Tenant pays or is required to pay and all losses or damages resulting from risks for which Tenant insures or has elected to self-insure shall be subject to the waiver of subrogation provisions set forth in Paragraph 12.3 (as if such self-insurance was, in fact, third-party insurance, and such waiver of subrogation provisions shall, to that extent, limit Landlord's obligations set forth in this Lease), and shall not limit Tenant's indemnification obligations pursuant to this Lease.

(c) If Tenant elects to self-insure and an event or claim occurs for which a defense or coverage would have been available from a third-party insurer, Tenant shall undertake the defense of such claim, including a defense of Landlord, at Tenant's sole cost and expense, and use Tenant's own funds to pay any claim, replace any property and otherwise provide the funding which would have been available from insurance proceeds but for such election by Tenant to self-insure. In no event shall Landlord be entitled to less coverage or benefits than Landlord would have been entitled had Tenant obtained the insurance required under this Lease from a third-party insurance carrier. Tenant shall respond promptly to all inquiries from Landlord with respect to any claim or loss, shall keep Landlord fully informed of the status of all claims and losses, shall work cooperatively with Landlord in addressing all claims and losses, and shall have the same duty to act in good faith towards Landlord as an insurer would have under Laws.

13. Damage and Destruction .

13.1. Repair . If the Premises are damaged or destroyed by any casualty, then unless this Lease is terminated in accordance with this Paragraph 13 , Landlord shall, as soon as reasonably practicable, in a reasonable, good and workmanlike manner and in accordance with Laws, repair the Premises to the condition in which the Premises were immediately prior to such damage or destruction; *provided, however,* that Landlord shall not be required to repair any damage to, or to make any restoration or replacement of, Tenant's Property. If Tenant does not occupy the Premises during the period of such repairs, then during such period, Landlord shall regularly communicate with Tenant regarding the progress of such repairs so that Tenant can reasonably plan for the recommencement of Tenant's occupancy of the Premises. Landlord shall permit Tenant and its agents to enter the Premises during the thirty (30)-day period prior to the completion of such repairs to prepare the Premises for Tenant's use and occupancy, including the installation of Tenant's Property. Any such permission shall constitute a license only and shall be subject to the conditions set forth in Paragraph 5 of the attached Exhibit A .

13.2. Abatement . Until such repair is complete or this Lease is terminated in accordance with this Paragraph 13 , Rent shall be abated proportionately commencing on the date of such damage or destruction as to that portion of the Premises rendered untenantable by such damage or destruction, if any; *provided,* that if only a portion of the Premises is damaged, but such damage causes the entire Premises to be untenantable, the entire Rent shall be abated. If Landlord elects to repair any such damage and Tenant has not elected to terminate this Lease as provided below, any abatement of Rent shall end on the date on which a factually correct notice is given by Landlord to Tenant that the Premises have been repaired, and exclusive possession of the Premises is delivered to Tenant.

13.3. Termination by Landlord . If:

(a) the Premises are damaged as a result of a risk not required to be covered by insurance;

(b) the Premises are damaged in whole or in part during the last twelve (12) months of the Term existing as of the date immediately prior to such damage or destruction and the estimated time required to complete such repairs is in excess of thirty (30) days;

(c) the Building (whether or not the Premises are damaged) is damaged to the extent of forty percent (40%) or more of its then-replacement value;

(d) the Premises are damaged to the extent that it would take, according to the reasonable estimate of Landlord's architect or contractor, in excess of nine (9) months after the date on which such damage occurs to complete the requisite repairs; or

(e) insurance proceeds adequate to repair the Property are not available to Landlord for any reason beyond Landlord's reasonable control (other than any applicable deductible amount) (excluding Landlord's failure to carry the insurance required under Paragraph 12.2),

then Landlord may either elect to repair the damage or terminate this Lease by notice of termination given to Tenant within thirty (30) days after such event, so long as Landlord terminates leases in the Building covering an aggregate of at least seventy-five percent (75%) of the rentable square footage of the Building.

13.4. Termination by Tenant . If the Premises are damaged, Landlord shall provide to Tenant as soon as reasonably practicable, but in no event later than thirty (30) days after the occurrence of such damage, a reasonable estimate of Landlord's architect or contractor, setting forth the estimated time required to complete the requisite repairs. If the Premises are damaged to the extent that it would take, according to such estimate, in excess of nine (9) months after the date on which such damage occurs, or two (2) months after the date on which such damage occurs if such damage occurs within the last twelve (12) months of the Term, to complete the requisite repairs, and the Premises would be untenantable for such nine (9)-month or two (2)-month period, respectively, Tenant may elect to terminate this Lease by notice of termination given by Tenant to Landlord within ten (10) business days after Landlord provides to Tenant such estimate. If Tenant has the right to, but does not, terminate this Lease pursuant to the preceding sentence, but, subject to force majeure, Landlord fails to repair or restore the Building and Premises within thirty (30) days after the later of (a) the date set forth in such estimate, or (b) the expiration of such nine (9)-month or two (2)-month period, respectively, then Tenant may terminate this Lease as of the date of such damage by giving notice of such termination to Landlord within ten (10) business days after the expiration of such thirty (30)-day period. For purposes of this Paragraph 13.4 , "untenantable" includes damage of a portion of the Premises such that use by Tenant of the remaining undamaged portion of the Premises for Tenant's business operations is not reasonably practicable.

13.5. On Termination . If this Lease is terminated pursuant to Paragraphs 13.3 or 13.4 , Tenant shall vacate and surrender the Premises to Landlord as soon as reasonably practicable in accordance with Paragraph 17.1 , but in no event later than thirty (30) days after Tenant receives or gives a notice of termination. If this Lease is so terminated, Landlord shall return to Tenant the Security Deposit in accordance with Paragraph 6 and any other deposit paid by Tenant as and to the extent to which Tenant is entitled to a refund, as well as any Rent paid by Tenant to Landlord for any period beyond the date of termination.

14. Condemnation .

14.1. Termination . If the whole of the Premises is taken through a Condemnation Proceeding, this Lease shall automatically terminate as of the date of the taking. The phrase " ***the date of the taking*** " means the date of taking actual physical possession by the condemning authority, the entry of an order of occupancy or such earlier date as the condemning authority gives notice that it is deemed to have taken possession. If part, but not all, of the Premises is taken, either Party may terminate this Lease as set forth in this Paragraph 14.1 . Landlord may terminate this Lease if any portion of the Property (whether or not including the Premises) is taken that, in Landlord's reasonable judgment, substantially interferes with Landlord's ability to operate or use the Property for the purposes for which the Property was intended, so long as Landlord terminates leases in the Building covering an aggregate of at least seventy-five percent (75%) of the rentable square footage of the Building. Tenant may terminate this Lease if any portion of the Property (not including the Premises) is taken that:

(a) terminates all reasonable physical access to and from the Premises and the public rights- of-way abutting the Property, and Landlord fails to provide reasonably acceptable substitute access; or

(b) reduces the parking available to Tenant and Tenant's Occupants on the Property below Tenant's Parking Stall Allocation, unless Landlord provides to Tenant replacement parking within reasonable proximity to the Building.

Any such termination must be accomplished through notice given no later than thirty (30) days after, and shall be effective as of, the date of the taking. If this Lease is so terminated, Landlord shall return to Tenant the Security Deposit in accordance with Paragraph 6 and any other deposit paid by Tenant as and to the extent to which Tenant is entitled to a refund, as well as any Rent paid by Tenant to Landlord for any period beyond the date of termination.

14.2. Restoration . In all other cases, or if neither Landlord nor Tenant exercises its right to terminate, this Lease shall remain in effect and Landlord shall restore the remaining portion of the Property and, to the extent affected thereby, the Building and the Premises to the extent of Building standard improvements, to its and their former condition as nearly as is reasonably practicable, and any condemnation award paid in connection with such taking shall be used to the extent necessary for such purpose. During such restoration, Rent shall be abated proportionately commencing on the date of such taking and continuing until the completion of such restoration as to that portion of the Premises rendered untenantable by such restoration, if any.

14.3. General . If a portion of the Premises is taken and this Lease is not terminated, Rent shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises immediately prior to such taking. Whether or not this Lease is terminated as a consequence of a Condemnation Proceeding, all damages or compensation awarded for a partial or total taking, including any award for severance damage and any sums compensating for diminution in the value of or deprivation of the leasehold estate under this Lease, shall be the sole and exclusive property of Landlord; *provided,* that Tenant shall be entitled to any award for loss of, or damage to, Tenant's Property, loss of business or goodwill and business interruption, moving and relocation expenses, if a separate award is actually made to Tenant.

15. Landlord's Financing . Within ten (10) business days after Landlord's request, Tenant shall execute a subordination, non-disturbance and attornment agreement or other similar document, subordinating this Lease to any mortgage, deed of trust or similar instrument covering the Property, and providing a non-disturbance agreement in favor of Tenant, all in reasonable form and substance reasonably satisfactory to Tenant and the lender concerned. If the holder of any mortgage or deed of trust elects to have this Lease superior to the lien of its mortgage or deed of trust and gives notice of such election to Tenant, this Lease shall be deemed prior to such mortgage or deed of trust, whether such notice is given before or after foreclosure. On any sale, assignment or transfer of Landlord's interest under this Lease or in the Premises, including any such disposition resulting from Landlord's default under a debt obligation, such sale, assignment or transfer shall be subject to this Lease, Tenant shall attorn to Landlord's successors and assigns and shall recognize such successors or assigns as Landlord under this Lease, regardless of any absence of privity of contract, provided that such successors and assigns recognize this Lease and do not disturb Tenant's use and occupancy of the Premises so long as no Tenant Default exists under this Lease. On Tenant's request, Landlord shall use its best efforts to obtain a subordination, non-disturbance and attornment agreement in favor of Tenant from Landlord's current mortgage lender in form and substance reasonably satisfactory to the Parties and such lender, and Tenant shall be solely responsible for any costs, expenses or fees payable in connection therewith.

16. Default .

16.1. Tenant Default . The occurrence of any of the following events shall constitute a " ***Tenant Default*** " under this Lease:

(a) Tenant fails to pay any Rent or other sum on the date when due under this Lease, and such failure is not cured within seven (7) business days after notice is given to Tenant that the same is past due;

(b) Tenant fails to observe or perform any other term, covenant or condition to be observed or performed by Tenant on the date when due under this Lease, and such failure is not cured within ten (10) business days after notice is given to Tenant of such failure; *provided, however,* that if more than ten (10) business days is reasonably required to cure such failure, no Tenant Default shall occur if Tenant commences such cure within such ten (10)-business day period and thereafter diligently prosecutes such cure to completion; or

(c) Tenant (i) files a petition in bankruptcy, (ii) becomes insolvent, (iii) has taken against it in any court, pursuant to state or federal statute, a petition in bankruptcy or insolvency or for reorganization or appointment of a receiver or trustee (and such petition is not dismissed within ninety (90) days), (iv) petitions for or enters into an arrangement for the benefit of creditors, or (v) suffers this Lease to become subject to a writ of execution.

16.2. Remedies .

(a) On any Tenant Default under this Lease, Landlord may at any time, without waiving or limiting any other right or remedy available to Landlord, in compliance with Utah Laws:

(i) perform in Tenant's stead any obligation that Tenant has failed to perform, and Landlord shall be reimbursed within thirty (30) days after demand for any reasonable cost incurred by Landlord, with interest thereon at the Default Rate from the date of such expenditure until paid in full, with interest;

(ii) terminate Tenant's rights under this Lease by an unlawful detainer or other judicial proceeding;

(iii) reenter and take possession of the Premises by any lawful means (with or without terminating this Lease); or

(iv) pursue any other remedy allowed by Law.

(b) Tenant shall pay to Landlord the reasonable cost of recovering possession of the Premises, all reasonable costs of reletting (including reasonable renovation, remodeling and alteration of the Premises in a manner that is typical and customary for Comparable Buildings), the reasonable amount of any commissions paid by Landlord in connection with such reletting, and all other reasonable costs and damages proximately caused by the Tenant Default, including attorneys' fees and costs actually incurred, and shall repay to Landlord all free rent and any other similar concession given to Tenant; *provided, however,* that for purposes of Tenant's liability under the foregoing portion of this sentence, such costs of reletting and commissions (only) shall be amortized over the initial term of the new lease, with interest thereon at the Interest Rate, and Tenant shall be liable only for that portion so amortized falling within the remaining portion of the Term.

(c) Notwithstanding any termination or reentry, the liability of Tenant for Rent payable under this Lease shall not be extinguished for the balance of the Term, and Tenant agrees to compensate Landlord within thirty (30) days after demand for any deficiency (which deficiency shall be reduced by all amounts actually received by Landlord from reletting the Premises). In the event of a Tenant Default, Landlord shall use its best efforts to mitigate its damages in accordance with Utah law.

(d) No reentry or taking possession of the Premises or other action by Landlord or Landlord's employees, agents or contractors on or following the occurrence of any Tenant Default shall be construed as an election by Landlord to terminate this Lease or as an acceptance of any surrender of the Premises, unless Landlord provides Tenant notice of such termination or acceptance.

16.3. Past Due Amounts .

(a) If Tenant fails to pay when due any amount required to be paid by Tenant under this Lease, such unpaid amount shall bear interest at the Default Rate from the due date of such amount to the date of payment in full, with interest, and Landlord may also charge a sum of five percent (5%) of such unpaid amount as a service fee. This late payment charge is intended to compensate Landlord for Landlord's additional administrative costs resulting from Tenant's failure to perform Tenant's obligations under this Lease in a timely manner, and has been agreed on by the Parties after negotiation as a reasonable estimate of the additional administrative costs that will be incurred by Landlord as a result of such failure. The actual cost in each instance is extremely difficult, if not impossible, to determine. This late payment charge shall constitute liquidated damages and shall be paid to Landlord together with such unpaid amount.

(b) All amounts due under this Lease are and shall be deemed to be rent or additional rent, and shall be paid without (except as expressly provided in this Lease) abatement, deduction, offset, prior notice or demand. Landlord shall have the same remedies for a failure to pay any amount due under this Lease as Landlord has for the failure to pay Basic Monthly Rent.

16.4. Landlord Default . Landlord shall be in default under this Lease (a " ***Landlord Default*** ") if Landlord fails to perform an obligation required of Landlord, or to correct a representation or warranty of Landlord made, under this Lease within thirty (30) days after notice by Tenant to Landlord and the holder of any mortgage or deed of trust covering the Property whose name and address have been furnished to Tenant, specifying the respects in which Landlord has failed to perform such obligation, and such holder fails to perform such obligation within a second thirty (30)-day period commencing on the expiration of such first thirty (30)-day period; *provided, however,* that if the nature of such obligation is such that more than thirty (30) days are reasonably required for performance or cure, no Landlord Default shall occur if Landlord or such holder commences performance or cure within its thirty (30)-day cure period and thereafter diligently prosecutes the same to completion. In no event may Tenant terminate this Lease or withhold the payment of Rent or other charges provided for in this Lease as a result of a Landlord Default, unless Tenant first obtains a judicial order expressly authorizing Tenant to do so pursuant to a judicial proceeding, notice of which has been given to Landlord by personal service as required by the Utah Rules of Civil Procedure for such proceeding. Subject to the foregoing provisions of this Paragraph 16.4 and to the provisions of Paragraph 22.8 , in the event of a Landlord Default, Tenant shall have the right to pursue all rights and remedies (legal and equitable) available to Tenant under Utah law. Notwithstanding the foregoing portion of this Paragraph 16.4 , on receipt of any notice of default from Tenant, Landlord shall promptly commence, and thereafter diligently prosecute to completion, the cure of such default, whether or not Tenant gives notice of such default to the holder of any mortgage or deed of trust covering the Property whose name and address have been furnished to Tenant.

17. Expiration and Termination .

17.1. Surrender of Premises .

(a) Prior to Lease end, Tenant shall, at Tenant's sole cost and expense:

(i) remove only Tenant's Property, excluding Tenant's voice and data lines, wiring, cabling and facilities, and all other property shall, unless otherwise directed by Landlord in accordance with this Paragraph 17.1 , remain in the Premises as the property of Landlord without compensation; *provided, however,* that (A) Tenant shall not remove Tenant's Property from the Premises without Landlord's prior consent if such removal will impair or damage the structure of the Building, and (B) at Landlord's option, Tenant shall, at Lease end, remove Tenant's voice and data lines, wiring, cabling and facilities in accordance with the National Electric Code, as amended;

(ii) repair any damage to the Property caused by or in connection with the removal of any property from the Premises by or at the direction of Tenant (including, without limitation, damaged or discolored wall areas exposed by the removal of pictures, video screens, white boards or other hangings), and any painting in connection with such repair shall include all reasonably necessary areas (meaning, for example, it may be necessary to paint an entire wall if the painting of only the discolored area does not completely match the surrounding painted surfaces); and

(iii) deliver all keys and access cards to the Premises to Landlord, and promptly and peaceably surrender the Premises to Landlord "broom clean," in good order and condition, subject to normal and reasonable wear and tear not required to be repaired by Tenant and the other provisions of this Lease regarding maintenance, repair, casualty, condemnation, insurance and indemnification.

Tenant covenants to continue to pay Rent, on a *per diem* basis in the same amount as is payable during the final month of the Term, during any period following Lease end and until completion of all Tenant's obligations described in the foregoing subparagraph (a) . Such Rent shall be due and payable to Landlord no later than thirty (30) days after the receipt by Tenant of an invoice therefor.

(b) Any of Tenant's Property not removed from the Premises on the abandonment of the Premises or on Lease end for any cause shall conclusively be deemed to have been abandoned and may be appropriated, removed, sold, stored, destroyed or otherwise disposed of by Landlord without notice to, and without any obligation to account to, Tenant or any other person unless required to do so by Laws. Tenant shall pay to Landlord all reasonable expenses incurred in connection with the removal and disposition of such Tenant's Property in excess of any amount received by Landlord from such removal and disposition.

(c) In addition, Landlord may require Tenant, at Tenant's sole cost and expense, to remove prior to Lease end any other Alteration made to the Premises by Tenant or by Landlord for Tenant and to restore the Premises to their condition prior to making such Alteration; *provided,* that, except as set forth in subparagraph (a)(i) above with respect to Tenant's Property, Tenant shall have no obligation to remove:

(i) the Initial Improvements made pursuant to Exhibit A ; or

(ii) any other Alteration made by Tenant with Landlord's prior consent, unless such consent was conditioned on such Alteration being removed at Lease end.

17.2. Holding Over .

(a) Tenant must obtain the prior consent of Landlord in order to remain in possession of the Premises after Lease end. If Tenant remains in possession of the Premises after Lease end *without* obtaining the prior consent of Landlord:

(i) such occupancy shall constitute an unlawful detainer of the Premises (and Tenant shall be subject to an unlawful detainer action therefor), for which period of occupancy Tenant shall pay to Landlord a rental (and not a penalty) in the amount of (A) one hundred fifty percent (150%) of the last Rent payable by Tenant to Landlord for the first month of such occupancy, plus all other charges payable under this Lease, and (B) two hundred percent (200%) of the last Rent payable by Tenant to Landlord for each month of such occupancy thereafter, plus all other charges payable under this Lease; and

(ii) Tenant shall reimburse Landlord within thirty (30) days after the receipt of an invoice therefor, accompanied by such detail as may reasonably be requested by Tenant, for all reasonable out-of-pocket costs, expenses, fees, charges or penalties incurred or payable by Landlord in connection with any other tenant or lease for the Premises resulting from the delay by Tenant in surrendering the Premises in accordance with the provisions of this Lease, including, without limitation, penalties or holdover rent paid or credit given to the next tenant for the Premises as a result of late delivery to such tenant of the Premises.

(b) If Tenant remains in possession of the Premises after Lease end *with* the prior consent of Landlord, such occupancy shall be a tenancy from month-to-month on all of the terms of this Lease and provisions of Utah law applicable to a month-to-month tenancy (which tenancy shall be terminable as of the end of any calendar month by notice given by either Party to the other at least fifteen (15) days prior to the end of the month concerned) at a rental (and not as a penalty) in the amount of (i) one hundred twenty-five percent (125%) of the last Rent payable by Tenant to Landlord for the first month of such occupancy, plus all other charges payable under this Lease, and (ii) one hundred fifty percent (150%) of the last Rent payable by Tenant to Landlord for each month of such occupancy thereafter, plus all other charges payable under this Lease.

(c) Notwithstanding anything contained in this Paragraph 17.2 to the contrary, on any termination of this Lease pursuant to Paragraphs 8.4(b), 13 or 14 , Tenant shall have up to thirty (30) days to surrender the Premises after the effective date of such termination, and the provisions of this Paragraph 17.2 shall not be applicable until after the expiration of such thirty (30)-day period.

17.3. Survival . The provisions of this Paragraph 17 shall survive Lease end.

18. Estoppel Certificate; Financial Statements .

18.1. Estoppel Certificate . Either Party shall, within ten (10) business days after request by the other Party, without charge, execute and deliver to the requesting Party an estoppel certificate in commercially reasonable form in favor of the requesting Party and such other persons as the requesting Party may reasonably request setting forth the following:

(a) a ratification of this Lease;

(b) the Commencement Date and Expiration Date;

(c) that this Lease is in full force and effect and this Lease has not been assigned, subleased, modified, supplemented or amended (except by such writing as shall be stated) by the responding Party;

(d) that, to the current, actual knowledge of the responding Party, all conditions under this Lease to be performed by the requesting Party have been satisfied or, in the alternative, those claimed by the responding Party to be unsatisfied;

(e) that, to the current, actual knowledge of the responding Party, no defenses, claims or offsets exist against the enforcement of this Lease by the requesting Party or, in the alternative, those claimed by the responding Party to exist;

(f) that, to the current, actual knowledge of the responding Party, the responding Party is not in default under this Lease;

(g) that (if true) Tenant has accepted and occupied the Premises;

(h) the amount of advance Rent, if any (or none if such is the case), paid by Tenant;

(i) the date to which Rent has been paid;

(j) the amount of the Security Deposit; and

(k) such other factual information reasonably related to this Lease as the requesting Party may reasonably request.

The requesting party and third parties reasonably designated by the requesting Party shall be entitled to rely on any such estoppel certificate.

18.2. Financial Statements . Tenant shall, within ten (10) business days after Landlord's request, furnish to Landlord current financial statements for Tenant, prepared in accordance with GAAP or other reasonable accounting standards consistently applied and certified by Tenant to be true and correct. If such financial statements are available online, Tenant shall have complied with the requirements of this Paragraph 18.2 if Tenant provides to Landlord within such ten (10)-business day period the website where such financial statements may readily be obtained by Landlord. If Tenant is a public reporting company registered with the SEC, Tenant shall have complied with the requirements of this Paragraph 18.2 if Landlord can readily access Tenant's current financial statements online. After the date of this Lease, Landlord shall only request Tenant's financial statements if required or requested to do so by a current or prospective lender or purchaser. Tenant shall have no obligation to produce financial statements in addition to those, if any, then existing, and shall have no obligation to produce financial statements more often than once in any twelve (12)-month period.

19. Parking; Signage .

19.1. Parking .

(a) Parking on the Property is provided generally to tenants of the Building on a non-reserved, first-come-first-served basis. During the Term, Landlord shall provide at least the same number of visitor parking spaces as are currently provided for the Building. Tenant and Tenant's Occupants shall have the non-exclusive right (together with other tenants of the Building) without charge, other than as contemplated by Paragraph 5 with respect to Operating Expenses, to use a number of parking stalls located on the Property equal to Tenant's Parking Stall Allocation only, and shall not use a number of parking stalls greater than Tenant's Parking Stall Allocation (excluding *de minimis* , occasional excess use), unless prior consent has been given by Landlord. As part of Tenant's Parking Stall Allocation, Landlord shall provide to Tenant, and mark with appropriate signage (at Tenant's cost), four (4) reserved parking stalls in a mutually acceptable location.

(b) Subject to the foregoing subparagraph (a) , automobiles of Tenant and Tenant's Occupants shall be parked only within parking areas not otherwise reserved by Landlord or specifically designated for use by any other tenant or occupants associated with any other tenant. Landlord and Landlord's employees, agents or contractors may cause to be removed any automobile of Tenant or Tenant's Occupants that may be parked wrongfully in a prohibited or reserved parking area, provided that such prohibited or reserved parking area is adequately marked with signs placed in reasonable locations. Each Building lease shall contain limitations on parking substantially similar to those contained in this Paragraph 19.1 , and Landlord shall diligently enforce such limitations in a nondiscriminatory manner.

(c) Tenant may, at Tenant's option and sole cost and expense, place a branded promotion vehicle that is new or like-new, in good, running condition and approved by Landlord, in a parking stall approved by Landlord, which parking stall shall be part of Tenant's Parking Stall Allocation.

19.2. Signage .

(a) Tenant shall be entitled to Building standard signage on the Building interior directory, at the entrance to the Premises and on the exterior multi-tenant monument sign, all at Tenant's sole cost and expense, as well as the Crown Signage described in Paragraph 3.5 (subject to the provisions of Paragraph 3.5). Tenant shall not place or suffer to be placed (i) on any exterior door, wall or window of the Premises, (ii) on any part of the inside of the Premises that is visible from the outside of the Premises, or (iii) elsewhere on the Property, any sign, decoration, lettering, attachment, advertising matter or other thing of any kind, without first obtaining Landlord's approval. Unless expressly permitted by this Lease, neither Tenant nor Tenant's Occupants shall erect, install, hold or place by any method any signage of any type outside of the Premises and on or around the Property, including, without limitation, any banner or placard sign held by individuals on any public property adjacent to or near the Property. Landlord may, at Tenant's sole cost and expense, following at least ten (10) business days' prior notice, remove any item erected in violation of this Paragraph 19.2 , and may enter the Premises to do so when necessary.

(b) All approved signs or letterings on doors shall be printed, painted and affixed at the sole cost and expense of Tenant by a person approved by Landlord, and shall comply with the requirements of the applicable municipality. At Tenant's sole cost and expense, Tenant shall maintain all permitted signs and shall, on Lease end, remove all of its signs and repair any damage caused by such removal.

20. Landlord's Representations and Warranties .

20.1. Representations and Warranties . Landlord represents and warrants to Tenant that (unless otherwise expressly indicated) as of the date of this Lease:

(a) (i) Landlord has good and marketable fee simple title to the Premises and the Property, with full right and authority to lease the Premises to Tenant;

(ii) there are no liens, encumbrances or other matters affecting such title that would interfere with the Permitted Use;

(iii) the Property is zoned to permit the Permitted Use; and

(iv) to Landlord's current, actual knowledge, there are no covenants, restrictions or other agreements that would interfere with the Permitted Use;

(b) to Landlord's current, actual knowledge:

(i) the Property has not been used to treat, store, process or dispose of Hazardous Materials;

(ii) there are no releases nor have there ever been any releases of Hazardous Materials at, on or under the Property that would give rise to a cleanup or remediation obligation under any applicable Environmental Laws; and

(iii) the Property does not contain (A) any underground storage tanks, nor have there ever been any underground storage tanks on the Property, (B) asbestos in any form, including insulation or flooring, (C) PCB-containing equipment, including transformers or capacitors, or (D) any other Hazardous Materials that could affect or impair Tenant's use of or operations at the Property or the health or safety of Tenant's employees, and notwithstanding anything contained in this Lease to the contrary, Tenant shall have no liability of any kind to Landlord for any pre-existing Hazardous Materials located on the Property as of the date of this Lease, or for any Hazardous Materials that migrate onto or under the Property or otherwise become present at the Property as the result of the activities of anyone other than Tenant or Tenant's Occupants, and Landlord shall remediate any such Hazardous Materials for which Tenant has no liability to the extent required by Laws;

(c) to Landlord's current, actual knowledge, the Building (including the Premises) complies (and will, as of the Commencement Date, comply) with Laws and any covenants, conditions and restrictions affecting the Building;

(d) to Landlord's current, actual knowledge, as of the Commencement Date:

(i) the Building (including the Premises, but excluding issues related to any Tenant work) will be free from any material defect in materials or workmanship;

(ii) the Premises (excluding issues related to any Tenant work) will be in good, structurally sound condition and watertight;

(iii) the Building utilities and mechanical (including, without limitation, elevators), electrical and HVAC systems will be in good, working condition and repair and of sufficient capacity to serve the Premises for the Permitted Use, as well as other Building tenants; and

(iv) the fire sprinklers in the Building (including in the Premises) will have adequate flow and pressure in accordance with the regulations of the National Fire Protection Association;

(e) no pending Condemnation Proceeding relating to or affecting the Property exists, and Landlord has no current, actual knowledge that any such action is presently threatened or contemplated;

(f) as of the Commencement Date, Tenant shall have exclusive possession of the Premises; and

(g) Landlord has not granted and will not grant, in the aggregate, allocations of parking stalls to all tenants in the Building (including Tenant's Parking Stall Allocation) that exceed one hundred percent (100%) of the Building's available parking stalls.

20.2. Remedy . If any representation or warranty set forth in Paragraph 20.1 is inaccurate or untrue as of the date when made, Landlord's sole and exclusive obligation and liability (and Tenant's sole and exclusive right and remedy) under this Paragraph 20 shall be to cause the condition causing such representation or warranty to be inaccurate or untrue to be corrected or remedied at Landlord's sole cost and expense, *subject, however,* to any provision of this Lease (such as, but without limitation, Paragraphs 7 and 9) expressly allocating responsibility to Tenant. Landlord shall so correct or remedy such condition as soon as reasonably practicable following notice of such condition.

21. Rules . Tenant and Tenant's Occupants shall faithfully observe and comply with all of the rules set forth on the attached Exhibit B , and Landlord may from time to time amend, modify or make additions to or deletions from such rules in a reasonable and nondiscriminatory manner, consistent with Comparable Buildings; *provided,* that no such amendments, modifications, additions or deletions (either individually or in the aggregate) shall, without Tenant's prior consent:

(a) adversely affect Tenant's business operations as permitted under this Lease, Tenant's compliance with Laws, or Tenant's use of, or access to and from, the Premises;

(b) materially increase any of Tenant's obligations, or materially decrease any of Tenant's rights, under this Lease, or require the payment of any monies to Landlord; or

(c) conflict with any of the express provisions of this Lease;

provided further, that Tenant shall have a reasonable time to bring its operations at the Premises into compliance with any such amendments, modifications, additions and deletions. Such amendments, modifications, additions and deletions shall be effective ten (10) business days after receipt by Tenant of notice, accompanied by a copy of such amendments, modifications, additions or deletions. Although Landlord shall use its best efforts to enforce such rules in a consistent and nondiscriminatory manner against all tenants of the Building (and shall promptly undertake to enforce such rules (without the obligation of bringing a lawsuit) on receipt of notice from Tenant of another tenant's or occupant's breach of the rules that is disturbing Tenant or Tenant's Occupants), Landlord shall not be responsible to Tenant for the failure of any other tenant or person to observe such rules. In the event of any conflict between such rules and the provisions of this Lease, the provisions of this Lease shall prevail.

22. General Provisions .

22.1. No Partnership . Neither Party, by this Lease, in any way or for any purpose, becomes a partner or joint venturer of the other Party in the conduct of the other Party's business or otherwise.

22.2. Force Majeure . If either Party is delayed or hindered in or prevented from the performance of any act required under this Lease by reason of acts of God, extraordinary weather conditions, strikes, boycotts, lockouts, other labor troubles (other than within such Party's organization), inability to procure labor or materials, fire or other casualty, accident, failure of power, governmental requirements, restrictive Laws of general applicability, riots, civil commotion, insurrection, terrorism, war or other reason not the fault of the Party delayed, hindered or prevented and beyond the control of such Party (financial inability excepted) (any of the foregoing, " ***force majeure*** "), performance of the action in question shall be excused for the period of delay and the period for the performance of such action shall be extended for a period equivalent to the period of such delay; *provided, however,* that the time period customarily associated with obtaining any approvals, permits, consents or waivers shall not be an event of force majeure. The provisions of this Paragraph 22.2 shall not, however, operate to excuse Tenant from the prompt payment of Rent or any other amount required to be paid by Tenant under this Lease, or excuse Landlord from the prompt payment of any amount required to be paid by Landlord under this Lease, unless such force majeure directly causes the delay concerned. The Party claiming the benefit of any force majeure delay shall use its best efforts to notify the other Party promptly following the occurrence of any event constituting a force majeure delay and, under the circumstances, to minimize such delay.

22.3. Notices . Unless otherwise expressly provided in this Lease, any communication to be given by either Party to the other shall be given in writing by personal service, express mail, Federal Express or any other similar form of courier or delivery service providing proof of delivery, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such Party as follows:

If to Landlord :

North Slope One, LLC
2801 North Thanksgiving Way, Suite 100
Lehi, Utah 84043
Attention: Andrew Bybee

with a required copy to :

the holder of any mortgage or deed of trust covering the Property
whose name and address have been furnished to Tenant in writing

and a required copy via email to :

Victor A. Taylor, Esq.
Durham Jones & Pinegar, P.C.
111 South Main Street, Suite 2400
Salt Lake City, Utah 84111
Email: vtaylor@djplaw.com

If to Tenant :

Purple Innovation, LLC
4100 North Chapel Ridge Road, Suite 200
Lehi, Utah 84043
Attention: Chief Financial Officer

with a required copy to :

Purple Innovation, LLC
4100 North Chapel Ridge Road, Suite 200
Lehi, Utah 84043
Attention: Chief Legal Officer

and a required copy via email to :

legal@purple.com

Either Party may change the address at which such Party desires to receive notice on notice of such change to the other Party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the Party to which the notice is directed; *provided, however,* that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change that was not properly communicated shall not defeat or delay the giving of a notice.

22.4. Severability . If any provision of this Lease or the application of any provision of this Lease to any person or circumstance shall to any extent be invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which such provision is held invalid shall not be affected by such invalidity. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by Laws.

22.5. Brokerage Commissions . Except as may be set forth in one or more separate agreements between (i) Landlord and Landlord's broker, or (ii) Landlord or Landlord's broker and Tenant's broker:

(a) Landlord represents and warrants to Tenant that no claim exists for a brokerage commission, finder's fee or similar fee in connection with this Lease based on any agreement made by Landlord; and

(b) Tenant represents and warrants to Landlord that no claim exists for a brokerage commission, finder's fee or similar fee in connection with this Lease based on any agreement made by Tenant.

Landlord shall indemnify, defend and hold harmless Tenant from and against any claim for a brokerage commission, finder's fee or similar fee in connection with this Lease based on an actual or alleged agreement made by Landlord. Tenant shall indemnify, defend and hold harmless Landlord from and against any claim for a brokerage commission, finder's fee or similar fee in connection with this Lease based on an actual or alleged agreement made by Tenant.

22.6. Use of Pronouns . The use of the neuter singular pronoun to refer to either Party shall be deemed a proper reference even though either Party may be comprised of one or more persons. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where more than one Party exists and to two or more persons, shall in all instances be assumed as though in each case fully expressed. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another.

22.7. Successors . Subject to Paragraph 10 , all provisions contained in this Lease shall be binding on, and shall inure to the benefit of, the Parties and their respective successors and assigns; *provided, however,* that on and after any sale of the Premises, assignment of this Lease by Landlord, transfer of any Security Deposit then held by Landlord and assumption in writing of this Lease by the transferee, Landlord shall be relieved entirely of all of Landlord's obligations under this Lease to the extent first arising after such sale, assignment and assumption, and such obligations shall automatically pass to Landlord's successor in interest.

22.8. Recourse by Tenant . Notwithstanding anything in this Lease to the contrary, Tenant shall look solely to the right, title and interest of Landlord in the Property, together with the rents, issues and profits, the proceeds of any sale or insurance carried by Landlord, and the awards of any Condemnation Proceeding, with respect to the Property, subject to the prior rights of the holder of any superior mortgage or deed of trust (collectively, " ***Landlord's Interest in the Property*** "), for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord on any Landlord Default, and no other asset of Landlord or any other person shall be subject to levy, execution or other procedure for the satisfaction of Tenant's remedies. Nothing contained in this Paragraph 22.8 shall limit or affect any right that Tenant may otherwise have to obtain injunctive relief or to exercise any other remedies or actions against Landlord that do not expose to liability assets other than Landlord's Interest in the Property. The provisions of this Paragraph apply not only to claims under the express terms of this Lease, but also to claims of any kind whatsoever arising from the relationship between the Parties or any rights and obligations they may have relating to the Property or this Lease.

22.9. Exculpation of Non-Parties .

(a) Neither Party shall have recourse or the right to make any claim against, and each Party, for itself and any person claiming by, through or under such Party, waives and releases, any person (including any current or future officer, director, trustee, beneficiary, shareholder, member, manager, employee, partner, principal or affiliate of either Party (unless such person becomes a party Landlord or Tenant under or with respect to this Lease), each an " ***Exculpated Party*** ", and collectively, the " ***Exculpated Parties*** ") with respect to any obligation arising under this Lease or its attachments, other than (i) Landlord with respect to any claim of Tenant, and (ii) Tenant with respect to any claim of Landlord. Each Party's assets shall specifically exclude the assets of the Exculpated Parties applicable to such Party.

(b) The foregoing subparagraph (a) : (i) is an essential and material term of this Lease, and each Exculpated Party shall be a third-party beneficiary thereof; and (ii) shall inure to the benefit of the Parties and the Exculpated Parties and their respective heirs, successors and assigns. The Parties would not have entered this Lease without the foregoing subparagraph (a) . The Exculpated Parties shall not have any liability for any duties, responsibilities, liabilities or obligations of the Parties under, or in any way related to, this Lease. No past, present or future Exculpated Parties shall be named as a party in any suit or other judicial proceeding of any kind or nature whatsoever brought against either Party with respect to the duties, responsibilities, liabilities or obligations of such Party under this Lease, unless such person was, is or becomes a party Landlord or Tenant under or with respect to this Lease.

22.10. Quiet Enjoyment . On Tenant paying Rent and all other amounts payable by Tenant under this Lease and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed under this Lease, Tenant shall have quiet use and enjoyment of the Premises for the Term without interference, hindrance or interruption from Landlord, or anyone claiming by, through or under Landlord (including, without limitation, any transferee of Landlord's interest under this Lease, whether by voluntary act or foreclosure), subject to all of the provisions of this Lease.

22.11. No Waiver . No failure by either Party to insist on the strict performance of any covenant, duty or condition of this Lease or to exercise any right or remedy on a breach of this Lease by the other Party shall constitute a waiver of such covenant, duty, condition or breach. Either Party may, but shall not be obligated to, waive any covenant or duty of any other Party, or any of its rights, or any conditions to its obligations, under this Lease by notice to the other Party. No such waiver by either Party will imply or constitute its further waiver of the same or any other matter. No waiver shall affect or alter the remainder of this Lease, but each other covenant, duty and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequently-occurring breach. No act or thing done by Landlord or Landlord's agents during the Term will be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender will be valid unless in writing signed by Landlord. The delivery of Tenant's keys to any employee or agent of Landlord will not constitute a termination of this Lease unless Landlord has entered into an agreement to that effect. No payment by either Party, or receipt from either Party, of a lesser amount than the Rent or other amount due will be deemed to be anything other than a payment on account of the earliest Rent or other amount due. No endorsement or statement on any check, or any letter accompanying any check or payment as Rent or other amount, will be deemed an accord and satisfaction. The recipient will accept any check for payment without prejudice to its right to recover the balance of such Rent or other amount due or to pursue any other remedy available to such recipient.

22.12. Rights and Remedies . Except as expressly set forth in this Lease, the rights and remedies of the Parties shall not be mutually exclusive and the exercise of one or more of the provisions of this Lease shall not preclude the exercise of any other provision. The Parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach by either Party of any of the provisions of this Lease. The Parties' respective rights and obligations under this Lease shall be enforceable by specific performance, injunction or any other equitable remedy. Neither Landlord nor Tenant shall be liable to the other for any consequential, indirect, special, exemplary, punitive or similar damages under Paragraphs 11, 16.2 or 16.4 or any other provision of this Lease.

22.13. Enforceability . Each Party represents and warrants that:

(a) such Party was duly formed and is validly existing and in good standing under the Laws of the state of its formation;

(b) such Party has the requisite power and authority under Laws and its governing documents to execute, deliver and perform its obligations under this Lease;

(c) the individual executing this Lease on behalf of such Party has full power and authority under such Party's governing documents to execute and deliver this Lease in the name of, and on behalf of, such Party and to cause such Party to perform its obligations under this Lease;

(d) this Lease has been duly authorized, executed and delivered by such Party; and

(e) this Lease is the legal, valid and binding obligation of such Party, and is enforceable against such Party in accordance with its terms.

22.14. Attorneys' Fees . If any action, lawsuit, mediation, arbitration or proceeding, including bankruptcy proceeding, is brought (a) to recover any Rent or other amount due under this Lease because of any Landlord Default or Tenant Default, (b) to enforce or interpret any provision of this Lease, (c) for recovery of possession of the Premises, or (d) with respect to this Lease or any other issue or matter relating to this Lease, the Party prevailing in such action shall be entitled to recover from the other Party reasonable attorneys' fees and costs (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Landlord in any case or proceeding involving Tenant or any assignee or subtenant of Tenant as the debtor under or related to any bankruptcy or insolvency law. Landlord shall be responsible for all expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Tenant in any case or proceeding involving Landlord as the debtor under or related to any bankruptcy or insolvency law. The foregoing provisions of this Paragraph 22.14 shall survive Lease end.

22.15. Merger . Neither the surrender of this Lease by Tenant nor the termination of this Lease by agreement of the Parties or as a result of a Tenant Default shall work a merger, and shall, at Landlord's option, either terminate any subleases of part or all of the Premises or operate as an assignment to Landlord of any of those subleases. Landlord's option under this Paragraph 22.15 may be exercised by notice to Tenant and all known subtenants in the Premises.

22.16. Anti-Terrorism .

(a) Each Party represents and warrants to the other that:

(i) such Party is (A) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury (" ***OFAC*** ") or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the " ***List*** "), and (B) not a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction or other prohibition of United States law, regulation or Executive Order of the President of the United States;

(ii) to such Party's actual knowledge, none of the funds of such Party has been derived from any unlawful activity with the result that the investment in such Party is prohibited by Laws or that this Lease is in violation of Laws; and

(iii) such Party has implemented such procedures as are required by Laws, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true at all times.

The term " ***Embargoed Person*** " means any person or government subject to trade restrictions under U.S. law, including, without limitation, the International Emergency Economic Powers Act, 50 U.S.C. §1701 *et seq.* , The Trading with the Enemy Act, 50 U.S.C.S. Appx. §1 *et seq.* , and any Executive Orders or regulations promulgated under it with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law.

(b) Each Party agrees:

(i) to comply with all requirements of law applicable to such Party relating to money laundering, anti-terrorism, trade embargos and economic sanctions, in effect now or after the date of this Lease;

(ii) to notify the other Party promptly in writing if any of the representations, warranties or covenants set forth in this Paragraph 22.16 are no longer true or have been breached or if such Party has a reasonable basis to believe that they may no longer be true or have been breached; and

(iii) not knowingly to use funds from any "Prohibited Person" (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due under this Lease.

(c) Either Party's inclusion on the List at any time during the Term shall be a default by such Party under this Lease. Tenant shall not knowingly permit all or any portion of the Premises to be used or occupied by any person on the List or by any Embargoed Person (on a permanent, temporary or transient basis).

22.17. Entire Agreement . This Lease (including its attachments) exclusively encompasses the entire agreement of the Parties, and supersedes all previous negotiations, understandings and agreements between the Parties, whether oral or written, including, without limitation, any oral discussions, letters of intent and email correspondence. The Parties have not relied on any representation, understanding, information, discussion, assertion, guarantee, warranty, collateral contract or other assurance (including, without limitation, one relating to square footage), made by or on behalf of any other Party or any other person whatsoever (including, without limitation, any real estate broker or agent), that is not set forth in this Lease. The Parties hereby waive all rights and remedies, at law or in equity, arising or that may arise as the result of a Party's reliance on any such representation, understanding, information, discussion, assertion, guarantee, warranty, collateral contract or other assurance.

22.18. Construction . This Lease has been prepared by Landlord and its professional advisors and reviewed by Tenant and its professional advisors. Landlord, Tenant and their separate advisors believe that this Lease is the product of all their efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Party or against either Party merely because of such Party's efforts in preparing it. The Table of Contents and captions to the Paragraphs of this Lease are for convenience of reference only, do not define, limit or describe the scope or intent of any provisions of this Lease and shall not be deemed relevant in resolving questions of construction or interpretation under this Lease. Unless otherwise set forth in this Lease, all references to Paragraphs are to Paragraphs in this Lease. Exhibits referred to in this Lease and any addendums, riders and schedules attached to this Lease shall be deemed to be incorporated in this Lease as though a part of this Lease.

22.19. Miscellaneous . Tenant shall not record this Lease or a memorandum or notice of this Lease, and any such recordation by or at the direction of Tenant shall be shall be void *ab initio* (from the beginning) and shall be a breach of this Lease. As a publicly traded company, Tenant may have an obligation to publicly disclose this Lease, and nothing in this Lease shall prohibit Tenant from satisfying any such disclosure obligation. No amendment to this Lease shall be binding on either Party unless reduced to writing and signed by both Parties. This Lease shall be governed by and construed and interpreted in accordance with the laws (excluding the choice of laws rules) of the state of Utah. Venue on any action arising out of this Lease shall be proper only in the state or federal courts having jurisdiction over the county in which the Property is located. **THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ALL MATTERS ARISING OUT OF THIS LEASE OR THE USE AND OCCUPANCY OF THE PREMISES OR RELATED IN ANY WAY TO THE PROPERTY OR THE PARTIES' LANDLORD/TENANT RELATIONSHIP.** Time is of the essence of each provision of this Lease. If there is more than one Tenant named in this Lease (or if more than one Tenant at any time assumes this Lease), the liability of each such Tenant under this Lease for payment and performance according to this Lease shall be joint and several. The submission of this Lease to Tenant is not an offer to lease the Premises or an agreement by Landlord to reserve the Premises for Tenant. Landlord shall not be bound to Tenant until Tenant has duly executed and delivered duplicate original copies of this Lease to Landlord, and Landlord has duly executed and delivered one of those duplicate original copies to Tenant. Transmission by email of a signed copy of this Lease, and the retransmission of any signed email, shall be the same as delivery of an original. The execution of this Lease or any amendment to this Lease may be accomplished by electronic signature utilizing DocuSign or any other technology, and any electronic signature (meaning any electronic symbol, designation or process), whether digital or encrypted, used by either Party shall authenticate this Lease and have the same force and effect as a manual signature.

[Remainder of page intentionally left blank; signatures on following page]

THE PARTIES have executed this Lease on the respective dates set forth below, to be effective as of the date first set forth above.

LANDLORD :

NORTH SLOPE ONE, LLC ,
a Utah limited liability company

By /s/ Andrew Bybee

Print or Type Name of Signatory:

Andrew Bybee

Its Manager

Date June 10, 2019

TENANT:

PURPLE INNOVATION, LLC ,
a Delaware limited liability company

By /s/ Joseph B. Megibow

Print or Type Name of Signatory:

Joseph B. Megibow

Its CEO

Date June 10, 2019

EXHIBIT A

to

LEASE

PREPARATION OF PREMISES FOR OCCUPANCY

THIS EXHIBIT is attached to, and is a part of, the foregoing Lease (the " ***Lease*** "). All words capitalized in this Exhibit shall have the same meaning given in the Lease. If any conflict exists between the provisions of this Exhibit and the provisions of the Lease, the provisions of this Exhibit shall control.

1. Initial Improvements .

(a) Preliminary drawings of the floor plans of the Premises are attached as Appendix 1 .

(b) Landlord shall cause the Base Building Improvements (the " ***Base Building Improvements*** ") described on Appendix 2 to be completed in accordance with the plans and specifications (the " ***Building Plans*** ") prepared by Landlord and Laws. The Base Building Improvements shall be made, and the Building Plans shall be prepared, at Landlord's sole cost and expense, and the cost thereof shall not reduce the TI Allowance, except as provided in Paragraph 2 of this Exhibit and except that any changes, alterations, modifications or upgrades to:

(i) the Base Building Improvements or the Building Plans requested by Tenant and approved by Landlord; or

(ii) the Tenant Improvements or the Tenant Improvement Plans (both defined below) that result in changes, alterations, modifications or upgrades to the Base Building Improvements or the Building Plans,

shall be made at Tenant's sole cost and expense, subject to the TI Allowance. Landlord will provide one test fit and one update at no charge to Tenant, using Landlord's preferred architect.

(c) Landlord shall cause a space plan (the " ***Space Plan*** ") for the Premises to be prepared by Landlord's architect. Landlord shall furnish the initial draft of the Space Plan to Tenant for Tenant's review and approval. Tenant shall within three (3) business days after receipt either provide comments to such Space Plan or approve the same. If Tenant provides Landlord with comments to the initial draft of the Space Plan, Landlord shall provide a revised Space Plan to Tenant incorporating Tenant's comments within three (3) business days after receipt of Tenant's comments. Tenant shall within three (3) business days after receipt then either provide comments to such revised Space Plan or approve such Space Plan. The process described above shall be repeated, if necessary, until the Space Plan finally has been approved by Tenant. The Space Plan shall be made at Tenant's sole cost and expense, subject to the TI Allowance; *provided, however,* that Landlord shall provide an initial Space Plan and a second iteration of the Space Plan for Tenant without cost to Tenant.

(d) After the Space Plan finally has been approved by the Parties, Landlord shall also cause the Tenant Improvements (the " ***Tenant Improvements*** ") described on Appendix 2 to be completed in accordance with the plans and specifications (including the tenant finishes) (the " ***Tenant Improvement Plans*** ") approved by the Parties and Laws. The Tenant Improvements shall be made, and the Tenant Improvement Plans shall be prepared, at Tenant's sole cost and expense, subject to the TI Allowance. (The Base Building Improvements and the Tenant Improvements are referred to in this Exhibit collectively as the " ***Initial Improvements*** .") The Initial Improvements shall be completed free of any mechanics' liens, except to the extent of any dispute in connection therewith, in which case Landlord shall adequately protect the Property from the foreclosure of any such lien.

(e) Landlord shall cause the Tenant Improvement Plans to be prepared by a registered professional architect and mechanical and electrical engineer(s). Landlord shall furnish the initial draft of the Tenant Improvement Plans to Tenant for Tenant's review and approval. Tenant shall within three (3) business days after receipt either provide comments to such Tenant Improvement Plans or approve the same. Tenant shall be deemed to have approved such Tenant Improvement Plans if Tenant does not timely provide comments on such Tenant Improvement Plans. If Tenant provides Landlord with comments to the initial draft of the Tenant Improvement Plans, Landlord shall provide revised Tenant Improvement Plans to Tenant incorporating Tenant's comments within three (3) business days after receipt of Tenant's comments. Tenant shall within three (3) business days after receipt then either provide comments to such revised Tenant Improvement Plans or approve such Tenant Improvement Plans. Tenant shall be deemed to have approved such revised Tenant Improvement Plans if Tenant does not timely provide comments on such Tenant Improvement Plans. The process described above shall be repeated, if necessary, until the Tenant Improvement Plans have finally been approved by Tenant.

(f) All bids and all costs will be provided to Tenant for approval per an "open book" process. The cost of the Tenant Improvements shall be calculated at Landlord's actual cost, with no additional markup or profit to Landlord. Landlord shall provide Tenant with reasonable input into the bidding process (including bid review) so long as Tenant's actions do not delay such process or the completion of the Initial Improvements; *provided, however,* that Landlord reserves the sole right and discretion, acting reasonably, to make all final decisions regarding selection of contractors, subcontractors and material suppliers, unless (except for all design/build subcontractors, that is, fire/life safety, mechanical, electrical and plumbing subcontractors, which shall not be subject to the following limitation) Tenant, acting reasonably, objects within three (3) business days after the acceptance of any bid of any subcontractor or material supplier to such bid as being an above-market bid (which objection shall be accompanied by a statement of the correct amount of a market bid and reasonable supporting evidence for such statement, such as, for example, a market bid from another reputable subcontractor or material supplier), in which case Landlord shall either cause such subcontractor or material supplier to reduce its bid to a market bid, or designate to Tenant another subcontractor or material supplier that provides a market bid. Landlord shall negotiate with its architects, contractors and suppliers to ensure that the design and construction of the Tenant Improvements are completed using high quality materials and workmanship, with such materials and workmanship being completed at fair market/industry standard costs. Landlord shall use its best efforts to cause the final bids to be competitive for tenant improvements to Comparable Buildings.

(g) Within three (3) business days following the award of all bids for the Tenant Improvements, Landlord shall prepare or caused to be prepared on an open-book basis a construction budget for the Tenant Improvements, which shall reflect the costs set forth in all of such bids and shall be submitted to Tenant for Tenant's approval. Tenant shall have three (3) business days following receipt of such budget to approve or request clarifications to the same and/or to perform value engineering and make changes to the Tenant Improvement Plans. Tenant shall be deemed to have approved such budget if Tenant does not timely provide comments on such budget. If Tenant provides Landlord with comments to the initial draft of such budget, Landlord shall provide a revised construction budget to Tenant incorporating Tenant's comments within three (3) business days after receipt of Tenant's comments. Tenant shall within three (3) business days after receipt then either provide comments to such revised budget or approve such budget. Tenant shall be deemed to have approved such revised budget if Tenant does not timely provide comments on such budget. The process described above shall be repeated, if necessary, until such budget finally has been approved by Tenant. On Tenant's approval of the budget, Landlord shall submit to Tenant for Tenant's signature a "Notice to Proceed with Construction" agreement which shall itemize all costs associated with the Tenant Improvements, and include Tenant's agreement to pay for any such improvement costs in excess of the TI Allowance. Tenant shall execute the Notice to Proceed with Construction within three (3) business days after Tenant's receipt of the same and prior to construction.

(h) Landlord shall provide project management services in connection with the construction of the Initial Improvements and the Change Orders (defined below). Such project management services shall be performed at Tenant's sole cost and expense, subject to the TI Allowance, for a fee of two percent (2%) of all costs related to the preparation of the Tenant Improvement Plans and the construction of the Tenant Improvements and the Change Orders. Except for the fee described in the immediately preceding sentence, and for the general conditions, overhead and profit of the general contractor (which may include Landlord acting as the general contractor) (which fee, together with the general conditions, overhead and profit of the general contractor, will not exceed a total of five percent (5%) of all costs related to the preparation of the Tenant Improvement Plans and the construction of the Tenant Improvements and the Change Orders), no other administrative or supervisory fee shall be payable by Tenant in connection with the Tenant Improvements or Change Orders. Tenant may, at Tenant's discretion and sole cost and expense, engage a representative to oversee construction activities on Tenant's behalf. Said representative shall coordinate its efforts with Landlord's project manager and/or contractor, shall have full access to all information and documentation with respect to the Tenant Improvements and may be engaged throughout the design and construction process of the Tenant Improvements.

2. Change Orders . If, prior to the Commencement Date and after the Tenant Improvement Plans and the construction budget have finally been approved by Tenant, Tenant requires improvements or changes (individually or collectively, the " ***Change Orders*** ") to the Premises in addition to, revision of, or substitution for, the Tenant Improvements, Tenant shall deliver to Landlord for its approval plans and specifications for such Change Orders. Within three (3) business days after such delivery by Tenant, Landlord shall either approve or disapprove such Change Orders, and if Landlord disapproves such Change Orders, Landlord shall advise Tenant of the revisions required. In addition, if specifically requested to do so by Tenant in a request accompanying the plans and specifications for such Change Orders, Landlord shall deliver to Tenant, concurrently with Landlord's approval or disapproval, Landlord's good faith estimate of any Tenant Delay that will result from the contractor's performance of such Change Orders. Tenant shall revise and redeliver the plans and specifications to Landlord within three (3) business days after Landlord's advice of its disapproval of a proposed Change Order or Tenant shall be deemed to have abandoned its request for such Change Orders. Tenant shall pay the reasonable, out-of-pocket costs for all preparations and revisions of plans and specifications for, and the construction of, all Change Orders, subject to the TI Allowance.

3. TI Allowance .

(a) Landlord shall contribute an amount of $52.00 per usable square foot of the Premises ($1,893,372.00 based on 36,411 usable square feet) (the " ***TI Allowance*** "), the total amount of which shall be subject to adjustment as set forth in the definition of "Premises" in Paragraph 1 of the Lease, toward the costs incurred for the Tenant Improvements and Change Orders, including, without limitation, painting, carpeting, tile, wall covering, light fixtures, plans, permits, insurance, architectural and engineering fees, signage, data cabling and card access systems (but expressly excluding Tenant's Property not expressly set forth in the foregoing list); *provided, however,* that if all or any portion of the TI Allowance is not used on or before the date that is one (1) year after the Commencement Date, the TI Allowance or such portion that is not used shall be lost and shall no longer be available to Tenant. In calculating the cost of Tenant Improvements and Change Orders, Landlord shall give Tenant the benefit of any cash, trade and quantity discounts actually received by Landlord.

(b) Except as expressly provided in this Paragraph 3 :

(i) Landlord has no obligation to pay for the cost of any Tenant Improvements or Change Orders in excess of the TI Allowance; and

(ii) if the cost of the Tenant Improvements and Change Orders exceeds the TI Allowance, Tenant shall pay such overage to Landlord within ten (10) business days after the receipt of an invoice therefor, accompanied by such detail as may reasonably be requested by Tenant, which invoice may be delivered prior to the commencement of construction.

4. Commencement Date Delay . The Commencement Date shall be delayed as set forth in Paragraph 1 of the Lease, except, as set forth in said Paragraph 1 , *to the extent that the delay is actually caused solely by any one or more of the following* (each, a " ***Tenant Delay*** "):

(a) Tenant's request for Change Orders (whether or not such Change Orders are actually performed) and the contractor's performance of any approved Change Orders, except to the extent that the delay exceeds any estimated delay set forth in any Landlord delay estimate for the Change Order concerned;

(b) Tenant's request for materials, finishes or installations requiring unusually long lead times, provided that Landlord gives notice to Tenant of such lead times at the time of Tenant's request or as soon thereafter as is reasonably practicable;

(c) Tenant's delay in reviewing, revising or approving plans and specifications beyond the periods set forth in this Exhibit;

(d) Tenant's delay in providing information critical to the normal progression of the Tenant Improvements (Tenant shall provide such information as soon as reasonably practicable, but in no event longer than three
(3) business days after receipt of such request for information from Landlord);

(e) Tenant's delay in making payments to Landlord for costs of the Tenant Improvements and/or Change Orders in excess of the TI Allowance; or

(f) any other act or omission by Tenant or its agents or contractors or persons employed by any of such persons that actually causes a delay of the Commencement Date.

If Substantial Completion is delayed by reason of Tenant Delay, then Landlord shall cause Landlord's architect to certify the date on which Substantial Completion would have occurred *but for* such Tenant Delay, which date shall be the Commencement Date for all purposes of the Lease; *provided, however,* that if Tenant objects to the decision of Landlord's architect by giving notice to Landlord within three (3) business days after receipt of such certification, the dispute shall be resolved by an independent architect mutually selected by the Parties, acting reasonably, the cost of which architect shall be shared equally by the Parties. Landlord shall use its best efforts to provide Tenant with notice of any Tenant Delay as soon as reasonably practicable.

5. Access by Tenant Prior to Commencement Date . Landlord shall permit Tenant and its employees, agents and contractors, at Tenant's sole cost and expense, to enter the Premises during Building Hours during the two (2)-week period prior to the Commencement Date to prepare the Premises for Tenant's use and occupancy, including the installation of Tenant's Property. Any such permission shall constitute a license only, conditioned on Tenant's:

(a) working in harmony with Landlord, Landlord's employees, agents and contractors and other tenants and occupants of the Building, and not interfering with, delaying or otherwise adversely affecting Landlord's Work;

(b) obtaining in advance Landlord's approval of the contractors proposed to be used by Tenant and, if requested by Landlord, depositing with Landlord in advance of any work the contractor's affidavit for the proposed work and the waivers of lien from the contractor and all subcontractors and suppliers of materials; and

(c) furnishing Landlord with such insurance as Landlord may reasonably require against liabilities that may arise out of such entry.

Any such activities shall be governed by Paragraph 9.2 and all other terms of the Lease.

6. Parties' Representatives . Tenant shall designate an individual to act as Tenant's representative with respect to all approvals, directions and authorizations pursuant to this Exhibit. Landlord shall designate an individual to act as Landlord's representative with respect to all approvals, directions and authorizations pursuant to this Exhibit.

Appendix 1

Floor Plans

(See attached)

Appendix 2

Base Building Improvements and Tenant Improvements

Base Building Improvements
(to be provided at Landlord's sole cost and expense)

General Building Information

1. Code: 2012 International Building Code

2. Jurisdiction: Lehi City and State of Utah

3. Type of Construction: Type IIA, Occupancy Classification B

4. Building Height: 5 Stories + Mechanical Penthouse

5. Fire Sprinklers: Wet Fire Sprinkler system throughout

6. Structural Design: Reinforced concrete walls for the bathroom and elevators cores, wide flange structural steel columns and beams, and lightweight composite concrete floor over metal decking.

7. Floor Live Loads:
   a) Office and partitions: 50 PSF + 20 PSF
   b) Lobbies and main floor: 100 PSF
   c) Corridors above main floor: 80 PSF
   d) Mechanical rooms: 125 PSF
   e) Concentrated Loads - All Areas: 2000 PSF

8. Floor to Floor heights: 13'-10" (structure)

9. Ceiling heights:
   a) Lobbies and corridors 9'-6" to 11' (finished)
   b) Tenant Areas 9' to 9'-6" ceilings finished

10. Elevators:
    Three high speed, high efficient Otis Gen2 traction elevators servicing all floors finished with granite floors, stainless steel doors, granite & wood panel wall finishes and 9' ceiling heights.

11. Two exit steel stairways with concrete pans from all floors – painted and finished.

12. Heating, Ventilation and Air Conditioning (HVAC):
    a) Ventilation and cooling is provided by a floor-by-floor Variable Air Volume (VAV) system served by one (1) roof-mounted, air-cooled liquid chiller of 350 tons nominal capacity. Chilled water is circulated through a closed loop vertical plumbing riser to air handlers located in the equipment room on each floor. Supply and return air ducts are extended from the air handler into the lease area and looped around each floor to supply conditioned air to the VAV terminal boxes. VAV terminal boxes are installed on each floor complete with heating coils, piping and control valves—approximately one VAV terminal box per 1,200 square feet of usable office space. All ductwork and piping are installed "high and tight" against the structural members to allow for lighting and data/communication cabling as part of the Tenant Improvements.
    b) Air conditioning equipment capacity is sized using the following load assumptions: Occupancy load: Average of one person per 240 square feet of usable office space.
    c) The initial warm shell improvements done during the core and shell, including installation of VAV boxes, heating coils, piping, control valves, and medium pressure duct; along with completion of the HVAC finish, including any new VAV boxes, low pressure ductwork, dampers, grills, diffusers, temperature controls, testing and balancing and standalone air conditioning for server rooms are at Tenant's sole cost and expense, to the extent that such costs (together with any other all costs payable by Tenant) exceed the TI Allowance.
    d) Heating: One (1) natural gas-fired boiler of 2 million BTU's, located in the mechanical penthouse on the roof, and is providing hot water to all VAV terminal boxes through a vertical plumbing riser in the building core with plumbing loops on each floor.
    e) Complete HVAC systems servicing all common areas of the building (including, without limitation, main 1 st floor lobby, elevator lobbies, and restrooms) is provided as part of the Base Building Improvements.

13. Domestic Water:
    Cold and warm water is provided to all restrooms in the core of the building via 2 stand-alone, gas-fired hot water heaters in the penthouse. A circulation pump will continuously circulate warm water from the boiler through a vertical plumbing riser in the core of the building. Cold domestic water is stubbed out into lease space on each floor for future tenant use. The hot water side is serviced with a water softener located in the penthouse.

14. Fire Protection System.
    A fire riser is constructed to meet applicable national and local Building code requirements. The fire protection water supply enters the Building underground at the fire control room on the main floor near the exterior of the Building. Wet standpipes rise vertically through the stairwells. Branch lines complete with sprinkler heads are installed in the building core. A main branch line (defined as 2-½" in diameter or larger) is extended from the core into the tenant lease areas on each floor in two directions as part of the Base Building Improvements. The main branch line extended into tenant lease areas along with secondary branch lines (defined as 2" in diameter or less) and all sprinkler head installation are at Tenant's sole cost and expense, to the extent that such costs (together with all other costs payable by Tenant) exceed the TI Allowance.

15. Electrical Systems:
    Electrical service is installed to meet applicable national and local building codes.
    a) Power to Panel Electrical service is provided from the electrical utilities service entry point to the switchboard and panels in the equipment room located on each floor.

- Lighting load: Average lighting load is .60 watts per one square foot for all areas.
- Office equipment load: Average of one personal computer (CPU and monitor) per 240 square feet of usable office space.

b) Fire alarm system is provided to meet applicable building codes in the core areas of the Building. Systems are designed to the necessary capacity to integrate future horns and strobes on Tenant's floors. Horns, strobes, pull stations and cabinets in the lease areas are at Tenant's sole cost and expense, to the extent that such costs (together with all other costs payable by Tenant) exceed the TI Allowance.

c) Communication conduit and interduct is provided from the elevator core to Thanksgiving Way and to Ashton Boulevard for Qwest copper lines and fiber lines as well as conduits for other communication providers. Conduit has also been extended between buildings for future communication connections in Thanksgiving Park. Tenant must have arrangements made with a communication provider in the park for communication services no later than 75 days prior to occupancy.

d) Emergency back-up generator is provided for life safety in the building core and shell. Landlord has provided a 650KW generator as part of this package and is sized for additional tenant use in their leased areas and is available to each tenant for an additional cost.

16. After-Hours Usage

Advanced Control System (ACS), is an after-hours system, and is installed to monitor after-hours usage for the tenants. ACS is a PC based, tenant override, and automatic billing system. ACS provides tenants with direct access for implementation of after-hours requests for HVAC and/or lighting usage via the internet.

17. Access Control System

An after-hour exterior door access control system is installed as part of the Base Building Improvements. The system includes electro-magnetic locks installed at the head of all exterior doors and is connected to a server in the main floor electrical room. Card readers are installed at primary entrances to the Building. Scheduling and monitoring of after-hour usage is controlled by a computer in Landlord's office. The system is expandable. The incremental cost for additional expansion control modules and/or cards and readers for Tenant use is at Tenant's sole cost and expense, to the extent that such costs exceed the TI Allowance.

18. Surveillance System:

Landlord has an IP based video surveillance system that monitors all exterior building entrances and parking lots. Surveillance cameras are mounted on the roof, in the main floor lobby, and in the main floor exit corridors. All cameras are monitored and controlled on a computer in Landlord's office.

19. Parking:

A minimum of 90% of all parking stalls are sized 9' x'18'. Handicap accessible parking stalls are provided according to all applicable laws along with designated parking stalls for high fuel-efficient vehicles and secure bicycle storage.

Base Building Improvement Standard Finishes

Base Building Improvements are constructed in accordance with applicable national and local building and life-safety code requirements including stairwells, elevators, restrooms, equipment rooms, mechanical systems, fire protection systems and electrical systems on each floor, finished per the following Building standards:

- Exterior Building Finishes: Combination of Terra-Neo, EFIS, GFRC, reflective glass and glass curtain walls, aluminum frames & entrances.
- Exterior common areas of hardscape and landscape completed per approved site plan including lighted walkways to building entrances, up lighting on the building exterior and lighted parking areas.

Interior Common Areas

- 1 st floor entrance and elevator lobby: Floors are granite tile; walls are a combination of glass windows, granite wainscot and wood paneling; lighting is a combination of indirect recessed fluorescent light fixtures and wall sconces.
- 2 nd , 3 rd , 4 th and 5 th level elevator lobbies: Granite floor tile; granite base; granite borders around the elevators; painted sheetrock walls; lighting is a combination of indirect recessed fluorescent lights.
- Building Directory: An electronic touch screen Building directory is provided in the elevator lobby on the first floor.
- Postal Boxes: A bank of Post Office Boxes are provided for each tenant and are located on the main floor in the exit corridor behind the restroom area.
- Restrooms: Floors are granite tile, walls are a granite wainscot, walls (above the wainscot) and ceilings are painted sheetrock, recessed and surface mounted lighting and wall sconces are provided. Countertops are of natural granite with stainless steel sinks. Ceiling mounted stainless steel toilet partitions in both the men's and women's restrooms. Motion sensor faucets and paper towel dispensers. The men's' restrooms have wall mounted fixtures with pressurized flush values with motion sensor water closets along with waterless urinals to conserve water. The women's restrooms have dual flush valves in each water closet to conserve water. Floors 2-5 will include a men's restroom containing a minimum of five bathroom stalls and two urinals; floor 1 will include four bathroom stalls and two urinals.
- 2 Drinking fountains per floor located just outside the restrooms.
- Equipment rooms: Concrete walls, sealed concrete floors; exposed structure ceilings; fluorescent strip lighting hung from structure above.
- Stairwells: Concrete and steel stairs and landings, with painted concrete walls, sealed concrete floors and painted steel handrails. Lighting for emergency egress is included.
- Elevators: Combination of wood and granite panels on the walls; granite flooring; standard ceiling with recessed lighting metal trim and accessories.
- Life-safety exit and egress lighting with alarms and horns as required by code.
- Building signage including stairwells, exiting, and elevator instructions as per code.

No-Smoking

Tenants, employees, or visitors may not smoke in the building or within 25 feet of any door or operable window. A designated smoking area has been provided on the outside corner of the building with a smoker's pole for proper disposal of cigarette butts.

Lease Areas

All improvements, except as provided above and specifically noted elsewhere, within the lease areas are excluded from the Base Building Improvements and are at Tenant's sole cost and expense, to the extent that such costs (together with all other costs payable by Tenant) exceed the TI Allowance, including but not limited to: interior partitions; sheetrock on perimeter walls; sheetrock column wraps; doors; hardware; interior sidelights; interior glass walls; ceilings; painting; floor coverings; cabinetry; millwork; VAV boxes: HVAC finish; plumbing; electrical service from the panel; phone/data/communication service from the first floor point of demarcation; wall finishes; lighting; building permits and project management services as described.

Tenant Improvements
(to be provided at Tenant's sole cost and expense, subject to the TI Allowance)

Structure and Shell

- Any structural support required for Tenant equipment
- Any structural support required for roof-mounted Tenant equipment

HVAC and Plumbing

- Building standard HVAC, including VAV boxes, medium and low-pressure ductwork, diffusers, sensors and controls.
- Independent HVAC/cooling systems for computer rooms, server rooms, etc.
- Plumbing and fixtures for kitchens, break rooms, additional restrooms, drinking fountains, etc.

Electrical and Fire Sprinkler System

- Fire sprinkler drops and finish sprinkler heads
- Building standard light fixtures
- Illuminated exit lights in Tenant corridors and space
- Tenant electrical panels, electrical wiring from panels to equipment, outlets, furniture, cubicles, FF&E, etc.
- Building standard switches and power outlets
- Building standard voice and data boxes

Finishes and Miscellaneous

- Building standard acoustical ceilings
- Building standard sheetrock ceilings
- Building standard paints, wall coverings, etc.
- Building standard doors
- Interior walls (framing, insulation, sheetrock, finishes, etc.)
- Additional thermal insulation (exterior walls), as requested by Tenant
- Additional sound insulation (interior walls), as requested by Tenant
- Tenant lobby and corridor finishes
- Floor coverings (carpet, ceramic tile, VCT tile, etc.) including base
- Cabinetry (break room, kitchen, offices, copy centers, etc.)
- All other finishes and improvements not included in Base Building Improvements

Tenant Property (to be provided at Tenant's sole cost and expense)

Miscellaneous

- Tenant signage/logo
- Window blinds
- Voice and data cabling
- Tenant furniture, fixtures and equipment
- All Tenant personal property

EXHIBIT B

to

LEASE

RULES

The rules set forth in this Exhibit are a part of the foregoing Lease (the " ***Lease*** "). Whenever the term "Tenant" is used in these rules, such term shall be deemed to include Tenant and Tenant's Occupants. The following rules may from time to time be modified by Landlord in the manner set forth in the Lease. The terms used in this Exhibit shall have the same meaning as set forth in the Lease. If any provision of these rules conflicts with any provision of the Lease, the provision of the Lease shall control.

1. Obstruction . Any sidewalks, entries, exits, passages, corridors, halls, lobbies, stairways, elevators or other similar Common Areas shall not be obstructed by Tenant or used for any purpose other than ingress and egress to and from the Premises. Tenant shall not place any item in any of such locations, whether or not such item constitutes an obstruction, without the prior consent of Landlord. Landlord may remove any obstruction or any such item without notice to Tenant and at the sole cost and expense of Tenant. Any sidewalks, entries, exits, passages, corridors, halls, lobbies, stairways, elevators or other Common Areas are not for the public, and Landlord shall in all cases retain the right to control and prevent access to them by all individuals whose presence, in the reasonable judgment of Landlord, would be prejudicial to the safety, character, reputation or interests of the Property or Landlord's tenants. Tenant shall not go on the roof of the Building, except as may otherwise be expressly provided in the Lease.

2. Deliveries . All deliveries and pickups of supplies, materials, garbage and refuse to or from the Premises shall be made only through such access as may reasonably be designated by Landlord for deliveries and only during normal weekday business hours. Tenant shall not obstruct or permit the obstruction of such access. Tenant shall be liable for the acts and omissions of any persons making such deliveries or pickups, in accordance with and subject to Paragraph 11.1 of the Lease.

3. Moving . Furniture and equipment shall be moved in and out of the Building only through such access as may reasonably be designated by Landlord for deliveries and then only during such hours and in such manner as may reasonably be prescribed by Landlord, but Landlord shall not impose any additional or special charge in connection therewith. If Tenant's movers damage any part of the Improvements, Tenant shall pay to Landlord within thirty (30) days after demand the amount required to repair such damage, and Landlord shall thereafter repair such damage.

4. Heavy Articles . No safe or article, the weight of which may, in the reasonable opinion of Landlord, constitute a hazard of damage to the Building, shall be moved into the Premises. Other safes and heavy articles shall be moved into, from or about the Building only during such hours and in such manner as shall reasonably be prescribed by Landlord, and Landlord may reasonably designate the location of such safes and articles.

5. Building Security . On business days and on other days between the hours of 6:00 p.m. that evening and 8:00 a.m. the following day, access to the Building, the halls, corridors, elevators or stairways in the Building or to the Premises may be refused unless the individual seeking access is known to the individual or employee of the Building in charge or has a pass and is properly identified, but will not be refused if the individual seeking access is known to the individual or employee of the Building in charge or has a pass and is properly identified. In the event of an invasion, mob, riot, public excitement or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of the same by closing the doors of the Building or any other reasonable method, for the safety of the tenants and protection of the Building and property in the Building. Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Building (including, without limitation, the installation of security cameras, scanning devices and other security technology in the Common Areas), provided that such systems and procedures shall not unreasonably disturb Tenant's business. Tenant shall be entitled to receive a number of key cards (digital or traditional) for after-hours access to the Building equal to Tenant's Parking Stall Allocation for Landlord's standard fee, provided that Tenant first has paid to Landlord in full any amounts due under Exhibit A attached to the Lease. Additional cards and replacement cards for any key cards that are lost or stolen may be issued by Landlord for a handling fee to be reasonably determined by Landlord.

6. Pass Key . The janitor of the Building may at all times keep a pass key to the Premises, and, subject to Paragraph 9.3 of the Lease, shall be allowed reasonable admittance to the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in advance); *provided,* that in any entry of the Premises, such janitor shall use its best efforts to minimize any interference with, or disturbance of, Tenant and the operation of Tenant's business in the Premises.

7. Locks, Access Cards and Keys . No additional lock or locks shall be placed by Tenant on any door in the Building and no existing lock shall be changed unless consent of Landlord shall first have been obtained, except for any card access system being installed as part of the initial improvements to the Premises made in accordance with Exhibit A to the Lease. At Lease end, Tenant shall promptly return to Landlord all access cards and keys to offices and toilet rooms and provide Landlord with all combinations and keys for any locks, safes, cabinets and vaults remaining in the Premises. Tenant shall keep the doors of the Premises closed and securely locked when Tenant is not at the Premises. Subject to the provisions of the Lease, including, without limitation, Paragraphs 9.2 and 9.3 , Tenant may, at Tenant's sole cost and expense, install its own card-reader system for the Premises.

8. Use of Water Fixtures . Toilets and other water fixtures shall not be used for any purpose other than that for which the same are intended. No foreign substances of any kind shall be placed in them, and any damage resulting to the same from use on the part of Tenant shall be paid for by Tenant. No individuals shall waste water by tying back or wedging the faucets or in any other manner. On leaving the Premises, Tenant shall shut off all water faucets located within the Premises. Tenant shall use all public restrooms in the Building in a reasonable and typical manner consistent with Comparable Buildings.

9. No Animals; Excessive Noise . No animals shall be allowed in the Building, other than service animals for disabled persons. Neither Tenant nor Tenant's Occupants shall disturb the occupants of the Building or adjoining buildings or space by using any electronic equipment or musical instrument or making loud or improper noises.

10. Bicycles . Bicycles and other vehicles shall not be permitted anywhere inside or on the sidewalks outside of the Building, except in those areas designated by Landlord for bicycle parking.

11. Trash . Tenant shall not allow anything to be placed on the outside of the Building, nor shall anything be thrown by Tenant out of the windows or doors, or down the corridors or ventilating ducts or shafts, of the Building. All trash and refuse shall be placed in receptacles provided by Landlord for the Building or by Tenant for the Premises.

12. Exterior Windows, Walls and Doors . No window shades, blinds, curtains, shutters, screens or draperies shall be attached or detached by Tenant and no awnings shall be placed over the windows without Landlord's prior consent.

13. Hazardous Operations and Items . Tenant shall not install or operate any steam or gas engine or boiler, or carry on any mechanical business in the Premises without Landlord's prior consent. (The phrase "mechanical business" does not include typical office use of computers, printers, copiers, fax machines and other similar office equipment.) Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or other inflammable or combustible fluid or material, or, without Landlord's prior consent, use any HVAC other than that supplied by Landlord; *provided, however,* that the foregoing shall not prohibit the storage, use or disposal of cleaning materials, ink, toner and other typical office supplies that are stored in reasonable quantities and are transported, stored, used and disposed of in accordance with Laws. Explosives or other articles deemed extra hazardous shall not be brought into the Building.

14. Hours for Repairs, Maintenance and Alteration . Any repairs, maintenance and alterations required or permitted to be done by Tenant under the Lease shall be done only during the normal weekday business hours unless Landlord shall have first consented to such work being done at other times; *provided, however,* that Tenant may proceed with after-hours emergency repairs to Tenant's property without the prior consent of Landlord if Tenant has a *bona fide* emergency, and despite its best efforts, Tenant has been unable to communicate with Landlord in advance, so long as Tenant promptly delivers to Landlord a description, in reasonable detail, of the repairs made. If Tenant desires to have any repairs or maintenance required to be done by Landlord under the Lease to be done by Landlord's employees on Saturdays, Sundays, holidays or weekdays outside of normal weekday business hours, Tenant shall pay the extra cost for such labor, unless such work, if done during ordinary business hours, will impede Tenant's ability to operate Tenant's business in a reasonable manner, in which case the cost of such labor shall be included in Operating Expenses, subject to the provisions of the Lease.

15. No Defacing of Premises . Except as permitted by Landlord by prior consent or as otherwise expressly permitted by the terms of the Lease, Tenant shall not paint, mark on, place signs on, cut, drill into, drive nails or screws into, or in any way deface the walls, ceilings, partitions or floors of the Premises or of the Building, with the exception of hanging artwork and LCD screens, whiteboards and internal marketing materials customarily utilized by Tenant in the normal course of Tenant's business operations in a normal and reasonable manner (but excluding any construction), so long as prior to Lease end the same are removed and all holes and other damage caused thereby are repaired in accordance with Paragraph 17.1 of the Lease. Pictures or diplomas shall be hung on tacks or small nails and, notwithstanding the foregoing, may be hung without Landlord's prior consent; Tenant shall not use adhesive hooks for such purposes. Tenant shall not be obligated to repair any holes caused by such tacks or small nails.

16. Chair Pads . Tenant is advised to install and maintain under all caster chairs a chair pad, or to take other reasonable steps, to protect the carpeting. If Tenant fails to comply with the preceding sentence, Tenant shall be responsible for any wear and tear of the carpet that would not have occurred had Tenant so complied.

17. Solicitation; Food and Beverages . Landlord reserves the right to restrict, control or prohibit canvassing, soliciting and peddling within the Building. Tenant shall not grant any concessions, licenses or permission for the sale or taking of orders for food or services or merchandise in the Premises, install or permit the installation or use of any machine or equipment for dispensing food or beverage in the Building, nor permit the preparation, serving, distribution or delivery of food or beverages in the Premises, without the prior approval of Landlord and only in compliance with arrangements prescribed by Landlord. Only individuals approved by Landlord shall be permitted to serve, distribute or deliver food and beverage within the Building outside the Premises or to use the public areas of the Building for that purpose. No cooking shall be done or permitted by Tenant on the Premises, except in areas of the Premises that are specially constructed for cooking as specifically provided in working drawing approved by Landlord, provided that such use is in accordance with Laws. Notwithstanding anything in this Paragraph 17 to the contrary, (a) microwave ovens and other Underwriters Laboratory-approved equipment may be used in the Premises for heating food and brewing coffee, tea and similar beverages for employees and visitors, and (b) Tenant may, at Tenant's sole cost and expense, install or have installed in the Premises vending machines for the use of Tenant's Occupants, and have food and beverage delivered to and served in the Premises for Tenant's Occupants. Notwithstanding Paragraph 5 of these Rules, Tenant's Occupants may accompany delivery personnel to the Premises to permit such food and beverage deliveries or may accept food and beverage delivery at the security desk if the Building security personnel are unwilling to permit such delivery personnel to go to the Premises.

18. Directory . Any bulletin board, directory or monument sign for Building tenants shall be provided exclusively for the display of the name and location of Building tenants only and Landlord reserves the right to exclude any other names. Landlord reserves the right to review and approve all signage and directory listings. Tenant shall pay Landlord's reasonable charges for changing any directory listing at Tenant's request.

19. Building Name . Landlord may, without notice or liability to Tenant, name the Building and change the name, number or designation by which the Building is commonly known, provided that such name will not lessen the first- class status of the Building. If Landlord changes the address of the Building and such change necessitates a change in Tenant's stationery or business cards, Landlord shall reimburse Tenant for Tenant's out-of-pocket costs for a one-month's supply of replacement stationery and business cards showing the new address. Tenant shall not use the name of the Building for any purpose other than the address of the Building.

20. Expulsion . Landlord reserves the right to exclude or expel from the Building any individual who, in the reasonable judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who is engaged in any act in violation of any of the rules and regulations of the Building that, in the judgment of Landlord, creates a safety or security risk to the Building or its occupants or materially interferes with the use and occupancy of the Building by its occupants.

21. Public Areas . Subject to the terms and conditions of the Lease, Landlord may control and operate the public portions of the Building, and the public facilities and HVAC, as well as facilities furnished for the common use of the tenants, in such manner as Landlord reasonably deems best for the benefit of the tenants, consistent with Comparable Buildings, provided that such control and operation shall not unreasonably interfere with Tenant's access to, or use of, the Premises.

22. Wireless Internet . If Tenant's wireless internet service causes interference with the wireless internet of other tenants in the Building, Tenant shall promptly eliminate such interference. If any other tenant's or occupant's wireless internet service causes interference with Tenant's wireless internet service, Landlord shall use its best efforts (without an obligation to file a lawsuit) to cause such interference to cease as soon as possible after Landlord's receipt of notice from Tenant of such interference.

EXHIBIT C

to LEASE

SUBLEASE CONSENT AGREEMENT

(See attached)

SUBLEASE CONSENT AGREEMENT

THIS AGREEMENT (this " ***Agreement*** ") is entered into as of the _____ day of _____, 20 ___, among the following:

(i) _____, a _____(" ***Landlord*** "), whose address is _____, with a required copy for notice purposes *via email* to Victor A. Taylor, Esq., Durham Jones & Pinegar, P.C., 111 South Main Street, Suite 2400, Salt Lake City, Utah 84111, Email: vtaylor@djplaw.com;

(ii) _____, a _____(" ***Tenant*** "), whose address is _____; and

(iii) _____, a _____(" ***Subtenant*** "), whose address is _____.

(Landlord, Tenant and Subtenant are referred to in this Agreement collectively as the " ***Parties*** ," and individually as a " ***Party*** .")

FOR GOOD AND VALUABLE CONSIDERATION , the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definitions . As used in this Agreement, each of the following terms shall have the indicated meaning:

" ***Lease*** " means the [_____], dated _____, [as amended by ,] entered into between Landlord or its predecessor in interest, as landlord, and Tenant or its predecessor in interest, as tenant, a copy of which is attached as Exhibit A .

" ***Premises*** " means the premises covered by the Lease.

" ***Sublease*** " means the [Sublease], dated _____, entered into between Tenant, as sublandlord, and Subtenant, as subtenant, covering the Subleased Premises, a copy of which is attached as Exhibit B .

" ***Subleased Premises*** " means [a portion of] Suite[s]____ on the _____floor[s] of the office building] [_____] located at _____, consisting of approximately _____square feet and shown on the attached Exhibit C .

2. Consent to Sublease; Representations and Warranties .

2.1. Consent to Sublease . Landlord consents to the subleasing by Tenant to Subtenant of the Subleased Premises; *provided, however,* that:

(a) such consent does not:

(i) relieve, release or discharge Tenant of any obligation to be paid or performed by Tenant under the Lease, including, without limitation, the payment of rent and other amounts when due under the Lease, whether occurring before or after such consent or the date of the Sublease, and Tenant will not be released from any liability under the Lease because of Landlord's failure to give notice of default by Subtenant under or with respect to any of the provisions of the Lease, but rather Tenant and, with respect to the Subleased Premises (except as expressly set forth in the Sublease with respect to the amount of rent or security deposit payable), Subtenant shall be jointly and severally primarily liable for such payment and performance;

(ii) constitute consent by Landlord to, approval or ratification by Landlord of, or agreement by Landlord with, any particular provision of the Sublease or a representation or warranty by Landlord with respect to the Sublease, and Landlord shall not in any respect or for any purpose be bound or estopped by the Sublease; or

(iii) constitute a consent to any change, alteration, addition, improvement or repair to the Subleased Premises, including the installation of signage, which must be separately obtained from Landlord and Tenant by Subtenant in accordance with Paragraphs 9.2 or 19.2 (as the case may be) of the Lease;

(b) Subtenant may not further sublease the Subleased Premises, allow the Subleased Premises to be used by others or assign, transfer, mortgage, encumber, pledge or hypothecate the Sublease or Subtenant's interest in the Sublease, in whole or in part, without the prior written consent of Landlord in each instance, which consent may be withheld in accordance with the provisions of the Lease relating to assignment and subleasing of the Lease; this consent is not, and shall not be deemed or construed as, a consent to any future or other sublease, assignment or transfer, or a consent to a sublease term beyond the term of the Lease, or a renewal or extension of the Lease or the Sublease;

(c) such consent shall not be deemed or construed to be an assignment or partial assignment of the Lease, or, except to the extent expressly provided by this Agreement, if at all, to create any privity of contract between Landlord and Subtenant with respect to the Lease;

(d) such consent shall not be deemed or construed to modify, amend, waive or affect any term, condition or other provision of the Lease, waive any breach of the Lease or any of the rights or remedies of Landlord, enlarge or increase Landlord's obligations or Tenant's rights under the Lease, grant to Subtenant rights that are greater than those granted to Tenant under the Lease, or waive or affect Tenant's obligations under the Lease, which shall continue to apply to the Premises and the occupants of the Premises as if the Sublease had not been made, with the Sublease remaining in all respects subject and subordinate to the Lease, as the same may be amended; if any conflict exists between the Lease or this Agreement and the Sublease (except, as to Subtenant, as expressly set forth in the Sublease with respect to the amount of rent or security deposit payable), then the Lease or this Agreement, as applicable, shall control and prevail;

(e) notwithstanding any provision of the Sublease to the contrary, Subtenant shall have no right to enforce any of Tenant's rights under the Lease directly against Landlord, all of such rights being personal to Tenant;

(f) Tenant and Subtenant shall not amend the Sublease in any respect without the prior written approval of Landlord, and in no event shall any such amendment, whether or not approved by Landlord, affect or modify or be deemed to affect or modify the Lease in any respect;

(g) for the benefit of Landlord, Subtenant agrees that Subtenant will be fully and completely bound by each and every term of the Lease relating to Subtenant's occupancy and use of the Subleased Premises, and, except as expressly set forth in the Sublease with respect to the amount of rent or security deposit payable, Subtenant expressly assumes and agrees to perform and comply with every obligation of Tenant under the Lease as to the Subleased Premises, as if Subtenant were the tenant under the Lease with respect to the Subleased Premises, including, without limitation, Tenant's obligation to indemnify Landlord in accordance with Paragraph 11.1 of the Lease and deliver financial statements in accordance with Paragraph 18.2 of the Lease; Subtenant acknowledges that Subtenant has examined and is familiar with all of the provisions of the Lease;

(h) Tenant shall be liable to Landlord for any default under the Lease, whether such default is caused by either or both Tenant and Subtenant or anyone claiming by, through or under either Tenant or Subtenant; subject to the notice and cure provisions given to Tenant and set forth in Paragraph 16.1 of the Lease, Landlord may proceed directly against Tenant without first exhausting Landlord's remedies against Subtenant, Landlord may proceed directly against Subtenant without first exhausting Landlord's remedies against Tenant, or Landlord may proceed directly against Tenant and Subtenant simultaneously; therefore, such consent shall not be deemed to restrict or diminish any right that Landlord may have against Tenant or Subtenant pursuant to the Lease, or at law or in equity for violation of the Lease or otherwise, including, without limitation, the right to enjoin or otherwise restrain any violation of the Lease by Subtenant, and Landlord may at any time enforce the Lease against either or both Tenant and Subtenant; any breach of the Lease by either Tenant or Subtenant will entitle Landlord to avail itself of any remedy set forth in the Lease in the event of such breach, as well as any other remedy available at law to Landlord;

(i) notwithstanding anything to the contrary contained in this Agreement, Landlord shall not be liable at any time for any cost or obligation of any kind arising in connection with the Sublease, including, without limitation, any failure of Tenant or Subtenant to perform any of its obligations under the Sublease, brokerage commissions or other charges or expenses, improvements to the Subleased Premises, or security required to be given by Subtenant under the Sublease; Tenant and Subtenant jointly and severally agree to indemnify, protect, defend and hold harmless Landlord from all claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees) that Landlord may incur as a result of any claim to pay any person any commission, finder's fee or other charge in connection with the Sublease;

(j) to the extent that any provisions of the Sublease are contrary to the provisions of the Lease, such Sublease provisions are deemed revoked as to Landlord, and Tenant and Subtenant shall fully perform all provisions of the Lease; without limiting the generality of the foregoing, and notwithstanding anything to the contrary contained in the Sublease: (i) nothing in the Sublease shall expand the liability or obligations of Landlord, whether to Tenant, Subtenant or any other person, and Landlord withholds consent to anything in the Sublease that does expand or purports to expand the liability or obligations of Landlord; and (ii) Subtenant shall have no right to expand or relocate the Subleased Premises beyond the Premises, to extend or renew the term of the Sublease beyond the existing term of the Lease or to exercise any option to terminate, right of first offer or right of first refusal, regardless of whether Tenant may have any such right under the Lease, and Subtenant shall have no right to exercise Tenant's rights thereunder; Subtenant's sole remedy for any alleged or actual breach of its rights in connection with the Subleased Premises shall be solely and exclusively against Tenant; and

(k) pursuant and subject to Paragraph 10.3 of the Lease, concurrently with the execution and delivery of this Agreement, Tenant shall pay to Landlord all of Landlord's reasonable and customary attorneys' fees and costs incurred in connection with the Sublease and this Agreement.

2.2. Representations and Warranties . As an inducement for Landlord to give the foregoing consent, Tenant represents and warrants to Landlord that:

(a) the Lease was duly authorized, executed and delivered by Tenant, is in full force and effect, and constitutes the legal, valid and binding obligation of Tenant, enforceable in accordance with its terms;

(b) any improvements to be constructed on the Premises by Landlord have been completed and accepted by Tenant (subject to any "punch list" items to be completed by Landlord under the Lease and to any items warranted by Landlord under the Lease), and any tenant improvement allowance due to Tenant has been paid to Tenant in full;

(c) Tenant unconditionally accepts the Premises in their current "as is" condition and does not have any claim against Landlord for any defect, limitation or deficiency in the Premises (subject to any "punch list" items to be completed by Landlord under the Lease and to any items warranted by Landlord under the Lease), or any defenses against the enforcement of the Lease;

(d) to Tenant's knowledge, neither Landlord nor Tenant is in default in any manner in the performance of any of their respective obligations under the Lease, and no circumstance exists which, with the passage of time or the giving of notice or both, would constitute such a default; and

(e) except for the Sublease, Tenant has not assigned the Lease or subleased or otherwise transferred or encumbered its interest under the Lease.

3. Payments under Sublease .

3.1. Payment to Landlord . As additional consideration for Landlord's consent to the Sublease, Tenant irrevocably, absolutely and unconditionally conveys, transfers and assigns to Landlord all rent and other amounts due to Tenant under the terms of the Sublease, together with the right, power and authority to collect such rent and other amounts, subject to Paragraph 10.3 of the Lease. Therefore, notwithstanding any Sublease provision to the contrary, Subtenant covenants to pay directly to Landlord without abatement, deduction, offset, prior notice or demand by Landlord all rent and other amounts payable to Tenant under the Sublease in lawful money of the United States at the address set forth above for Landlord or at such other place as Landlord may designate to Subtenant in writing, on or before the date due. To the extent of all rent and other amounts actually paid by Subtenant and received by Landlord, Tenant shall receive credit under the Lease against current amounts then payable by Tenant to Landlord under the Lease, and Subtenant shall receive credit under the Sublease for those amounts; *provided, however,* that the receipt by Landlord of any rent or other amounts from Subtenant shall not be deemed or construed as releasing Tenant from Tenant's obligations under the Lease (except to the extent of such amounts actually received by Landlord) or the acceptance of Subtenant as a direct tenant; *provided further, however,* that if the rent actually received by Landlord from Subtenant under the Sublease exceeds the rent payable by Tenant under the Lease (calculated on a per rentable square foot basis if less than all of the Premises is subleased), Landlord shall promptly remit fifty percent (50%) of such excess to Tenant in accordance with and subject to Paragraph 10.3 of the Lease (meaning that such excess shall be calculated after reimbursing Tenant for reasonable advertising expenses, brokerage commissions, tenant improvement costs and attorneys' fees actually incurred by Tenant and payable to non-affiliated third parties in connection with such assignment or subleasing, all of which must be amortized over the applicable assignment or sublease term). Landlord shall give Tenant prompt written notice if Subtenant fails to pay any monthly rent to Landlord when due under this Agreement, and no late charge or default interest shall be payable by Tenant on such monthly rent payable by Subtenant in such event if Tenant cures such failure within three (3) business days after the receipt of such notice from Landlord.

3.2. Consideration . Tenant and Subtenant each represent and warrant to, and covenant with, Landlord that the rent expressly set forth in the Sublease (which shall be paid to Landlord in accordance with Paragraph 3.1 of this Agreement) is the only rent or other consideration paid or to be paid by Subtenant to Tenant in connection with the Sublease or the Subleased Premises, and that no other rent or consideration has been paid or is to be paid by Subtenant to Tenant, including, without limitation, any money, property, services or anything else of value (including, without limitation, the payment of costs, cancellation of indebtedness, discounts, rebates or any other items). Landlord may, at its expense, following at least ten (10) business days' written notice to Tenant, audit and review Tenant's records and accounts relating to the Sublease and the Subleased Premises at any time or from time to time during normal business hours. If such audit and review reveal that Tenant has paid less than the amount owed pursuant to Paragraph 10.3 of the Lease, then Tenant shall pay within thirty (30) days after demand the reasonable cost of such audit and review and any additional rent or other sums owed to Landlord hereunder.

4. Termination of Sublease . If at any time prior to the expiration or sooner termination of the Sublease:

(a) the Lease expires or terminates for any reason, including, without limitation, as a result of a Tenant default, a rejection of the Lease in Tenant bankruptcy proceedings, a voluntary termination agreed to by Landlord and Tenant, or the expiration of the term of the Lease; or

(b) Tenant's right to possession terminates by surrender, as a result of an unlawful detainer proceeding, or by any other cause, without termination of the Lease,

then the Sublease shall automatically and simultaneously terminate as a matter of law, and Subtenant shall vacate the Subleased Premises on or before the effective date of such expiration, termination or surrender, subject to the provisions of Paragraph 5 of this Agreement. If Subtenant fails to vacate the Subleased Premises in a timely manner, Landlord shall be entitled to all of the rights and remedies available to a landlord against a tenant wrongfully holding over after expiration of the term of a lease without Landlord's prior written consent, including, without limitation, the rights and remedies available to Landlord under Paragraph 17.2 of the Lease (including, without limitation, those provisions relating to increased rent). Landlord shall not be liable to Tenant or Subtenant for any claim or damage because of the termination.

5. Discretionary Continuance of Sublease .

5.1. Right to Continue . Notwithstanding anything to the contrary contained in Paragraph 4 of this Agreement, if at any time prior to the expiration or sooner termination of the Sublease:

(a) the Lease expires or terminates for any reason (other than a termination under the provisions of the Lease relating to damage, destruction or condemnation), including, without limitation, as a result of a Tenant default, a rejection of the Lease in Tenant bankruptcy proceedings, a voluntary termination agreed to by Landlord and Tenant, or the expiration of the term of the Lease; or

(b) Tenant's right to possession terminates by surrender, as a result of an unlawful detainer proceeding, or by any other cause, without termination of the Lease,

then Landlord may, at its sole option (which may be exercised in Landlord's sole and absolute discretion and without any obligation to do so), on written notice delivered to Subtenant not more than thirty (30) days after the effective date of such expiration, termination or surrender, and without any additional or further agreement of any kind by Subtenant (such notice being self-operative without the execution of any further instrument), elect to continue the Sublease without interruption with the same effect as if Landlord, as landlord, and Subtenant, as tenant, had entered into a lease as of the end of the Lease containing the same provisions as those contained in the Sublease for a term equal to the unexpired term of the Sublease, *subject, however,* to the right of Landlord, in its sole discretion, to terminate the Sublease thereafter on not less than thirty (30) days' advance written notice given by Landlord to Subtenant. That is, even if Landlord elects to continue the Sublease pursuant to this Paragraph 5 , Landlord may nevertheless at any time thereafter, on at least thirty (30) days' written notice to Subtenant, terminate the Sublease, in which case the Sublease and all right, title and interest of Subtenant under the Sublease shall terminate, and Subtenant shall vacate the Subleased Premises in accordance with the Sublease and the Lease, as of the effective date of such termination.

5.2. Conditions on Continuance . If Landlord elects to continue the Sublease:

(a) Subtenant shall attorn to Landlord as tenant, and Landlord shall accept such attornment, *subject, however,* to the foregoing right of Landlord thereafter to terminate the Sublease, and Subtenant shall, within ten (10) days after the request of Landlord, confirm such attornment in writing;

(b) Landlord shall thereafter stand in the place and stead of Tenant under the Sublease, and all rent and other sums payable to Tenant under the Sublease, and all other obligations to be performed by Subtenant under the Sublease, shall continue to be paid and performed when due by Subtenant to Landlord; *provided, however,* that in no event will Landlord:

(i) be liable for any act, omission or default of Tenant under the Sublease;

(ii) be subject to any claims, offsets or defenses that Subtenant had or might have against Tenant;

(iii) be obligated to cure any default of Tenant that occurred prior to the time that Landlord succeeded to the interest of Tenant under the Sublease, to perform any obligation under the Sublease to have been paid or performed by Tenant prior to the giving of such notice, or for any construction, improvement or repair that is not the obligation of Landlord under the Lease;

(iv) be bound by any payment of rent or other payment made by Subtenant to Tenant in advance of any periods reserved for that payment in the Sublease;

(v) be bound by any modification or amendment of the Sublease made without the written consent of Landlord; or

(vi) be liable for the return of any security deposit not actually received by Landlord;

(c) neither Landlord's election under this Paragraph 5 nor its acceptance of any rent from Subtenant will be deemed a waiver by Landlord of any provisions of the Lease or this Agreement; and

(d) Landlord shall have the same remedies against Subtenant for the nonperformance of any agreement contained in the Sublease, for the recovery of rent, for the commission of any waste, and for any other default that Tenant had or would have had if the Lease had not ended.

6. Services . Landlord may furnish services to the Subleased Premises requested by Subtenant other than or in addition to those to be provided under the Lease, and bill Subtenant directly for such services for the convenience of, and without notice to, Tenant. Subtenant shall pay to Landlord all amounts that may become due for such services on the due dates therefor. If a separate submeter is installed to measure any utility furnished to the Subleased Premises, then payment for the utility so furnished will be made by Subtenant directly to Landlord as and when billed, and the furnishing of such utility will be in accordance with and subject to all of the applicable provisions of the Lease. If Subtenant fails to pay any of the foregoing amounts in a timely manner, then Tenant shall pay such amount to Landlord on written demand as additional rent under the Lease, and the failure of Tenant to pay such amount in a timely manner shall be a default under the Lease. Therefore, both Tenant and Subtenant shall be and continue to be jointly and severally liable for all bills rendered by Landlord for charges incurred by or imposed on Subtenant for services rendered and materials supplied to the Subleased Premises.

7. Insurance . Subtenant shall, with respect to Subtenant and the Subleased Premises, carry the insurance policies required to be carried by Tenant pursuant to Paragraph 12 of the Lease and shall deliver evidence of such policies to Landlord prior to occupancy of the Subleased Premises by Subtenant. The insurance shall name Landlord as an additional insured or as a loss payee, as applicable, and provide that the policy will not be subject to cancellation or change except after at least thirty (30) days' prior written notice to Landlord and Tenant.

8. No Modifications to Sublease . Neither Subtenant nor its successors or assigns shall enter into any agreement that modifies or merges the Sublease without the prior written consent of Landlord. Any agreement made in contravention of the preceding sentence shall not affect or be binding on Landlord.

9. Sale of Subleased Premises . The term "Landlord" as used in this Agreement means only the owner of the Subleased Premises during the term of such owner's ownership, so that in the event of any sale or other transfer of Landlord's interest in the Subleased Premises, Landlord will be relieved of all covenants and obligations of Landlord thereafter arising under this Agreement. The provisions of this Agreement, however, shall bind any subsequent owner of the Subleased Premises.

10. Estoppel Certificate . Subtenant shall, within ten (10) days after Landlord's request, execute and deliver to Landlord an estoppel certificate in favor of Landlord and such other persons as Landlord shall reasonably request setting forth the following: (a) a ratification of the Sublease; (b) the commencement date and expiration date of the Sublease; (c) that the Sublease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writing as shall be stated); (d) that all conditions under the Sublease to be performed by Tenant have been satisfied or, in the alternative, those claimed by Subtenant to be unsatisfied; (e) that no defenses or offsets exist against the enforcement of the Sublease or, in the alternative, those claimed by Subtenant to exist; (f) the amount of advance rent, if any (or none if such is the case), paid by Subtenant; (g) the date to which rent has been paid; (h) the amount of any security deposit under the Sublease; and (i) such other information regarding the status of the Sublease as Landlord may reasonably request.

11. Notices . Any notice or demand to be given by one Party to another under this Agreement shall be given in writing by personal service, express mail, Federal Express or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to such Party as set forth at the outset of this Agreement. Any Party may change the address at which such Party desires to receive notice on written notice of such change to the other Party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the Party to which the notice is directed; *provided, however,* that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change that was not properly communicated shall not defeat or delay the giving of a notice. Notwithstanding any provision of the Sublease to the contrary, Landlord shall have no obligation to deliver to Subtenant any notice or copy of any notice given under the Lease, and no obligation to accept, consider or respond to any request, inquiry, demand or other communication from Subtenant, whether of a type described in the Lease, the Sublease or otherwise, except as expressly set forth in this Agreement. Tenant and Subtenant shall each, concurrently with the mailing of any default notice to the other under the Sublease, provide a copy of such notice to Landlord in accordance with this Paragraph.

12. Attorneys' Fees . If any Party brings suit to enforce or interpret this Agreement, the prevailing Party shall be entitled to recover from the other Party or Parties the prevailing Party's reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing Party is entitled.

13. Miscellaneous . This Agreement shall inure to the benefit of, and be binding on, the Parties and their respective successors and assigns, subject to the other provisions of this Agreement. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Utah. This Agreement may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document. Each individual executing this Agreement represents and warrants that such individual has been duly authorized to execute and deliver this Agreement in the capacity and for the entity set forth where such individual signs. A modification of, or amendment to, any provision contained in this Agreement shall be effective only if the modification or amendment is in writing and signed by all of the Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect. Each exhibit referred to in, and attached to, this Agreement is an integral part of this Agreement and is incorporated in this Agreement by this reference.

[Remainder of page intentionally left blank; signatures on following page]

THE PARTIES have executed this Agreement on the respective dates set forth below, to be effective as of the date first set forth above.

LANDLORD :

_____

By _____

Print or Type Name of Signatory:

_____

Its _____

Date _____

TENANT :

_____

By _____

Print or Type Name of Signatory:

_____

Its _____

Date _____

SUBTENANT :

_____

By _____

Print or Type Name of Signatory:

_____

Its _____

Date _____

CONSENT AND CONFIRMATION OF SUBLEASE GUARANTOR

THE UNDERSIGNED , the guarantor of the Sublease (the " ***Sublease*** ") identified in the foregoing Sublease Consent Agreement (the " ***Agreement*** "), (i) consents and agrees to the Agreement, (ii) agrees that the undersigned's guaranty of the Sublease is in full force and effect and will continue to apply to the Sublease, as the Sublease may be amended after the date of this instrument, or as the Sublease may be enforced by Landlord (as defined in the Agreement), (iii) agrees that the undersigned has no defenses to the enforcement of such guaranty, which is and shall continue to be enforceable in accordance with its terms, and (iv) agrees that such guaranty shall by fully enforceable by Landlord with respect to any obligation of Subtenant (as defined in the Agreement) running in favor of Landlord.

DATED : _____.

_____

_____, individually

Date _____

EXHIBIT A

to

SUBLEASE CONSENT AGREEMENT

LEASE

(See attached)

EXHIBIT B

to

SUBLEASE CONSENT AGREEMENT

SUBLEASE

(See attached)

EXHIBIT C

to

SUBLEASE CONSENT AGREEMENT

SUBLEASED PREMISES

(See attached)

Exhibit 10.4

SETTLEMENT AND GENERAL RELEASE OF CLAIMS

This Settlement and General Release of Claims (hereinafter "Agreement") is entered into by and between Mark Watkins (hereinafter "Watkins") on the one hand and Purple Innovation, Inc. and its subsidiaries, predecessors, and affiliates (hereinafter the "Company") on the other hand. Watkins and the Company may individually and collectively be referred to as a "Party" and the "Parties."

RECITALS

A. Company is a Delaware company doing business in the State of Utah.

B. Watkins was employed by the Company as its Chief Financial Officer ("CFO").

C. Watkins' employment with the Company terminated on March 15, 2019 (the "Separation Date") pursuant to Watkins' resignation.

D. During his employment as CFO, Watkins was granted options to purchase Class A Common Stock of the Company, of which 107,604 had vested and were exercisable with 90-days of his Separation Date.

E. Watkins desires to exercise and sell all his exercisable options within the 90-day time period he can do so under the terms of his equity grant.

F. Because of his position as CFO, Watkins was an "affiliate" for purposes of Rule 144 during the past 90 days and is limited in the number of shares of the Company's stock he can sell within 90-days from his Separation Date, and, as a consequence of this Rule, Watkins is not allowed by law to exercise and sell all of his vested options during the limited 90-day time period he can exercise his options under the terms of his equity grant.

G. Watkins desires and has asked the Company for an accommodation that would allow him the ability to exercise and sell all his vested options, or otherwise fully benefit from the vested equity granted to him.

H. The Company desires and has agreed to provide the accommodation set forth herein to which Watkins would not otherwise be entitled in exchange for Watkins' settlement and compromise of any and all possible claims and disputes he has against the Company arising out of their relationship to date, and to provide for a General Release of any and all such claims.

AGREEMENT

1. Payment from the Company . If Watkins signs this Agreement within twenty-one (21) days of receipt and does not revoke it as set forth in Section 5, then in exchange for the promises contained in this Agreement, the Company agrees to pay Watkins a settlement amount determined by multiplying (x) the difference between (i) the closing price of the Company's Class A Common Stock on the date he signs and returns this Agreement to the Company minus (ii) the strike price of $5.9455, by (y) the full 107,604 vested options he now can exercise, less applicable federal and state payroll tax deductions. The payment will be made in 2 equal monthly installments, with the first payment to be made no later than seven (7) business days after the Effective Date of this Agreement, as defined in Section 5, and will be subject to applicable tax withholdings, provided Watkins does not revoke this Agreement.

2. Release of All Claims by Watkins . In consideration of the payment and promises described in Section 1, which Watkins would otherwise not be entitled to except for signing this Agreement, Watkins does hereby unconditionally, irrevocably and absolutely release and discharge the Company and any related holding, parent, sister or subsidiary corporations or entities and all of their respective owners, directors, officers, employees, agents, volunteers, attorneys, insurers, divisions, successors and assigns ("Releasees") from any and all loss, liability, claims, demands, causes of action or suits of any type, whether in law and/or in equity, whether known or unknown, related directly or indirectly, or in any way connected with any transaction, affairs or occurrences between them to date, including but not limited to Watkins' employment at the Company, the terms of said employment, the termination of said employment, and any other conduct by the Company concerning Watkins to date. This Agreement specifically applies, without limitation, to any and all contract or tort claims, claims for wrongful termination and/or violation of public policy, wage claims, and claims arising under Title VII of the Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act ("ADEA"), the Equal Pay Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Utah Antidiscrimination Act, and any and all federal, state or local statutes, regulations or ordinances, including without limitation those governing the employment relationship and/or discrimination in employment. Without limiting the foregoing, the Option Grant Agreement under which Watkins was granted his equity in the Company is hereby canceled in accordance with Section 14(b) of the Company's 2017 Equity Incentive Plan and no longer conveys any rights to Watkins, and Watkins expressly agrees not to exercise, or attempt to exercise, any rights under the grant document.

This Agreement does not prohibit Watkins from reporting possible violations of federal law or regulation to any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission ("SEC"), the Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. Nothing in this Agreement requires Watkins to seek prior authorization from the Company to make any such reports or disclosures and Watkins does not need and is not required to notify the Company that he has made any such reports or disclosures. This Agreement is not intended to and does not restrict Watkins from seeking or obtaining an SEC whistleblower award.

3. No Claims Filed/Waiver of Right to Sue . Watkins represents that Watkins has not filed any claim, complaint, charge or lawsuit against Company or any other Releasee with any governmental agency or any state or federal court. Watkins agrees that neither he nor any person, organization or any other entity acting on his behalf will file, charge, claim, sue, participate in, join or cause or permit to be filed, charged or claimed, any action, claim, charge, grievance, or demand for damages or other relief (including injunctive, declaratory, monetary or other) against the Releasees with respect to the claims which are the subject of this Agreement. Notwithstanding the foregoing, nothing in this Agreement prohibits Watkins from filing a charge with the Equal Opportunity Employment Commission ("EEOC") or participating in any investigation or proceeding conducted by the EEOC. Nothing in this Agreement shall be deemed to preclude Watkins from challenging the knowing and voluntary nature of his waiver of ADEA claims, or from challenging any breach of this Agreement.

4. Waiver of Damages . Watkins hereby waives any right to recover damages, costs, attorneys' fees, and any other relief in any charge, proceeding or action brought against the Releasees by him or by any other party on his behalf, including without limitation the Equal Employment Opportunity Commission, or other administrative agency, asserting any claims released by Watkins herein. Notwithstanding the foregoing, Watkins does not waive rights, if any, he may have to unemployment insurance benefits or workers' compensation benefits.

5. Older Workers' Benefit Protection Act/ADEA Claims .

a. This section of the Agreement addresses Watkins' release of claims arising under the ADEA, the federal law involving discrimination on the basis of age in employment (age 40 and above). This section is provided, in compliance with federal law, including but not limited to the ADEA and the Older Workers' Benefit Protection Act of 1990, to ensure that Watkins clearly understands his rights so that any release of age discrimination claims under federal law (the ADEA) is knowing and voluntary on the part of Watkins.

b. Watkins represents, acknowledges and agrees that the Company has advised him, in writing through this subparagraph, to discuss this Agreement with an attorney, and to the extent, if any, that Watkins has desired, Watkins has done so; that the Company has given Watkins twenty-one (21) days from receipt of this Agreement to review and consider this Agreement before signing it, and Watkins understands that he may use as much of this twenty-one (21) day period as he wishes prior to signing; that no promise, representation, warranty or agreements not contained herein have been made by or with anyone to cause him to sign this Agreement; that he has read this Agreement in its entirety, and fully understands and is aware of its meaning, intent, content and legal effect; and that he is executing this release voluntarily and free of any duress or coercion.

c. The Parties acknowledge that for a period of seven (7) days following the execution of this Agreement, Watkins may revoke the ADEA release portion of the Agreement. If revocation occurs, the Agreement shall not become effective or enforceable. If revocation does not occur, the Agreement shall become effective and enforceable upon the eighth (8^{th}) day after it has been signed by Watkins (the "Effective Date").

d. This Agreement and its release of ADEA claims do not waive rights or claims under ADEA that may arise **after** the date the Agreement is executed.

e. If Watkins exercises his right to revoke the ADEA release portion of the Agreement, the Company may, at its option, either nullify this Agreement in its entirety, or keep it in effect in all respects other than as to that portion of his release of claims that Watkins has revoked. Watkins agrees and understands that if the Company chooses to nullify this Agreement in its entirety, the Company will have no further obligations under this Agreement.

6. Confidentiality of Agreement . Watkins agrees that all matters relative to this Agreement shall remain confidential. Watkins agrees that Watkins shall not disclose any information concerning this Agreement to any person who is not a party hereto, other than Watkins' attorneys, tax advisors, or spouse. The Parties acknowledge that Watkins may disclose this Agreement and its terms pursuant to court order, agency directive, or in accordance with law. Watkins also agrees to immediately notify the Company of any requests or demands to disclose any information concerning this Agreement before any such disclosure is made pursuant to court order, agency directive, or in accordance with law. Watkins agrees to advise all persons to whom he discloses this Agreement or its terms, of his obligation of confidentiality, and, with respect to Watkins' attorneys, tax advisors, and spouse, to extract from them a promise to be bound by this section.

7. Non-Disparagement . As a material condition of this Agreement, Watkins agrees not to disparage in any way, orally or in writing, any of the Releasees to any person or entity.

8. Cooperation . Upon reasonable request, Watkins agrees to give reasonable assistance and cooperation willingly in any matter relating to his expertise or experience as an employee or officer of the Company, as the Company may reasonably request, including but not limited to one or both of (1) providing information concerning, or assistance with, investigations, claims, litigations, matters or projects in which Watkins was involved or as to which Watkins potentially has knowledge by virtue of his employment with the Company or otherwise related to the Company's business prior to the Separation Date and (2) Watkins' attendance and truthful testimony where deemed appropriate by the Company, with respect to any investigation or the Company's defense or prosecution of any existing or future claims or litigations relating to matters in which Watkins was involved or as to which Watkins potentially has knowledge by virtue of his employment with the Company or otherwise related to the Company's business prior to the Separation Date. Watkins agrees to comply with any and all litigation holds provided to him by the Company and to produce all documents related to such litigation holds as requested by the Company. To the extent permitted by law, the Company will reimburse Watkins' reasonable expenses incurred in connection with any travel that may be required to fulfill his obligation under this paragraph.

9. Entire Agreement . The Parties further declare and represent that no promise, inducement or agreement not herein expressed has been made to them, and that this Agreement contains the full and entire agreement between and among the Parties concerning the subject matter herein, and that the terms of this Agreement are contractual and not a mere recital. Notwithstanding the foregoing, the Parties acknowledge and agree that the Proprietary Information, Invention Assignment, and Non-Competition Agreement signed by Watkins on [*], will remain in full force and effect, to the fullest extent allowed by law, following the execution of this Agreement. Without limiting the nature of those agreements, Watkins acknowledges that the Company owns all of Watkins's ideas, inventions and other intangible property, including but not limited to photographs and writings of Watkins, in the Company's possession or control or created by Watkins for the Company or while employed by the Company, and the Company may fully use the same without any limitation or obligation to Watkins.

10. Knowing Agreement . Watkins has read the foregoing Agreement, knows its contents and fully understands it. Watkins further acknowledges that he has been given the opportunity to consult with his own independent legal counsel with respect to the matters referenced in this Agreement. Watkins acknowledges that he has fully discussed this Agreement with his attorney or has voluntarily chosen to sign this Agreement without consulting an attorney, fully understanding the consequences of this Agreement.

11. Applicable Law and Venue . The validity, interpretation and performance of this Agreement shall be construed and interpreted according to the substantive laws of the State of Utah. Any cause of action arising under this Agreement shall be brought in the courts located in Salt Lake County, Utah and both Parties agree to submit to the jurisdiction of those courts.

12. Attorneys' Fees . The Parties also expressly agree that, should any action or proceeding be commenced for breach of this Agreement, the prevailing Party shall be awarded reasonable attorneys' fees on such proceedings. The Parties further agree that, in the event Watkins commences any sort of legal proceeding or action in any court or before any tribunal alleging a claim or cause of action that is released, waived, or barred under the provisions of this Agreement, the Company shall be awarded its attorneys' fees and costs in defending against such action or proceeding upon dismissal or judgment of the barred claim or cause of action. The Parties further agree that, in the event Watkins attempts to exercise any rights under the Options Grant Agreement that is voided by this Agreement, the Company shall be awarded its attorneys' fees and costs in enforcing this Agreement.

13. Complete Defense . This Agreement may be pleaded as a full and complete defense against any action, suit or proceeding which may be prosecuted, instituted or attempted by either Party in breach thereof.

14. Severability . If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which may be given effect without the invalid provision or part. To this extent, the provisions, and parts thereof, of this Agreement are declared to be severable.

15. No Admission of Liability . It is understood that this Agreement is not an admission of any liability by any person, firm, association or corporation, or of any rights under any agreement, but is in compromise and settlement of disputed claims and rights.

16. Authority to Sign . Each individual signing this Agreement directly and expressly warrants that she or he has been given and has received and accepted authority to sign and execute the documents on behalf of the Party for whom it is indicated she or he has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement or enter into a binding agreement on behalf of such Party with respect to the matters contained herein and as stated herein.

17. No Assignment of Claims . Watkins represents and warrants that he has not previously assigned or transferred, or attempted to assign or transfer, to any third party, any of the claims waived and released herein

18. Successors and Assigns . This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

19. Counterparts . This Agreement may be signed in counterparts. A facsimile signature shall have the same force and effect as an original signature.

20. Notices . Watkins should provide the required notices and shall return the executed Agreement, and if applicable his revocation of the Agreement, to the following representative of Purple:

Casey McGarvey
Purple Innovation, Inc.
123 E 200 N
Alpine, UT 84004
801-756-2600 x211 (office)
casey@purple.com

IN WITNESS WHEREOF , the undersigned have executed this Agreement on the dates shown below.

Dated: May 22, 2019

/s/ Mark Watkins
Mark Watkins

Dated: May 28, 2019

/s/ Joseph B. Megibow
Joseph B. Megibow, CEO

EXHIBIT 31.1

CERTIFICATIONS

I, Joseph B. Megibow, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Purple Innovation, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 13, 2019

/s/ Joseph B. Megibow

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

EXHIBIT 31.2

CERTIFICATIONS

I, Craig L. Phillips, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Purple Innovation, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 13, 2019

/s/ Craig L. Phillips

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

EXHIBIT 32.1

CERTIFICATION

In connection with the Quarterly Report on Form 10-Q of Purple Innovation, Inc. (the "Corporation") for the quarter ended June 30, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Joseph B. Megibow, Chief Executive Officer of the Corporation, hereby certifies, pursuant to Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

Dated: August 13, 2019

/s/ Joseph B. Megibow

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

EXHIBIT 32.2

CERTIFICATION

In connection with the Quarterly Report on Form 10-Q of Purple Innovation, Inc. (the "Corporation") for the quarter ended June 30, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Craig L. Phillips, Interim Chief Financial Officer of the Corporation, hereby certifies, pursuant to Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

Dated: August 13, 2019

/s/ Craig L. Phillips

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